

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

C.A No: 738/98F

D.C.Marawila Case No: 17 /P

Mahawattage Anthony Perera,
Haldaduwana,
Dankotuwa.

PLAINTIFF

-Vs-

1. Dobagahawttage Jeannona, (Dead)
- 1A. N.P.Jayasena,
Haldaduwana,
Dankotuwa.
2. Mapahamige Enganona, (Dead)
- 2A. Mapahamige Rathnasena,
Haldaduwana,
Dankotuwa.
3. Mapahamige Janganona(Dead)
Dankotuwa.
4. Mapahamige Senarathne, (Dead)
Madampe.
5. Mapahamige Punchisingho, (Dead)
6. Mapahamige Jemis singho, (Dead)
- 6A. Mapahamige Danasena ,
Haldaduwana,
Dankotuwa.

7. Herath Mudiyansele (Dead)
Appuhamy,
Gonawila.
8. Herath Mudiyansele
Gunasekara,
Gonawila.
9. Mapahamige Menikhami, (Dead)
Yogiyana.
10. Kumarasinghe Hetti Arachchige Charlettona,
Haldaduwana,
Dankotuwa.
11. Kumarasinghe Hetti Arachchige agnasnona,
Haldaduwana,
Dankotuwa.
12. Kumarasinghe Hetti Arachchige Magilinnona,
Dankotuwa.

DEFENDANTS

AND

- 6A. Mapahamige Danasena ,
Haldaduwana,
Dankotuwa.

6th A DEFENDANT-APPELLANT

Vs.

Mahawattage Antony Perera,
Haldaduwana,
Dankotuwa.

PLAINTIFF-RESPONDENT

And

1. Dobagahawttage Jeannona, (Dead)

- 1A. N.P.Jayasena,
Haldaduwana,
Dankotuwa.
2. Mapahamige Enganona, (Dead)
- 2A. Mapahamige Rathnasena,
Haldaduwana,
Dankotuwa.
3. Mapahamige Janganona,(Dead)
Dankotuwa.
4. Mapahamige Senarathne,
Madampe.
5. Mapahamige Punchisingho, (Dead)
7. Herath Mudiyansele Appuhami, (Dead)
Gonawila.
8. Herath Mudiyansele Gunasekara,
Gonawila.
9. Mapahamige Menikhami, (Dead)
Yogiyana.
10. Kumarasinghe Hetti Arachchige Charlethna,
Haldaduwana,
Dankotuwa.
11. Kumarasinghe Hetti Arachchige agnasnona,
Haldaduwana,
Dankotuwa.
12. Kumarasinghe Hetti Arachchige Magilinnona,
Dankotuwa.

DEFENDANTSRESPONDENTS

C.A.No.738/98(F)

D.C.Marawila No.17/P

Before : **K.T.Chitrasiri, J.**

Counsel : D.M.G.Dissanayake for 6A substituted Defendant-Appellant.

M.C.Jayaratne with M.D.J.Bandara for the Plaintiff-Respondent

Argued & Decided on : 28.01.2013

K.T.Chitrasiri, J.

This is an appeal seeking to set aside the order dated 1.10.1998. By that order learned District Judge confirmed the final Plan bearing No.1275/B and the report thereto dated 03.09.1995.

The said order had been made in terms of Section 36 of the Partition Law No.21 of 1997. A party who is dissatisfied with an order made under the said Section 36 has a right to canvass the same in terms of Section 36(A) of the Partition (Amended) Act No.17 of 1977. In terms of the said Section 36(A), a person dissatisfied with an order made under Section 36 may prefer an appeal with the leave of the Court of Appeal first had and obtained.

In this instance, no such leave had been obtained by the appellant. Instead he had filed a final appeal without leave being obtained.

Accordingly, it is clear that the appellant had adopted wrong procedure when he filed this appeal. In such a situation this Court has no option than to dismiss the appeal. This proposition in law had been upheld by the Supreme Court in the case of S. Rajendra Chettiar vs. S. Narayan Chettiar and others. [2011 BASL Law Report at page 25] The aforesaid decision of the Supreme Court had been followed by this Court in the case of C.A.889/99 as well. (C.A.Minute dated 18.12.12).

In the circumstances, the appeal of the 6A substituted Defendant-Appellant is dismissed without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

KLP/-