

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

C.A. Appeal No: 1299/98 (F)

D.C. Maravila No: 172/P

Warnakula Aditya Arsaneela Itta
Mahamuhandiramge Hilda Ponse Dondeenu, Of
No.84,
Angampitiya-East,
Waikkala

Petitioner

1. Warnakulasuriya Joseph Luise Tissera
2. Warnakulasuriya Aloysius Tissera, Both of
Angampitiya, Waikkala

1st and 2nd Defendant Appellant-Respondents

Vs.

1. Warnakulasuriya Lurdu Mary Tissera.
2. Warnakula Aditya Arsaneela Itta
Mahamuhandiramge Paustinu,
3. Bernadette Mary Conseeliya Dondeenu
All of Angampitiya, Waikkala

Plaintiff Respondent Respondents

- 3a. Warnakulasuriya Marthina Fernando, Of
Angampitiya, Waikkala

Defendant Respondent-Respondent

Case No. CA 1299/98(Final)

DC Marawila 172/P

BEFORE : K.T. Chitrasiri, J.

COUNSEL : Rohan Sahabandu P.C. for the 1st & 2nd
Defendant-Appellants.
Dr. Sunil Cooray for the 1st – 3rd Plaintiff-
Respondents.

ARGUED &

DECIDED ON : 12.02.2013

K.T. CHITRASIRI, J.

This is an appeal seeking to set aside the order made on 17.02.1998 by the learned District Judge of Marawila. The said order is seen in the Journal Entry bearing No. 67 made in the original record wherein the learned District Judge confirmed the final plan and its report that are found at pages 186 – 197 in the brief.

In terms of Section 36(A) of the Partition (Amendment) Act No. 17 of 1997, the party aggrieved by an order confirming the final plan which

indicates the blocking out of the land sought to be partitioned, should obtain leave of the Court of Appeal at the first instance and then only he/she is allowed to proceed with the appeal. In this instance, leave of this Court had not been obtained by the appellants to proceed with the appeal. They had not even made an application to do so. Obtaining leave of Court is a mandatory requirement in terms of Section 36(A) of the Partition (Amendment) Act No. 17 of 1997.

In the circumstances, this Court has no option than to dismiss this appeal since the appellants have failed to obtain leave of Court as mentioned above. Accordingly, this appeal is dismissed without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

KRL/-