

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

**CA No.394/94 (F)**

DC Panadura Case No. 16109/L

1A/2A. S. Sunethra Kanthi

3A. H. Dayawathi Fernando

3B. B. Kamal Ranathunge

3C. B.I.S. Bentharage,

all of  
No.66,  
Pangiriwatte Road,  
Nugegoda- 10250.

**Plaintiffs / Appellants**

**Vs.**

1 A/4. B. Sarath Lal

2. Cicilia Tissera

3. P. Gnanaratne,

all of  
No.28,  
Perera Mawatha,  
Panadura – 12500.

**Defendants / Respondents**

**C.A. Appeal No. 394/97 (F) - D.C. Panadura No. 16109/L**

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

Counsel : K.V. Sisisena with K. Tirimanne for the  
Plaintiff- Appellant.

Substituted Plaintiff-Appellant is present.

Bimal Rajapaksha with Muditha Perera  
for the Defendant-Respondent.

Argued &  
Decided on : 25.03.2013.

**K.T. Chitrasiri, J.**

It is brought to the notice of Court that the plaint in this case has been filed in order to obtain a declaration in respect of the land referred to in the 2<sup>nd</sup> schedule to the plaint dated 02.05.1979. In that schedule, the land claimed by the plaintiff is the land marked 'D' in Plan No. 2119. However, according to the Counsel for the Appellant, the land claimed by the plaintiff is not lot 'D' but it is lot 'C' in that Plan No. 2119. The first issue raised by the plaintiff is also directed to have a declaration in respect of the said lot 'D' to which the plaintiff does not claim title.

In the light of the above, learned Counsel for the appellant moves to withdraw this appeal reserving his right to file an action in respect of lot 'C' of the aforesaid Plan No. 2119 dated 28.09.1947. Mr. Bimal Rajapaksha appearing for the respondent has no objection to this application of the appellant. Accordingly application for withdrawal of the appeal is allowed. Therefore this appeal is dismissed without costs.

As agreed by the parties, the substituted plaintiff has the right to file an action in respect of lot 'C' in Plan No. 2119 mentioned earlier, irrespective of this action had been filed and concluded in respect of lot 'D' referred to in the said plan.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

/mds