

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

C.A.No.320/99 (F)

D.C.Kegalle No.4237/L.

M.P. Jayarathna

L. Kusumawathie

Both Are

Padeedora,
Mawanella.

Appellants

Vs.

D.P. David Sinyo

Padeedora,
Mawanella.

Respondent

C.A.No.320/99 (F)

D.C.Kegalle Mo.4237/L.

Before : K.T.Chitrasiri,J.

Counsel : S.N.Wijith Singh for the Defendant-Appellant.
Daya Guruge for the Plaintiff-Respondent.

Argued and Decided on : 09.05.2013.

K.T.Chitrasiri,J.

Counsel for the defendant-appellant agrees to withdraw this appeal provided the plaintiff-respondent undertakes to file a partition action in respect of the subject matter in this case. The plaintiff-respondent without conceding the title of the defendant-appellant to this land agrees to file a partition action to vindicate his rights. In view of the withdrawal of this appeal, the plaintiff-respondent also agrees not to execute the decree entered in this case until a decision is arrived at in the partition action that he intends to file. In view of the above, Counsel for the appellant also submits that his client would undertake not to use any right of way over the land referred to in the schedule to the plaint until a final decree is entered in the partition action that is to be filed.

Having considered the above agreement of the parties, application for withdrawal of the appeal is allowed. The plaintiff-respondent should file a partition action in order to determine the rights of the parties. The plaintiff-respondent is not entitled to have the decree entered in this case executed until a decision is made in the partition action. The defendant-appellant is not entitled to use any right of way over the subject matter in this case.

Subject to the above, the appeal is dismissed without costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

WC/-