

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

C.A. 182/98(F)

D.C. Matale Case No: 1903/P

Wijesinghe Mudiyanseelage Kiribanda Wijekoon
Kotuwe Gedara,
Matale.

Appellant

Vs.

Rathnayaka Mudiyanseelage Dingiri Amma
Arabepola,
Alawathugoda.

Respondent

C.A. 182/98(F)**D.C. Matale Case No: 1903/P**

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

COUNSEL : V. Kulatunga with Miss Piumi Kalutantri for the 3rd
Defendant- Appellant.
R.C. Gunaratne for the Respondents.

**ARGUED &
DECIDED ON** : 05.06.2013

K.T. CHITRASIRI,J.

Having made submissions, both Counsel inform Court that the deed bearing No: 33756 marked in evidence as P19 does not relate to the land sought to be partitioned. The correct deed bearing No: 33756 had been marked as 3V2 and it had not been considered by the learned District Judge.

Furthermore, by the deed bearing No: 27754 marked in evidence as P20, three vendors have given their rights to the 3rd Defendant-Appellant. However in the judgment only one of the vendors', namely Palingumenika's rights have been considered by the learned District Judge, when he decided to allocate shares to the respective parties.

In the circumstances both Counsel concede that the allocation of shares by the learned District Judge do not fall in line with the evidence recorded in this case. Moreover, the learned District Judge has considered a wrong deed when he decided to allocate shares under the deed marked P19.

For the aforesaid reasons, it is clear that the judgment dated 28.11.1997 is ex facie wrong. Accordingly, the aforesaid judgment dated 28.11.1997 is set aside.

At this stage both Counsel agree to hold a retrial on the basis of the pedigree filed by the plaintiff for which no party has raised any objection at the commencement of the trial. Learned District Judge therefore, is directed to have a trial *de-novo*. Subject to the above this appeal is allowed without costs. Learned District Judge is directed to conduct a trial *de-novo*.

The Registrar is directed to remit the record back to the District Court of Matale enabling the learned District Judge to have a trial de novo.

Appeal allowed without costs.

JUDGE OF THE COURT OF APPEAL

Jmr/-