

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

**C.A. No. 764/97 (F)**

DC Kuliypitiya case No.5501/P

Manobala Arachchilage Tikiri Appu Naide  
Gurulawela,  
Tharana Udawela (Deceased)

**Plaintiff**

Manobala Arachchilage Sunil Jayawardane  
Gurulawela,  
Tharana Udawela

**Substituted-Plaintiff Appellant**

**Vs.**

1. Jayakody arachchilage Lama Naide.
  2. Lanka Mudalige Wijerathna (Deceased)
  - 2a. Siriwardane Henayalage Emalin
  - 2b. Lanka Mudalige Damayanthi Wijekoon
  - 2c. Lanka Mudalige Sriyani Ajantha Kumari
  - 2d. Lanka Mudalige Chaminda Kumara Wijekoon
  - 2d. Lanka Mudalige Nadeeka Dilhani Wijekoon
- All of Madulupitiya, Tharana Udawela

**Substituted 2a to 2d Defendant  
Respondents**

3. Jayakody Arachchige Guruwa Naide (Deceased)
  - 3a. Jayakodi Arachchige Thilakarathna
  4. Jayakodi Arachchige Pithara singho
- All of Madulupitiya, Tharana Udawela

**Defendant-Respondents**

C.A.No. 764/97(F)D.C. Kuliyaipitiya No.5501/PBEFORE : K.T.CHITRASIRI, J.COUNSEL : M.C.Jayarathne with M.D.J. Bandara for the  
substituted plaintiff-appellant  
Erusha Kalidasa for the 2<sup>nd</sup> defendant-  
respondent.ARGUED ANDDECIDED ON : 10<sup>th</sup> June 2013

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**K.T.CHITRASIRI, J.**

Learned Counsel for the appellant submits that he would restrict his appeal as to the decision made in respect of the identity of the land sought to be partitioned. Learned District Judge has decided that the land sought to be partitioned is not correctly shown in the plan bearing No. 615 marked "X" in evidence and has accordingly dismissed the plaint.

However, at this stage it is brought to the notice of Court by both the Counsel that the 2<sup>nd</sup> defendant-respondent, in paragraph 4 of his statement of claim, has stated that the land sought to be partitioned is only a portion of a larger land. It has been described in the schedule to his amended statement of claim dated 10<sup>th</sup> June 1985. Having disclosed

a larger land in the statement of claim, it is his duty to move for a commission to show the said larger land by way of a plan in terms of section 9 of the Partition Act. However, the 2<sup>nd</sup> defendant-respondent has failed to do so.

Against this background the Counsel for the appellant submits that the plaintiff is now willing to move for a commission to show the land referred to in the schedule to the amended statement of claim of the 2<sup>nd</sup> defendant-respondent and to proceed with the action from that point onwards on the basis of the plan to be submitted accordingly. Learned Counsel for the 2<sup>nd</sup> defendant-respondent has no objection to this application of the appellant.

Accordingly, learned District Judge of Kuliyaipitiya is directed to issue a commission to the surveyor, in the event the plaintiff-appellant moves for a commission to show the land referred to in the schedule to the statement of claim dated 10.03.1985 of the 2<sup>nd</sup> defendant-respondent. Thereafter, the parties are free to make applications to amend the pleadings, if necessary and to proceed with the action.

In view of the above settlement the proceedings in this Court are terminated. Learned District Judge is also directed to hear and conclude this case expeditiously. The Registrar is directed to send the

original case record back to the District Court of Kuliyaipitiya forthwith,  
since the parties have come to a settlement in respect of this appeal.

*Proceedings terminated.*

JUDGE OF THE COURT OF APPEAL

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