

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

**C.A. 1271/98(F)**

D.C. Galle Case No.11563/P

Mathugama Gunerathana  
Aswastharamaya,  
Thalgasyaya,  
Akmeemana.

**APPELLANT**

**Vs.**

K.A. Chandrapala  
Egodagahawatte,  
Thalgasyaya,  
Akmeemana.

**RESPONDENT**

▶ C.A. 1271/98(F) : D.C. Galle Case No.11563/P

Before : K.T. CHITRASIRI, J.

Counsel : Parties are absent and unrepresented

Decided on : 09.09.2013

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

Pursuant to the preparation of briefs, the Registrar of this Court has sent notices under registered cover to the Defendant-Appellant, Plaintiff-Respondent and to the other Defendant-Respondents. Those notices have not been returned though it was sent under registered cover. Neither of the parties are present in Court nor are they being represented by an Attorney-at-Law. The Registrar also has sent notices to the Registered Attorneys of the parties. A notice dated 22.09.2008 sent to the Registered Attorney of the Plaintiff-Respondent had been returned with the endorsement that he has left the given address. On perusal of the docket, it is seen that the Registrar of this Court has sent notices on several occasions to the parties concerned, but they have not come before Court on any of those occasions. Accordingly, this appeal is considered in the absence of the parties.

This is an appeal seeking to set aside the Judgment dated 12.11.1998 of the learned District Judge of Galle. By that Judgment, the learned District Judge decided the manner in which the land sought to be partitioned be divided. In the middle of the trial, the parties have agreed to exclude Lot No. 2 in the Plan marked 'X' and accordingly the land sought to be partitioned was restricted to Lot No. 1 in the Plan bearing No. 686 marked 'X'. Therefore, there was no dispute as to the land sought to be partitioned.

The learned District Judge also have considered the evidence as to the entitlements of the respective parties referring to the relevant deeds marked in evidence. Basically, his decision is on the basis of the evidence relating to the facts of the case. This Court being a Court exercising appellate jurisdiction is slow in interfering with the decisions which are arrived at considering the facts of the case unless it amounts to a perverse judgment. **[Alwis v. Piyasena Fernando (1993) 1 S.L.R. at 119]**. Also, I do not see any glaring mistake or error on the part of the learned District Judge when he decided to allocate the shares to the respective parties of the land sought to be partitioned.

For the aforesaid reasons, this appeal is dismissed without costs.

*Appeal is abated.*

JUDGE OF THE COURT OF APPEAL

Cr/-