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

C.A. No. 64/98
D.C. Matara Case No. 13933/P

> G. Babahami alias Hinni Hami
> Dewalegama,
> Deiyandara.
>
> G. Saiman Hami
> Dewalegama,
> Deiyandara.
>
> **Appellants**
>
> **Vs.**
>
> K.B. Karunawathi
> Dewalegama,
> Deiyandara.
>
> **Respondent**

OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

C.A. No. 64/98 - **D.C. Matara Case No. 13933 /P**

BEFORE : K.T.CHITRASIRI, J.

COUNSEL : C. J. Fernando with Manori Pathirana for the substituted 2nd

Defendant-Appellant

Erusha Kalidasa for the Plaintiff-Respondent & 4th Defendant-

Respondent

ARGUED &
DECIDED ON : 19.02.2014

K. T. CHITRASIRI J.

This is an appeal seeking to set aside the order dated 19.11.1997 in which the learned District Judge confirmed the division of the land sought to be partitioned as shown in the plan, bearing number 4147 dated 23.07.1992 drawn by the S. L. Galappaththi, Licensed Surveyor. Accordingly, he made order to enter final decree in terms of the interlocutory decree entered in this case.

Learned Counsel for the Respondent submits that this appeal cannot be entertained in this Court in terms of Section 36(a) of the Partition Amendment

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Law which came in to force by the Act No. 17 of 1997. In terms of the aforesaid Section 36(a) in the Act No. 17 of 1997, the party who is dissatisfied with an "order" of a District Judge, should have first obtained leave of Court before proceeding with the appeal. In this instance, no such leave had been obtained from the Court of Appeal even though this is an order not amounting to a judgment made in this partition action. This position is admitted by the Counsel appearing for the appellant as well.

Therefore, this Court cannot, in law, entertain this appeal, it being a final appeal filed by the petition of appeal dated 16.01.1998 having filed a notice of appeal on the 28.11.1997, to challenge an "order" made by the trial Judge.

For the aforesaid reasons, this appeal is dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

CN/-