

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

(Deceased) 1. Mohottige Nomis Perera,

Heneihatta, Biyagama,

Malwana.

And several others

PLAINTIFFS

D.C. Gampaha Case No: 19077/P

Vs

C.A. No: 710,711,712 /99/ (F)

1. Kariyawasam Gamage Piyasena

Of Heneihatta, Biyagama,

Malwana.

And several others

DEFENDANTS

AND BETWEEN

5A. Kumarapeli Arachchige Dharmasiri

Perera, Heneihatta, Biyagama,

Malwana.

18. Narangoda Liyanage Dharmasiri

Perera, Heneihatta, Niyagama,

Malwana.

5A AND 18TH DEFENDANT APPELLANT

Vs.

(Deceased) 1. Mohottige Nomis Perera,

Heneihatta, Biyagama,

Malwana.

1a. Henarath Mohottige Albert Perera

Of Hena Ihaththa, Biyagama,

Malwana.

(Deceased) 2. Kumarapeli Arachchige Luwisa Nona

2a. Henarath Mohottige Albert Perera

Of Hena Ihaththa, Biyagama,

Malwana.

PLAINTIFF RESPONDANTS

1. Kariyawasam Gamage Piyasena

Of Heneihatta, Biyagama,

Malwana.

And several others

2. Kumarapeli Arachchige Luwisa Nona

a. Henarath Mohottige Albert Perera

Of Hena Ihaththa, Biyagama,

Malwana.

3.Kumarapeli Arachchigea Arnolis

And several others

DEFENDANT RESPONDANTS

BEFORE : **P.W.D.C. JAYATHILAKE, J**

COUNSEL : Bimal Rajapaksha with Muditha Perera for the
Appellant in Case No: 711/99 (F).

M. U. M. Ali Sabry P C with Nuwan Bopage for the
10th & 13A Appellants in Case No: 712/99 (F).

B. Manawadu with Thusitha M. Silva for the 2nd A
to 2nd E Defendant Respondents.

Gamini Premathilake for the 3rd and 4A Defendant
Respondents

W.D. Weeraratne for the 1st and 2A Defendant
Respondents.

ARGUED ON : 30.06.2014

DECIDED ON : 02.10.2014

P.W.D.C. Jayathilake J.

The partition case bearing No: 19077 of District Court Gampaha was instituted on 07.12.1977 to terminate undivided rights of the land called "Nillagahawatte" situated in Biyagama of Adhikaripattuwa of Siyanekorale. The extent of the land according to the schedule is 12 bushels. After following the necessary steps under the Administration of Justice Law and the law of partition, the preliminary survey has been done by the commissioner of the case and has submitted the plan No: 546 of 12.06.1977 which has been marked as 'X' in the trial proceedings. The extent

of the land according to the commissioner's plan is 05 acres 01 rood and 06 perches. But the 3rd and 4th Defendants who disagree with the preliminary survey have moved for an alternative survey. The commission for the alternative survey has been issued to K.G. Hubert Perera, licenced surveyor. He has surveyed the land pointed by the 3rd and 4th Defendants and submitted the plan No: 1089 of 25.09.1978 which has been marked as 3V2 in the trial proceedings. The extent of the land according to 3V2 is 10 acres 02 roods and 35.4 perches. The land surveyed by the commissioner of the case has been shown as lot 01 and 02 and lots 03 to 08 have been shown in addition in the alternative plan. The Plaintiff and all other Defendants except the 3rd and the 4th Defendants disputed the alternative survey. The main contest of the case had been the dispute with regard to the subject matter.

The learned trial judge has decided the dispute with regard to the subject matter in the following manner.

“Even though the extent of the subject matter has to be six acres or near it as all other parties except the 3rd and the 4th Defendants accept that the extent of 01 bushel is half an acre, since 04 boundaries are in accordance not with the plan X, but with the plan 3V2 and even if it is possible to make a mistake in respect of the extent of the land when it shows in units of bushels, as the 4 boundaries of the

land are in no way acceptable to be wrong, it has to be accepted that the land depicted in the plan 3V2 is the subject matter"

Three parties have filed appeals against the judgment which have been numbered as CA 710/99F (A), CA 711/99F and CA 712/99F 5A and 18 Defendants, 1 and 21 Defendants and 10 and 3A Defendants are the appellants of those three appeals respectively. The 3rd and 4th Respondents, 2A Defendant Respondent and the 18 Defendant Respondent have taken up a preliminary objection against those 3 appeals, challenging the legality and regularity of notices of appeal and petitions of appeal. Their contention is that 3 notices of appeal have been filed after the lapse of appealable time.

According to the journal entries of the original case record, the case record had been sent to the former District Judge who had concluded the trial for preparing the judgment after 16.03.1999 as appeared in the journal entry No: 72. The journal entries 73 to 78 are not appearing in the main record as those entries have been entered in the sub file. According to the journal entry No: 79, the judgment has been delivered on 13.08.1999. The next journal entries No: 80 and 81 are in respect of notices of appeal tendered by 5A and 18 Defendants. Those two journal entries have been dated as 28.09.1999. The next journal entry has been placed leaving two blank sheets on the same day in respect of the notice of appeal of 10 and 13A Defendants. As it appears in those 3 journal entries, filing of all these 3 notices of

appeal have been journalized after 1 ½ months' time of the pronouncement of the judgment.

The registered postal article submitted with the notice of appeal of 10 and 13A Defendant Appellants is file of the record bearing the page No: 819. This receipt has been issued by the post office, Gampaha on 13th August 1999. The day stamp of the District Court Gampaha appears on this document as 30.08.1999. The cash receipt No: Y/19, 980067 issued by the District Court in respect of security deposit for the appeal of 10 and 13A Defendants is dated 30.08.1999.

The registered postal article receipt submitted along with the notice of appeal of 1 and 21 Defendants is file of the record bearing page No: 798. The day stamp of the post office, Gampaha, appearing on this receipt is 27.08.1999. The receipt of security deposit No: Y/19, 980016 is dated 27.08.1999 and the day stamp of the District Court appears as 27.08.1999.

The registered postal article receipt submitted along with the notice of appeal of 5 (a) and 18 Defendants is file of the record bearing page No: 794. The day stamp of the post office, Gampaha, appearing on this receipt is 27.08.1999. The receipt of security deposit No: Y/19, 980006 is dated 27.08.1999 and the day stamp of the District Court appears as 27.08.1999.

This court decides as the day stamp of the District Court, in the notices of appeal security deposit receipts issued by District Court and the registered postal article receipts issued by the post office bear evidence to the fact that all three notices of appeal have been submitted within the period of time even though the subject clerk has entered the journal entries deliberately or negligently after a period of one month. This court decides that the date of the journal entry minuted by the subject clerk is irrelevant in computing the time of submitting the relevant document in respect of notices of appeal and/or petitions of appeal. Therefore, this court overrules the preliminary objection raised against all three appeals filed in respect of this appeal.

Preliminary Objection Overruled.

JUDGE OF THE COURT OF APPEAL