

**IN THE COURT OF APPEAL OF THE DEMOCRATIC**

**SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of application for Leave to  
Appeal in terms of Sec. 754 (2) of the  
Civil Procedure Code.

Warnakula Ediriweera Patabendige  
Podinona  
of Dodampahala

**PLAINTIFF**

**Vs**

1. Ediriweera Patabendige Uparis Singho  
Of Aluthgoda, Dodampahala and  
Several others

**DEFENDANTS**

**D.C. Matara Case No. P/7283**

**Case No. CALA 498/2006**

**AND BETWEEN**

5A Denagama Vithanage Danny De Silva  
Of Kaduwella East

**DEFENDANT - PETITIONER**

(Deseased 5<sup>th</sup> Defendants Legal  
Representative)

**Vs**

Warnakula Ediriweera Patabendige  
Podinona of Dodampahala.

**PLAINTIFF - RESPONDENT**

1. Ediriweera Patabendige Uparis Singho  
of Aluthgoda, Dodampahala.
2. Warnakula Ediriweera Karnalhamy  
of Dadawella.
3. Loku Kamadi Hennadige Arthur Silva  
of Aluthgoda, Dickwella.  
(Deceased 3<sup>rd</sup> Defendant's Legal  
Representative)
4. Warnakula Ediriweera Patabendi  
Davissingho  
of Hamuarachchi land, Ranthaliya.
5. Ediriweera Patabendi Jemis Appu  
of Aluthgoda, Dodampahala.
6. Ediriweera Patabendige Saranelis Appu  
of Aluthgoda, Dodampahala.
7. Ediriweera Patabendi Punchinona  
of Aluthgoda, Dodampahala.
8. Ediriweera Patabendige Edwin Singho  
of Aluthgoda, Dodampahala.
9. Ediriweera Patabendige Misinona  
of Aluthgoda, Dodampahala.
10. Sawunda Hannadige Sominona  
Of Middeniya.
11. Ediriweera Patabendige Albert  
Of Aluthgoda, Dodampahala.
12. Ediriweera Patabendige Milinona  
Of Aluthgoda, Dodampahala.

13. Ediriweera Patabendige Dayawathie  
Of Aluthgoda, Dodampahala.
14. Chandrasiri Staweera  
Of Dodampahala, Kandy.
15. Edirisuriya Kattadi Arachchige Nanohamy  
Of Belikumbura, Dodampahala.
16. Edirisuriya Kattadi Arachchige Heensingho  
Of Aluthgoda, Dodampahala.
17. Padma Edirisuriya  
Of, Gemunu Road, Debarawewa, Tissa.
18. Edirisuriya Kattadi Arachchige Punchinona  
Of Dodampahala.
19. Edirisuriya Kattadi Arachchige Jesinona  
Of Aluthgoda, Dodampahala.
20. Dias Karunathilake Edirisuriya  
Of Aluthgoda, Dodampahala.
- 21A. Edirisuriya Kattadi Arachchige Piyadasa  
Of Aluthgoda, Dodampahala.
22. Edirisuriya Kattadi Arachchige Piyasena  
Of Aluthgoda, Dodampahala.
23. Edirisuriya Arachchige Piyatissa  
Of Aluthgoda, Dodampahala.
24. Edirisuriya Kattadi Arachchige Bandupala  
Of Aluthgoda, Dodampahala.
25. Edirisuriya Kattadi Arachchige Siri  
Of Aluthgoda, Dodampahala.
26. Edirisuriya Kattadi Arachchige Sominona  
of Aluthgoda, Dodampahala.
27. Edirisuriya Kattadi Arachchige Wasanthi  
Chandrani of Aluthgoda, Dodampahala.
28. Ediriweera Patabendi Piyasena  
Of Aluthgoda, Dodampahala.

29. Warnakula Ediriweera Patabendige  
Babynona of Aluthgoda, Dodampahala.
30. Samarasekera Weerasuriya Mudiyansele  
Muhandirame Gardias Appuhamy  
Of Watakeiyagaha Hena, Dodampahala,  
Dickwella.
31. Geekiyanage Sopinona  
Of Bogahawatte, Aluthgoda, Dodampahala.
32. Ediriweera Patabendige Chandrasiri  
Of Bogahawatte, Aluthgoda, Dickwella.
33. Ediriweera Patabendige Nandasiri  
Of Bogahawatte, Aluthgoda, Dickwella.
34. L.K.H. Ariyadasa  
Of Aluthgoda, Dickwella.

**DEFENDANT-RESPONDENTS**

1. Denagama Vitharanage Asoka Indrani  
255, Aluthgoda, Dickwella.
2. Denagama Vitharanage Ramani  
Uppuweli, Trincomalee.
3. Denagama Vitharanage Kanthi  
Mangalika  
255, Aluthgoda, Dickwella.
4. Denagama Vitharanage Saman  
255, Aluthgoda, Dickwella.
5. Denagama Vitharanage Dilan Priyantha  
148/D8, Rajasinghe Mawatha,  
Koratota, Kaduwela.
6. Denagama Vitharanage Yulan  
Dodampahala, Dickwella.

**SUBSTITUTED 5A DEFENDANT  
PETITIONERS.**

**Vs**

Warnakula Ediriweera Patabendige  
Podinona  
Of Dodampahala.

**PLAINTIFF      RESPONDENT**  
**RESPONDENT**

1. Ediriweera Patabendige Uparis  
Singho  
of Aluthgoda, Dodampahala.
2. Warnakula Ediriweera Karnalhamy  
of Dadawella.
3. Loku Kamadi Hennadige Arthur  
Silva  
of Aluthgoda, Dickwella.  
(Deceased 3<sup>rd</sup> Defendant's Legal  
Representative)
4. Warnakula Ediriweera Patabendi  
Davissingho  
of Hamuarachchi land, Ranthaliya.
5. Ediriweera Patabendi Jemis Appu  
of Aluthgoda, Dodampahala.
6. Ediriweera Patabendige Saranelis  
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of Aluthgoda, Dodampahala.
7. Ediriweera Patabendi Punchinona  
of Aluthgoda, Dodampahala.
8. Ediriweera Patabendige Edwin  
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of Aluthgoda, Dodampahala.
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of Aluthgoda, Dodampahala.

10. Sawunda Hannadige Sominona  
Of Middeniya.
11. Ediriweera Patabendige Albert  
Of Aluthgoda, Dodampahala.
12. Ediriweera Patabendige Milinona  
Of Aluthgoda, Dodampahala.
13. Ediriweera Patabendige  
Dayawathie  
Of Aluthgoda, Dodampahala.
14. Chandrasiri Staweera  
Of Dodampahala, Kandy.
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Nanohamy  
Of Belikumbura, Dodampahala.
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Of Aluthgoda, Dodampahala.
17. Padma Edirisuriya  
Of, Gemunu Road, Debarawewa,  
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Of Dodampahala.
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Of Aluthgoda, Dodampahala.
20. Dias Karunathilake Edirisuriya  
Of Aluthgoda, Dodampahala.
- 21A. Edirisuriya Kattadi Arachchige  
Piyadasa  
Of Aluthgoda, Dodampahala.
21. Edirisuriya Kattadi Arachchige  
Piyasena

- Of Aluthgoda, Dodampahala.
23. Edirisuriya Arachchige Piyatissa  
Of Aluthgoda, Dodampahala.
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Bandupala.  
Of Aluthgoda, Dodampahala.
25. Edirisuriya Kattadi Arachchige Siri  
Of Aluthgoda, Dodampahala.
26. Edirisuriya Kattadi Arachchige  
Sominona of Aluthgoda,  
Dodampahala.
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Wasanthi Chandrani  
of Aluthgoda, Dodampahala.
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Of Aluthgoda, Dodampahala.
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Babynona of Aluthgoda,  
Dodampahala.
30. Samarasekera Weerasuriya  
Mudiyanselage Muhandiramge  
Gardias Appuhamy  
Of Watakeiyagaha Hena,  
Dodampahala, Dickwella.
31. Geekiyanage Sopinona  
Of Bogahawatte, Aluthgoda,  
Dodampahala.
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Chandrasiri  
Of Bogahawatte, Aluthgoda,  
Dickwella.

33. Ediriweera Patabendige Nandasiri  
Of Bogahawatte, Aluthgoda,  
Dickwella.

34. L.K.H. Ariyadasa  
Of Aluthgoda, Dickwella.

**DEFENDANT-RESPONDENT**  
**RESPONDENTS**

**BEFORE** : Deepali Wijesundera J.  
: M.M.A. Gaffoor J.

**COUNSEL** : Ranjan Suwandarathne with  
Anil Rajakaruna for the  
5A Defendant – Petitioner  
Saman Galappaththi for the  
3<sup>rd</sup> and 4<sup>th</sup> Defendant - Respondents

**ARGUED ON** : 02<sup>nd</sup> October, 2015

**DECIDED ON** : 24<sup>th</sup> March, 2016

**Deepali Wijesundera J.**

The plaintiff respondent has instituted a partition action bearing *no. P/7283* in the District Court of Matara to partition the land described in the schedule to the plaint. After trial the judgment was delivered on 12/11/1985. An appeal was filed against this judgment which had been



refused by the appeal court affirming the District Judge's judgment. The Interlocutory Decrees had been entered and the court had directed to partition the land. A commission has been issued and the final plan *no.* 2260 confirmed by court on 29/11/2006. The application of the petitioner who is the 5<sup>th</sup> defendant in the District Court was refused by this order and the final plan was confirmed. The 5<sup>th</sup> defendant petitioner has filed this application against the said order.

The petitioner states in his argument that they were enjoying the main road frontage prior to the institution of the partition case and they should be given their rights to include their ancestral house and main road frontage. The petitioner stated that the 3<sup>rd</sup> respondent's rights were purchase by him pending the partition decree.

The petitioner submitted that the proposed final partition scheme *no.* 2260 marked **G** has caused immense injustice to the petitioners therefore the said scheme which has been prepared in contravention to the principles of partition action should be rejected and the surveyor should be directed to amend the said final scheme.

The counsel for the 3<sup>rd</sup> and 4A defendant respondents submitted that the final decree had been entered on 01/01/2007 and writ of possession has been issued as shown in the journal entries 48 and 49,

and the final report of the fiscal is also filed, therefore it is settled law that the finality attached to the Interlocutory Decree and the final decree under *sec. 48 of the Partition Act* should not be changed.

The respondents further stated that the petitioners have not proved that there has been a miscarriage of justice, a grave impropriety, or violation in the procedure or a fraud or collusion by the parties.

The respondents stated by paragraph 13 of the petition the petitioner misdirects court to say that the petitioner has purchased the rights of the 3<sup>rd</sup> defendant respondent whereas the legal representative of the 3<sup>rd</sup> defendant respondent is L.K.H. Arthur Silva who has not transferred his share to the petitioner, and that the petitioner has purposely tried to mislead court by the said paragraph.

On perusal of the submissions made by both parties and the learned District Judge's order I find that the District Judge has carefully considered the facts placed before him in consideration with the partition law. The petitioner nowhere has stated that there was fraud or collusion involved, when entering the Interlocutory and final decrees. Under *sec. 48 of the Partition Act* the Interlocutory Decree or Final Decree can only

be altered when a party proves fraud, collusion violation of the procedure and law, fundamental vice, none of which the petitioner has proved in the District Court. The petitioner has been an active party to the District Court case therefore he has to strictly prove that there has been a fraud, collusion of violation of the procedure or law. The learned District Judge has considered the facts placed before him and arrived at the conclusion. I see no reason to set aside a well considered order of the District Judge. I refuse the application of the petitioner with costs fixed at Rs. 50,000/= and affirm the District Judges order dated 12/11/1985.

**JUDGE OF THE COURT OF APPEAL**

**M.M.A. Gaffoor J.**

I agree

**JUDGE OF THE COURT OF APPEAL**