

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

S.A. Kusuma Weerasekara  
Marapona Hakmuwa,  
Ratnapura.

**8<sup>th</sup>Defendant-Appellant**

**C.A.Appeal No.397-398/96 (F)**

**D.C.Ratnapura No.6419/P**

Vs.

L.P.Jayasekera, Marapone,  
Hakmuwa, Ratnapura

And others

**Plaintiffs- Respondents.**

1.S.A.Jayawardene,  
Hakmuwa, Marapone,  
Ratnapura And others

**Defendants-Respondents.**

Before : M.M.A.Gaffoor,J.and  
S.Devika de L.Thennekoon,J.

Counsel : S.A.D.S. Suraweera of the 8<sup>th</sup> Defendant -  
Appellant in C.A. No. 398/96 Adeesha  
Senadheera with K. Senadheera for the  
plaintiff-Appellant.  
Nimal Muthukumarana with M.D.J. Bandara  
for the 1<sup>st</sup> and 12 (a) (b) substituted -  
Defendant-Respondent.  
S.A.D.S. Suraweera for the 7<sup>th</sup> and 8<sup>th</sup>  
Defendant-Respondent in C.A.No.397/96 (F)  
Ranjan Suwadharatne with Anil Rajakaruna  
for the 10<sup>th</sup> and 11<sup>th</sup> Defendant-  
Respondents.

Written submissions filed on : 13.10.2017

Decided on : 02/03/2017.

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

The plaintiffs instituted a partition action bearing  
No.6419/P in the District Court of Rathnapura against 1<sup>st</sup> -  
8<sup>th</sup> defendants and later added 9<sup>th</sup>,10<sup>th</sup> and 11<sup>th</sup> Defendants

seeking to partition the land called "Minihompolwatta" alias "Owita". The learned District Judge of Ratnapura has delivered his judgment on 23/07/1996 confirming the commissioner's scheme of partition plan No.3507 prepared by Mr. M.Samarasekera Licensed Surveyor morefully described in the schedule to the plaint among the parties in terms of the provisions of the Partition Act (as amended ).Being aggrieved by the said judgment the 8<sup>th</sup> defendant-appellant preferred this appeal to this Court.

The trial commenced in this case on 16/12/1991, no points of contest were raised. The 1<sup>st</sup> plaintiff has given evidence when the case was proceed to trial and none of the parties have not contested the evidence of the 1<sup>st</sup> plaintiff. The main contention of these respondents is to get the 2<sup>nd</sup> alternative plan dated 04.02.1996 prepared by Boopadeera Licensed Surveyor, should be considered as it is going to cause grave injustice to these respondents. The submissions made by these respondent is a submission opposing the Boopadeera's plan and contended that these Respondent are prepared to accept either surveyor Boopadeera's first alternative plan dated 01.08.1995 or proposed final scheme

No.3507 suggested by Samarasekera Licensed Surveyor . As acceptance of those plans will minimize the damages that can because to the parties in the event of accepting surveyor Boopadeera's 2<sup>nd</sup> alternative plan dated 04.02.1996.

The counsel for the 1<sup>st</sup> and 12(a) 12(b) defendant – respondents submitted that the said order had been made before the amended Act No.17 of 1997 came into effect and therefore appellants do not need to prefer this appeal with the leave of this Court first and accordingly, it is clear that this Court has jurisdiction to entertain this final appeal without leave being obtained. He further stated that the learned District Judge was corrected in rejecting the objections of the defendants that the appellant have failed to adduce any strong reasons so as to substantiate the final scheme of partition plan 3507 is unjustifiable and unreasonable other than the reasons which are trivial in nature suggested by them in their objections taken in their respective written submissions filed in the District Court.

Counsel for the respondents cited that the legal principle has been accepted in the case of **Albert Vs. Ratnayake reported in 1988 (2) S.L.R. at page 246-249** His Lordship Justice Wijetunga held in this case that court can consider in an appropriate case a scheme of partition with substantial changes could be adopted and further held that in this case that when there is slight alteration in a scheme of partition suggested by a party to a partition action when he objects to the final scheme of partition should not be modify or change it. Further in the case of **Appuhamy Vs. Weerathunga 46 NLR 46 and Gunasekara Vs. Soothannona 1988 (2) SLR 8** it was held that the commissioners original scheme of partition should not be lightly rejected.

We observed that the learned District Judge has carefully analyzed the above circumstances and followed with the above applicable law and arrived at the correct conclusion that the final scheme of partition submitted by the court commission is more fair and reasonable and practical when compared with the two alternative scheme of partition.

The learned District Judge has assigned reasons in his judgment in rejecting the above plaintiffs' objections is perfectly correct in line with the aforesaid accepted principles of law:

“ හවුල් ඉඩමක යම් පාර්ශවකරුවකු වෙත කර ගෙන ඔක්කඩ් විදින කොටස ඔහුටම අවසන් වෙදුම් සැලැස්මෙන් ලබා දිය යුතුමය කියා නීතියක් නැත. කොමසාරිස්වරයෙකු ඉඩමක් කැබලි කිරීමේ දී සැකිලාක් දුරට කරනු ලබන්නේ එ එ පාර්ශවකරුවන්ගේ වැඩි දියුණු කිරීම් යන වගාවන් ඇතුලත් වන පරිදි කැබලි කිරීමයි. නමුත් එය හැම වටම හැම වෙදීමක දීම කළ නොහැක. ”

Hence it is abundantly to clear that the above objections which plaintiffs raised against it cannot be supported in law and nowhere in their written submissions filed in Court to point out a single instance where the commissioner has failed to exercise his discretion judicially by disregarding the said applicable law.

For the above reasons we see no reasons to interfere with the order of the learned District Judge confirming the

commissioner's scheme of partition plan N.3507 and its report is justifiable in law and hence the order of the learned District Judge dated 23.07.1996 is hereby stands and the appeals are dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**S.Devika de L. Thennekoon**

I agree.

**JUDGE OF THE COURT OF APPEAL**