

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

10. Kulasekara Mudiyanselage  
Gunasekara,  
Puhulegama.  
(Deceased)

10A. Kulasekara Mudiyanselage  
Wickramasinghe Kulasekara  
Puhulegama.

**Defendant – Appellant**

Vs.

CA 187/97 (F)

D.C. Kegalle Case No. L/19707/P

1A. A.P. Somaratna,  
No 85,  
Algama Government Estate,  
Dandhiwita .

2. Weerasuriya Arachchi  
Appuhamilage Somapala,  
Puhulegama.

3A. Athauda Pathiranahelage  
Senarathna,  
Puhulegama.

3B. Athauda Pathiranahelage  
Dharmasena,  
Puhulegama.

**Plaintiff – Respondents**

1. Weerasuriya Arachchi  
Appuhamilage Sirisena,

Puhulegama.

2. Weerasuriya Arachchi  
Appuhamilage Amarasena,  
Puhulegama.
3. Weerasuriya Arachchi  
Appuhamilage Guneris,  
Puhulegama.
4. Weerasuriya Arachchi  
Appuhamilage Kulathunga,  
Puhulegama.
5. Athauda Pathiranahelage  
Senarathna,  
Puhulegama.
6. Athauda Pathiranahelage  
Dharmasena,  
Puhulegama.
- 7A. Kulasekara Mudiyansele  
Punchi Nilame,  
Puhulegama.
8. Kulasekara Mudiyansele  
Weerasekara,  
Puhulegama.  
(Deceased)
- 8A. Weerasuriya Arachchige  
Tikiri Menika  
Puhulegama,  
Danowita.
- 9A. Kulasekara Mudiyansele  
Jemis Singho  
Puhulegama.

(Deceased)

- 9B. Kulasekara Mudiyansele  
Irangani  
Puhulegama,  
Danowita.
11. Kulasekara Mudiyansele  
Karunaratne  
Danowita,  
Puhulegama.  
(Deceased)
- 11A. Kulasekara Mudiyansele  
Munasinghe  
Puhulegama,  
Danowita.
12. Kulasekara Mudiyansele  
Siripala Kulasekara  
Meerigama,  
Pannalpitoya.
13. Kulasekara Mudiyansele  
Gunasekara,  
Puhulegama.  
(Deceased)
- 13A. Kulasekara Mudiyansele  
Karunaratna Banda,  
Dodangaslanda,  
Dunumadalawa.  
(Deceased)
14. Kulasekara Mudiyansele  
Karunaratne,  
Puhulegama.  
(Deceased)

- 14A. Kulasekara Mudiyansele  
Munasinghe  
Puhulegama,  
Danowita.
15. Kulasekara Mudiyansele  
Siripala Kulasekara  
Paththalpitiya,  
Mirigama.
16. Kulasekara Mudiyansele  
Gunasekara,  
Dunumadalawa,  
Udaththapola,  
Dodamgaslanda.  
(Deceased)
- 16A. Kulasekara Mudiyansele  
Karunarathna Banda,  
Dunumadalawa,  
Dodamgaslanda.

**Defendant – Respondents**

**BEFORE: M.M.A. GAFFOOR J**

**S. DEVIKA DE LIVERA TENNEKOON J**

**COUNSEL:**

**Dr. Sunil Coorey with S. Coorey for the  
Plaintiff – Respondents  
S. Vithanrana for the 10A Defendant –  
Appellant  
S. Gunawardena for the 14A Defendant –  
Respondent**

**ARGUED ON:**

**06.12.2017 & 22.02.2017**

**WRITTEN SUBMISSIONS –**

**10A Defendant – Appellant –  
07.07.2017**

**Plaintiff – Respondents – 04.04.2017**

**DECIDED ON:**

**14.12.2017**

**S. DEVIKA DE LIVERA TENNEKOON J**

The Plaintiff – Respondents (hereinafter referred to as the Plaintiffs) instituted action in the District Court of Kegalle by Plaint dated 26.07.1972 against the 1<sup>st</sup> – 10<sup>th</sup> Defendants to partition the land morefully described in the Plaint. Thereafter, the 11<sup>th</sup> – 13<sup>th</sup> Defendants were added as necessary parties to the action.

The 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Defendant – Respondents and the 10<sup>th</sup> Defendant – Appellant (hereinafter referred to as the Appellant) filed their joint statement of claim dated 21.02.1974 seeking *inter alia* a dismissal of the Plaint with costs.

When this case was taken up for trial on 06.05.1987 no admissions were recorded by the parties and issue Nos. 1 – 3 were raised on behalf of the Plaintiffs, issue Nos. 4 – 10 were raised on behalf of the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Defendants, issue Nos. 11 – 16 were raised on behalf of the 11<sup>th</sup> and 12<sup>th</sup> Defendants. Thereafter, the evidence of the 2<sup>nd</sup> Plaintiff was led.

However, when the learned District Judge who took up trial was transferred the parties did not agree to adopt the evidence of the 2<sup>nd</sup> Plaintiff before the new

trial Judge. Therefore, the learned Trial Judge directed that new issues be framed and ordered to commence a fresh trial on 09.02.1989.

Accordingly, on 09.02.1989 issue Nos. 1 – 6 were raised on behalf of the Plaintiffs, issue Nos. 7 – 13 were raised on behalf of the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Defendants, issue Nos. 14 – 19 were raised on behalf of the 11<sup>th</sup>, 12<sup>th</sup> and 13A Defendants.

It is clear that the learned District Judge by Judgment dated 24.03.1997 has answered the original issues, numbered 1 – 16 framed on 06.05.1987 and has not considered issue Nos. 1 – 19 which were framed on 09.02.1989.

This Court finds that the issues on which the original partition action ought to have been decided were those which were framed on 09.02.1989. However, as the learned District Judge has failed to address her judicial mind to the issues framed at the commencement of the fresh trial and has failed to evaluate the evidence presented at trial in light of these issues the said judgment is manifestly wrong.

Therefore we set aside the judgment of the learned District Judge dated 24.03.1997 and order re trial.

Considering the time exhausted on the matter in dispute the learned District Judge is directed to hear this matter expeditiously giving priority to this case.

*Appeal Allowed.*

Judge of the Court of Appeal

**M.M.A. GAFFOOR J**

I Agree.

Judge of the Court of Appeal