

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

E.M. Sumanadasa,
Ambagahakumbura,
Kabillawala South,
Bandarawela.
7th Defendant-Appellant

CA CASE NO: CA/440/2000/F

DC BANDARAWELA CASE NO: 90/P

Vs.

R.M. Gunasekera,
Ambagahakumbura,
Kabillawala South,
Bandarawela
Plaintiff-Respondent
And several other Defendant-
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Athula Perera for the 7th Defendant-Appellant.
Jacob Joshep for the Plaintiff-Respondent.

Argued &

Decided on: 14.01.2019

Samayawardhena, J.

The 7th defendant-appellant has filed this appeal against the Judgment of the District Court of Bandarawela dated 16.08.2000.

In the petition of appeal, the appellant has sought to exclude Lot 3 in the Preliminary Plan marked X at the trial.

The learned counsel for the appellant before this Court makes submissions seeking exclusion of Lot 4 in Plan marked 7V1 at the trial.

The Plan marked 7V1 is not the Preliminary Plan. Lot 4 of the Plan marked 7V1 has not been superimposed on the Preliminary Plan to identify the portion to be excluded.

More importantly, no issue has been raised by the appellant regarding exclusion (or any other matter) at the trial notwithstanding the appellant has been represented by a senior counsel, who has expressly stated, according to the proceedings, that no issue would be raised on behalf of the appellant. If such an issue has not been raised at the trial, it is elementary that no such position seeking exclusion of a part of the corpus can be taken up for the first time in appeal.

This is the only point raised by the learned counsel for the appellant during the course of argument.

This appeal is clearly devoid of merit. I dismiss the appeal with costs.

Judge of the Court of Appeal