

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

**C.A. Appeal No. 817/2000 (F)**

**D.C. Kuliypitiya No. 7663/L**

01. Hettiarachchilage Swarnalatha
- 02b. Athaudachchi Thalammehera  
Lekamlage Lily Menike
- 02c. Hettiarachchilage Swarnalatha
- 02d. Hettiarachchilage Shriyani Mallika
- 02e. Hettiarachchilage Anura jayantha
- 02f. Hettiarachchilage Ajith Priyantha
03. Hettiarachchilage Shriyani Mallika
04. Hettiarachchilage Anura jayantha

All from Maharagama, Giriulla

Plaintiff/Appellants

V.

Thalarambha Withanage Ekanayake,  
Maharagama, Giriulla

Defendant/Respondent

AND

Udalawatte Gamage Premadasa  
Maharagama, Giriulla

02a. Plaintiff/ Respondent

**BEFORE**

: **JANAK DE SILVA, J**  
**K.PRIYANTHA FERNANDO, J**

**COUNSEL** : H. Withanaachchi for the Plaintiff/  
Appellants  
Dr. Sunil F.A. Cooray with Nilanga Perera  
for the Defendant/Respondent

**ARGUED ON** : 04.04.2019

**WRITTEN SUBMISSIONS**

**FILED ON** : 07.08.2012 - by the Defendant/Respondent  
18.05.2012 - by the Plaintiff/Appellants

**JUDGMENT ON** : 15.05.2019

**K. PRIYANTHA FERNANDO, J.**

01. Plaintiff Appellants (Appellants) instituted the above numbered action in the District Court of Kuliypitiya by their plaint dated 11.03.1985 praying for a declaration of title to the land described in schedule 'b' of the plaint and to eject the defendant from the said land.
02. Defendant Respondent (Respondent) filed answer admitting the 3<sup>rd</sup> averment of the plaint which says that Juwanis Appuhamy by deed No. 415 dated 22.03.1948 sold a divided share of 02 roods, 15 and 1/2 perches to one Jinadasa. The said Juwanis Appuhamy has by deed No. 34154 dated

09.11.1949 had transferred another portion of the land of one rood to the said Jinadasa. The Respondent further stated that by deed No. 5747 dated 05.09.1961, said Jinadasa had transferred the above lands to him and that he had been possessing the said lands as one land and that he had not encroached into appellants land. He prayed that the plaint be dismissed.

03. After trial the learned District judge dismissed the plaint. Among other reasons, the learned District Judge said in her Judgment that the appellant had asked for declaration of title for undivided land and that he had changed his stance at the trial.
04. Being aggrieved by the said judgment of the District Judge, the instant appeal was lodged by the appellant.
05. We have considered the pleadings in the District Court, evidence adduced at the trial and submissions made by counsel for Appellants and the Respondents at the argument of the appeal.
06. At the argument of the instant appeal, counsel for the appellant submitted that the land in suit has to be defined for an action for declaration of title to succeed. Counsel further conceded that on the evidence adduced at the trial, the land in question was an undivided land and that it was a portion of a larger land. Therefore, he conceded that there is no merit in this appeal. Counsel for the appellant further contended that a partition action has been already filed to divide the land among the co-owners.
07. As submitted by the counsel for the respondent, during the trial the appellant had admitted the averments no. 3, 4, 5, and 6 of the answer of the Respondent. (Vide proceedings dated 10.06.1998) Therefore, the Appellant had taken a position different to what he took in his plaint.

08. It is settled law that a declaration of title cannot be sought on an undivided land. The property has to be clearly identified. ( HarietteV. Pathmasiri [1996 1 Sri L.R. 358], Jamaldeen V. Mansoor [2010] 2 Sri L. R. 333).
09. The evidence led at the trial including the admissions recorded shows that the land in question is an undivided portion of a larger land, which fact the counsel for the appellant conceded. Counsel also submitted that already a partition action to divide the land has been filed. We find that the learned trial Judge rightly concluded that the land in question includes an undivided share of a larger land and that the plaint should be dismissed.

Hence, the appeal is dismissed with costs.

**JUDGE OF THE COURT OF APPEAL**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**