

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

Vithanage Nandawathie alias
Siriawathie,
Galagedera,
Padukka.
5th Defendat-Appellant

Case No: CA/258/2000 (F)

DC Avissawella Case No. 160/P

Vs.

Herath Mudiyansele
Suddahamy,
Galagedarawatte Gedara,
Padukka.
1st Plaintiff-Respondent
And Several Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Rohan Sahababdu, P.C., for the Appellant.

Nuwan Bopage for the Plaintiff-Respondents.

Decided on: 02.07.2019

Mahinda Samayawardhena, J.

The plaintiffs filed this action to partition the land between the plaintiffs and 1st-5th defendants. The 3rd and 5th defendants claimed undivided rights in the manner they have pleaded in their statement of claim.

The 5th defendant filed this appeal against the order of the learned District Judge whereby partition action was dismissed upon withdrawal by the plaintiffs, and the application of the 5th defendant to proceed with the action was rejected.

At the argument no extensive oral submissions were made as the counsel agreed to file written submissions. No written submissions have been filed on behalf of the appellant.

In any event, this appeal is bad in law as no direct appeal lies against the impugned order except with leave of this Court first had and obtained. Vide the Seven Judge Bench decision of the Supreme Court in *Senanayake v. Jayantha* (SC Appeal No. 41/2015) decided on 04.08.2017, which affirmed the Five Judge Bench decision of the Supreme Court in *Chettiar v. Chettiar* [2011] 2 Sri LR 70.

Appeal dismissed. No costs.

Judge of the Court of Appeal