

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

In the matter of an appeal from the  
final judgment in the District Court  
of Mount Lavinia in Case No.  
1042/P.

**CA Case No. CA/DCF/651-653/97**

DC, Mount Lavinia Case No. 1042/P

Don Ealan Weerasinghe (nee  
Hettiarachchi)  
No. 683/2,  
Station Road,  
Maharagama

**Plaintiff**

**Vs.**

1. Don Soloman Ramanayake  
(Deceased)  
Gammana Road,  
Maharagama.
- 1(a). Don Piyasena Ramanayaka,  
Kurunegala Road,  
Alawathuwala,  
Anuradhapura
2. Don Simon Ramanayake  
(Deceased)  
Karamana,  
Geli Oya
- 2(a). S.C. Luxshmi Devi Herath  
(nee Ramanayake)  
Trinity College,  
Kandy
3. Don David Hettiarachchi  
(Deceased)  
Sunaragama, Infront of Temple,  
Awlegama

- 3(a).D.K. Kumari Hettiarachchi  
Sundaragama, Opposite School,  
Awlegama
4. Don Sirisena Hettiarachchi  
(Deceased)  
Gammana Road,  
Mahargama
- 4(a). Chandrawathi Ramanayake
5. Don Eva Hettiarachchi  
Ekanayake Road,  
Arawwala,  
Pannipitiya
6. D. Maggie Nona Ramanayake  
(Deceased)
7. D. Steven Ramanayake
8. D. Premedasa Ramanayake
9. D. Darmadasa Ramanayake
10. D. Karunawathie Ramanayake  
  
All of 349, Gammana Road,  
Maharagama
11. D.M. Hettiarachchi (Deceased)
- 11(a).S. Dewananda Herath
12. L. Manonanda Herath
13. S. Dewananda Herath  
  
All of 279, Station Road,  
Maharagama
14. S.R. Kumara Ratnasekara  
519/2. Gonawala.  
Kelaniya
15. Somasiri *alias* Percy Ramanayake,  
Gammana Road,  
Maharagama

16. D. Karunawathie Ramanayake.  
390, Panagoda,  
Homagama

17. Edmund Kariyawasam  
Devenige Watta, Thirangama,  
Hikkaduwa

**Defendants**

**AND**

1(a)/15. Saomasiri *alias* Percy  
Ramanayake  
Gammana Road, Maharagama

**1(a) and 15<sup>th</sup> Defendant-  
Appellants**

**Vs.**

Don Ellen Weerasinghe (nee  
Hettiarachchi)  
No. 683/2, Station Road,  
Maharagama

**Plaintiff-Respondent**

2(a). S.C. Luxshmi Devi Herath  
(nee Ramanake)  
Trinity College,  
Kandy

3(a).D.K. Kumari Hettiarachchi  
Sundaragama, Opposite School,  
Awlegama

4(a). Chandrawathi Ramanayake

5. Don Eva Hettiarachchi  
Ekanayake Road,  
Arawwala,  
Pannipitiya

6. D. Maggie Nona Ramanayake  
(Deceased)

- 6(a).Darmadasa Ramanayake  
349, Gammana Road,  
Maharagama
7. D. Steven Ramanayake
- 7(a).Chandrawathie Ramanayake  
(Former V.H.S. House)  
Weerakatiya Road,  
Maharagama
8. D. Premedasa Ramanayake
9. D. Darmadasa Ramanayake
10. D. Karunawathie Ramanayake  
  
All of 349, Gammana Road,  
Maharagama
11. D.M. Hettiarachchi (Deceased)
- 11(a).S. Dewananda Herath
12. L. Manonanda Herath
13. S. Dewananda Herath  
  
All of 279, Station Road,  
Maharagama
14. S.R. Kumara Ratnasekara  
519/2, Gonawala.  
Kelaniya
15. Somasiri *alias* Percy Ramanayake,  
Gammana Road,  
Maharagama
16. D. Karunawathie Ramanayake.  
390, Panagoda,  
Homagama
17. Edmund Kariyawasam  
Devenige Watta, Thirangama,  
Hikkaduwa

**Defendant-Respondents**

**AND NOW BETWEEN**

- 7(a). Chandrawathie Ramanayake  
(Former V.H.S. House)  
Weerakatiya Road,  
Maharagama
8. D. Premedasa Ramanayake
- 8a. Kukulage Sumanawathie Perera  
No. 349, Gammana Road,  
Maharagma
9. D. Darmadasa Ramanayake
- 9a. Ramanayake Arachige Dona  
Nayana Ranjula  
No. 3/1, Egodawaththa Road,  
Borelasgamuwa
10. D. Karunawathie Ramanayake  
Gammana Road,  
Maharagama

**7a, 8a, 9a and 10<sup>th</sup> Defendant-  
Appellants**

**[CA/DCF/651/97]**

**Vs.**

1. Don Soloman Ramanayake  
(Deceased)  
Gammana Road,  
Maharagama.
- 1a. D. Piyasena Ramanayake  
Kurunagela Road, Alawathuwala  
Anuradhapura
- 1a(b). Somasiri alias Percy Rathnayake  
350, 2<sup>nd</sup> Lane, Gammana Road,  
Maharagama
- 1a(c). Ani Ramanayake,  
No. 14, 2<sup>nd</sup> Lane, Gammana Road,  
Maharagama.

2. D. Solaman Ramanayake (Dead)
- 2(a). S.C. Luxshmi Devi Herath  
(nee Ramanake)  
Trinity College,  
Kandy
- 3(a). D.K. Kumari Hettiarachchi  
Sundaragama, Opposite School,  
Awlegama
- 4(a). Chandrawathi Ramanayake
- 4(a)(a). Dona Sriyani Manel Hettiarachchi  
Galapitamulla,  
Hindhagolla, Kurunegala
5. Don Eva Hettiarachchi  
Ekanayake Road,  
Arawwala,  
Pannipitiya
- 5a. Ekanake Musiyanselage Samantha  
Priaydharshani  
No. 345, Ekanayake Road,  
Arawwala,  
Pannipitiya
6. D. Maggie Nona Ramanayake  
(Deceased)
- 6(a). Darmadasa Ramanayake  
349, Gammana Road,  
Maharagama
11. D.M. Hettiarachchi (dead)
- 11(a). S. Dewananda Herath
12. L. Manohanandha Herath,  
279, Stain Road,  
Maharagama
13. S. Devendra Herath,  
279, Stain Road,  
Maharagama
14. S.R. Kumara Ratnasekara  
519/2. Gonawala, Kelaniya

15. Somasiri *alias* Percy Ramanayake,  
Gammana Road,  
Maharagama

16(a).Darshana Priyangika Madapatha  
390, Panagoda,  
Homagama.

17. Edmund Kariyawasam  
Devenige Watta, Thirangama,  
Hikkaduwa

17(a).K.G. Shanthi C. Kariyawasam  
Pinkenda Farm,  
Pinkenda,  
Dodandoowa

**Defendant-Respondents**

1(a)/15. Saomasiri *alias* Percy  
Ramanayake  
Gammana Road, Maharagama

**1(a) and 15<sup>th</sup> Defendant-  
Appellants (Deceased)**

1(a)(a)/15(a).Somasiri *alias* Percy Ramanayake  
350, 2<sup>nd</sup> Lane,  
Gammana Road,  
Maharagama

**Substituted 1(a) and 15<sup>th</sup>  
Defendant-Appellants**

**[CA/DCF/653/97]**

**Vs.**

2(a). S.C. Luxshmi Devi Herath  
(nee Ramanake)  
Trinity College,  
Kandy

3(a). D.K. Kumari Hettiarachchi  
Sundaragama, Opposite School,  
Awlegama

4(a). Chandrawathi Ramanayake

5. Don Eva Hettiarachchi  
Ekanayake Road,  
Arawwala,  
Pannipitiya
- 5(a). Ekanayake Mudiyanseelage  
Samantha Priyadharshini  
358/5, Erawwala,  
Pannipitiya
6. D. Maggie Nona Ramanayake  
(Deceased)
- 6(a). Darmadasa Ramanayake  
349, Gammana Road,  
Maharagama
7. D. Steven Ramanayake
- 7(a). Chandrawathie Ramanayake  
(Former V.H.S. House)  
Weerakatiya Road,  
Maharagama
8. D. Premadasa Ramanayake
9. D. Darmadasa Ramanayake
10. D. Karunawathie Ramanayake  
  
All of 349, Gammana Road,  
Maharagama
11. D.M. Hettiarachchi (Deceased)
- 11(a). S. Dewananda Herath
12. L. Manonanda Herath
13. S. Dewananda Herath  
  
All of 279, Station Road,  
Maharagama
14. S.R. Kumara Ratnasekara  
519/2. Gonawala.  
Kelaniya



15. Somasiri *alias* Percy Ramanayake,  
Gammana Road,  
Maharagama

16. D. Karunawathie Ramanayake.  
390, Panagoda,  
Homagama

16(a). Darshana Priyangika Madapatha  
390, Panagoda,  
Homagama.

17. Edmund Kariyawasam  
Devenige Watta, Thirangama,  
Hikkaduwa

17(a). K.G. Shanthi C. Kariyawasam  
Pinkenda Farm,  
Pinkenda,  
Dodandoowa

**Defendant-Respondents**

Before: **M. T. MOHAMMED LAFFAR, J. and  
S. U. B. KARALLIYADDE, J.**

Counsel: Upul Kumarapperuma with Darshika Nayomi for the  
1(a)(a) and 15<sup>th</sup> Defendant-Appellants [CA/DCF/651/97].

Rohan Sahabandu P.C., with Sachini Senanayake for the  
7A, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> Defendant-Appellants  
[CA/DCF/653/97].

M. Nanayakkara for the 3A Defendant-Respondent.  
Sampath Karunarathne for the 4(a) Defendant-  
Respondent.

W. Jayathilake for the 16<sup>th</sup> Defendant-Respondent.

Mahinda Nanayakkara with Aruna Jayathilake for the 17<sup>th</sup>  
Defendant-Respondent.

Written Submissions on: 03.02.2021 (by the 1(a)(a) and 15<sup>th</sup> Defendant-Appellant).

Decided on: 14.12.2021

**MOHAMMED LAFFAR, J.**

The appeal bearing No. CA/DCF/651/97 has been preferred by the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Defendant-Appellants and the appeal bearing No. CA/DCF/653/97 has been preferred by the 1<sup>st</sup> and 15<sup>th</sup> Defendant-Appellants (hereinafter referred to as the respective “Defendants”) from the judgment of the learned District Judge of Mount-Lavinia dated 25.08.1997. It is borne out from the appeal brief that the petition of appeal has not been tendered pertaining to the appeal bearing No. CA/DCF/652/97. As such, this judgment is in respect of the petitions of appeal tendered by the 7<sup>th</sup> to 10<sup>th</sup> and 1<sup>st</sup>, and 15<sup>th</sup> Defendants.

The Plaintiff-Respondent (hereinafter referred to as the “Plaintiff”) instituted action to partition the land called *Sambuddi Delgahawatta* and *Delgahawatta* which is morefully described in the schedule to the plaint, among the co-owners as set out in paragraph 13 of the same.

After trial, the learned District Judge of Mount-Lavinia delivered the impugned judgment to partition the subject matter as set out in the judgment. Being aggrieved by the judgment, the 7<sup>th</sup> to 10<sup>th</sup>, 1<sup>st</sup> and 15<sup>th</sup> Defendants have preferred these appeals.

At the trial, the parties to the action have admitted the pedigree set out in the plaint (vide admission No. 01). Accordingly, the dispute is confined to the identification of the corpus sought to be partitioned. The Preliminary plan bearing No. 326 dated 04.06.1991 made by C.D.S. Gunathilake, Licensed Surveyor has been marked as “X” and the report of the Commissioner is produced as “X1”. The determination of the learned District Judge was that the lots comprising A, B, C and D in plan X should be the corpus in this case.

**Appeal bearing No. CA/DCF/651/97**

In their petition of appeal, the 7<sup>th</sup> to 10<sup>th</sup> defendants raised several grounds of appeal. However, in accordance with the points of contest Numbers 4 to 8, raised by these Defendants, the grounds of appeal are properly identified as follows:

1. The larger land is not depicted in the preliminary plan marked X.
2. The 8<sup>th</sup> and 9<sup>th</sup> Defendants have acquired prescriptive title to Lot-B in plan X.

It is the contention of these Defendants that the entirety of the corpus has not been shown in plan X.

In partition actions, if a party to the action is of the view that the entire land has not been depicted in the preliminary plan, such party is permitted to take necessary steps to survey the entirety of the subject matter in terms of section 16 (2) of the Partition Law, No. 21 of 1977 (as amended), which reads thus:

*“...The court may, on such terms as to costs of survey or otherwise, issue a commission at the instance of any party to the action, authorizing the surveyor to survey any larger or smaller land than that pointed out by the plaintiff where such party claims that such survey is necessary for the adjudication of the action.”*

It is to be noted that the aforesaid Defendants have not availed themselves of this provision of law, and therefore, they are precluded from taking up such a position in appeal.

Be that as it may, I shall now ascertain as to whether the subject matter has properly been identified in plan X.

The Plaintiff instituted this partition action to partition the land called *Sambuddi Delgahawatta* and *Delgahawatta*, approximately in extent of  $2\frac{1}{2}$  Acres. According to the preliminary plan marked X, the extent of the land is *2 Acres and 5 Perches*. It is to be noted that there is no considerable disparity, as far as the extent of the subject matter is concerned, between the land described in the schedule of the plaint and the land depicted in the preliminary plan.

<b>Boundary</b>	<b>As per the schedule of the plaint, the corpus sought to be partitioned is bounded</b>	<b>The land depicted in the preliminary plan is bounded</b>
<b>North</b>	Land owned by Ramanayaka Arachchige Don Peiris Appuhami, Ramanayaka Arachchige Don Agonis Appuhami and others.	Land owned by Ramanayaka Arachchige Don Peiris Appuhami, Ramanayaka Arachchige Don Agonis Appuhami and others.
<b>East</b>	<i>"Sambuddi Gorakagahawatta"</i> owned by Ramanayaka Arachchige Don Agonis Appuhami and <i>"Gorakagahawatta"</i> owned by Ramanayaka Arachchige Don Peiris Appuhami and others.	<i>"Sambuddi Gorakagahawatta"</i> owned by Ramanayaka Arachchige Don Agonis Appuhami and <i>"Gorakagahawatta"</i> owned by Ramanayaka Arachchige Don Peiris Appuhami and others.
<b>South</b>	<i>"Nawagahakumbure Pille Kabella"</i> owned by Arumapperuma and the land owned by Ramanayaka Arachchige Don Peiris Appuhami and others.	<i>"Nawagahakumbure Pille Kabella"</i> owned by Arumapperuma and the land owned by Ramanayaka Arachchige Don Peiris Appuhami and others.
<b>West</b>	Balance $\frac{1}{2}$ of the same land.	Balance $\frac{1}{2}$ of the same land.

It is pertinent to be noted that all four boundaries of the land described in the schedule to the plaint tally with the four boundaries of the land depicted in the preliminary plan.

In the case of **Gabrial Perera v. Agnes Perera** [1950] 43 CLW 82, it was held that,

*“In a deed the partition of the land conveyed is clearly described and can precisely ascertained, a mere inconsistency as to the extent thereof should be treated as a mere false demonstration not affecting that which is already sufficiently conveyed.”*

The above decision was followed in **Yapa v. Dissanayake Sedara** [1989] 1 Sri LR 361, and held that,

*“Inconsistency in extent will not affect the question of identity if the portion of land conveyed is clearly described and can be precisely ascertained.”*

In **Welegedera Sekera v. Ratnapala** (CA. No. 698/98F. CA Minutes dated 12.09.2014) Chithrasiri, J. observed that,

*“Inconsistency in extent will not affect the question of identity if the portion of land conveyed, is clearly described and can be precisely ascertained. As mentioned before, the land sought to be partitioned in this case had been identified having looked at its boundaries and also by referring to the manner in which it was possessed.” [Vide pp. 5-6]*

Besides, the attention of this Court is drawn to the fact that these Defendants have not put forward their contention before the Commissioner that the entire land has not been surveyed, and also the preliminary plan and the report to the same have been produced without any objections by these Defendants.

In these respects, this Court is of the considered view that the contention of the 7<sup>th</sup> to 10<sup>th</sup> Defendants stating that the entirety of the subject matter has not been shown in plan X is devoid of merits.

I shall now deal with the claim of prescriptive title of the 8<sup>th</sup> and 9<sup>th</sup> Defendants in respect of lot B in plan X.

Indeed, these Defendants are co-owners of the subject matter. Generally, one co-owner is in possession of common land on behalf of the other co-owners. If a co-owner claims prescriptive title against other co-owners, it is necessary to prove “ouster” in addition to the requirements set out in section 3 of the Prescription Ordinance, No. 22 of 1871 (as amended).

In **Corea v. Appuhamy** [1911] 15 NLR 65, it was held that,

*“A co-owner's possession is in law the possession of his co-owners. It is not possible for him to put an end to that possession by any secret intention in his mind. Nothing short of ouster or something equivalent to ouster could bring about that result”.*

In the case of **Wickramaratne and Another v. Alpenis Perera** [1986] 1 Sri LR 190, the Court of Appeal observed that,

*“In a partition action, for a lot of land claimed by the plaintiff to be a divided portion of a larger land, he must adduce proof that the co-owner who originated the division and such co-owner's successors had prescribed to that divided portion by adverse possession for at least ten years from the date of ouster or something equivalent to ouster. Where such co-owner had himself executed deeds for undivided shares of the larger land after the year of the alleged dividing off it will militate against the plea of prescription. Possession of divided portions by different co-owners is in no way inconsistent with common possession.”*

In ***Thilakaratne v. Bastian*** [1918] 21 NLR 12, the full bench of the Supreme Court considered the meaning of “adverse possession” in an exhaustive manner, which reads thus:

*“Possession by one co-owner is presumed as the possession on behalf of all of the co-owners. For one co-owner to acquire prescriptive title against the other co-owners, he shall prove ten years exclusive possession after changing the nature of the possession to one of adverse to the title of others.”*

In the case of ***Maria Fernando and Another v. Anthony Fernando*** [1997] 2 Sri LR 356 (CA), Wigneswaran, J. clearly and briefly simplified the requirements to acquire prescriptive title among co-owners as follows:

*“Long possession, payment of rates and taxes, enjoyment of produce, filing suit without making the adverse party, a party, preparing plan and building house on land and renting it are not enough to establish prescription among co-owners in the absence of an overt act of ouster. A secret intention to prescribe may not amount to ouster.”*

In ***Maria Perera v. Albert Perera*** [1983] 2 Sri LR 399 (CA), B.E. De Silva, J. and G.P.S. De Silva, J. (as he then was), observed that,

*“An amicable partition can be a starting point of prescription even though no deed of partition or cross deeds or other documents have been executed. But inclusive possession by a co-owner for a period of 10 years alone cannot give rise to prescriptive title. There must be the further important element of all change of circumstances from which an inference could reasonably be drawn that such possession is averse to and independent of "all other co-owners. There must be proof of circumstances from which a reasonable inference could be drawn that such possession had become adverse at some date ten years before action was brought.*

*Mere exclusive possession for 20 years (by taking the natural produce of the land) on a plan not signed by any of the co-owners to whom the plaintiff claimed lots were allotted cannot constitute proof of ouster. The possession of a co-owner would not become averse to the rights of the other co-owners until there is an act of ouster or something equivalent to ouster”.*

K.D. De Silva, J. and H.N.G. Fernando, J. (Basnayake C.J. dissenting), in the case of **Abdul Majeed v. Ummu Zaneera** [1959] 61 NLR 361, decided that,

*“Proof that one of the co-heirs let out the premises and appropriated to himself the entire rent (which was not much) for thirty-seven years was insufficient, by itself, to bring the case within section 3 of the Prescription Ordinance.”*

In **Chelliah v. Wijenathan** [1951] 54 NLR 337 at 342, Gratien, J. stated that,

*“Where a party invokes the provisions of Section 3 of the Prescription Ordinance in order to defeat the ownership of an adverse claimant to immovable property, the burden of proof rests squarely and fairly on him to establish a starting point for his or her acquisition of prescriptive rights.”*

In **Anthonidura Hemawathie and Others v. Anthodura Bastian Silva and Others** (CA/DCF/1132/99, CA Minutes dated 05.10.2021), this Court echoed the above view as follows:

*“When a co-owner claims prescriptive title to the entirety of the subject matter against the other co-owners such as in the instant case, there is an onus cast on them to establish the fact that they had prescribed to the entire corpus by adverse possession against other co-owners for at least ten*



*years from the date of ouster or something equivalent to ouster.” [Vide p. 9]*

In the light of the above legal literature, it is abundantly clear that a considerable prudence is always necessary to recognize prescriptive title as undoubtedly it deprives the ownership of the party having paper title. Therefore, it is to be reiterated that when a party invokes the provisions of section 3 of the Prescription Ordinance in order to defeat the true ownership of an adverse claimant to immovable property, the burden of proof rests fairly on him to establish the adverse possession by strong and cogent evidence.

It is abundantly clear that the 8<sup>th</sup> and 9<sup>th</sup> Defendants totally failed to adduce evidence to establish the purported claim of prescriptive title to lot B in plan X in accordance with the foregoing determinations of the apex Courts.

Furthermore, these Defendants have not claimed prescriptive title to lot B before the Commissioner as well (vide X1-Report of the Commissioner). The learned District Judge has rightly observed the fact that, at the trial, the parties to the action have admitted the pedigree set out in the plaint and the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> Defendants, in paragraph 6 of their statements of objection, have stated that, the father of 8<sup>th</sup> and 9<sup>th</sup> Defendant, Thomas/Almon obtained undivided rights as per the plaint. Moreover, the 9<sup>th</sup> Defendant, while giving evidence before the learned trial Judge, categorically admitted the fact, that the undivided right of Pabliyana devolved on his father.

In these respects, it is evident that the 8<sup>th</sup> and 9<sup>th</sup> Defendants are in possession of lot B in plan X as co-owners, and therefore, they cannot claim prescriptive title to the same.

**Appeal bearing No. CA/DCF/653/97**

The grounds of appeal advanced by the 1<sup>st</sup> and 15<sup>th</sup> Defendants are as follows:

1. Whether the lot A in plan X has to be excluded from the corpus sought to be partitioned on the footing that the 1<sup>st</sup> defendant has acquired prescriptive title to the same.
2. Whether the lot D in plan X has to be excluded from the subject matter on the basis that the same was part of *Pahaladelgahawata*.

Having framed the points of contest No. 9 and 10, the 1<sup>st</sup> Defendant took up the position that he has obtained prescriptive title to lot A. Admittedly, the 1<sup>st</sup> Defendant is a co-owner of this land. As I have already stated in this judgment, if a co-owner claims prescriptive title against other co-owners, it is necessary to prove “ouster” in addition to the requirements set out in section 3 of the Prescription Ordinance, No. 22 of 1871 (as amended).

It is pertinent to be noted that the 1<sup>st</sup> Defendant who was present before the Commissioner has not claimed Lot A on prescription. As per the report of the Commissioner marked X1, the 1<sup>st</sup> Defendant had claimed only the improvements in lot A. The 15<sup>th</sup> Defendant, who is the son of the 1<sup>st</sup> Defendant, while giving evidence on behalf of the 1<sup>st</sup> Defendant categorically admitted the fact that the larger land (co-owned property) was not partitioned among the co-owners. The learned Trial Judge has rightly observed the fact that the 15<sup>th</sup> Defendant failed to produce any documents as to the payment of Municipal rates, though he took up the position that the 1<sup>st</sup> Defendant had paid municipal rates pertaining to Lot A in plan X. In order to establish the claim of the 1<sup>st</sup> Defendant, the deed bearing No. 3285 dated 17.12.1971 is produced as 1V1. It appears to this Court that an extent of 1 Acre out of the entire land, has been conveyed by the said deed. As such, it is apparent that the vendor in 1V1 has conveyed undivided 1 Acre from the corpus. Since the said 1 Acre is not

identified in a plan, the 1<sup>st</sup> Defendant cannot take up the position that the land described in the schedule to 1V1 is a divided portion, namely lot A in plan X.

Having considered the totality of the evidence adduced, it is manifestly clear that the 1<sup>st</sup> Defendant in this case totally failed to establish his purported claim of prescriptive title to lot A.

I shall now deal with the second ground of appeal, whereas the 15<sup>th</sup> Defendant contended that the lot D in plan X is part of *Pahaladelgahawatta*.

It is to be noted that other than the bare statement of the 15<sup>th</sup> Defendant, there is no iota of evidence to establish the contention of the 15<sup>th</sup> Defendant. The title plan of *Pahaladelgahawatta* has not been superimposed on the preliminary plan. Moreover, the 1<sup>st</sup> or the 15<sup>th</sup> Defendant has not put forward such a claim before the Commissioner. The learned trial Judge has drawn his attention to the fact that the purported title deed of the 15<sup>th</sup> Defendant, namely 15V1, claiming title to lot D has not been produced by the said defendant though the same was marked at the trial. In a nutshell, having considered the evidence adduced, it is abundantly clear that the 15<sup>th</sup> Defendant failed to adduce adequate evidence to establish the fact that the lot D in plan X is part of *Pahaladelgahawatta*, and therefore, the grounds of appeal advanced by the 1<sup>st</sup> and 15<sup>th</sup> Defendants are devoid of merits.

For the foregoing reasons, I see no basis to interfere with the impugned judgment of the learned District Judge of Mount-Lavinia.

Accordingly, I dismiss the appeals with costs, fixed at Rs. 50,000 (each appeal) and affirm the impugned judgment.

The Registrar is directed to dispatch the original case record along with a copy of this judgment to the District Court of Mount-Lavinia.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**S. U. B. KARALLIYADDE, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**