

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

In the matter of an application for leave to appeal against  
the order of the District Judge of Ratnapura dated  
27.03.2001 in D.C. Ratnapura case No.176(P) in terms of  
Section 754 (2) of the Civil Procedure Code.

**Case No.CA.L.A/118/2001**

D.C. Ratnapura Case No.176/P.

11. Felix Stanley Senanayake (deceased)  
11A. Anton Joseph Reginald Senanayake  
Good shed Road, Ratnapura.

**Substituted 11<sup>th</sup> (A) Defendant-Petitioner-Petitioner**

Vs.

1. Wengappuli Arachchige Rohana (deceased)  
1A. Paliyaguruge Sunanda alias N.P.G. Sunanda Naottunna of  
No.231/3, Colombo Road, Weralupa, Ratnapura.

**Substituted 1<sup>st</sup> (A) Plaintiff-Respondent-Respondent and others.**

Before **PRESANTHA DE SILVA, J. &**  
**K.K.A.V. SWARNADHIPATHI, J.**

Counsel **Buddhika Gamage (A.A.L.) with Ranjanie Warnasinghe (A.A.L.)**  
(for the 11<sup>th</sup> (A) Defendant-Petitioner-Petitioner)

**W. Dayarathna (P.C.) with R. Jayawardhana (A.A.L.)**  
(for the 37<sup>th</sup> and 86<sup>th</sup> Defendant-Respondent-Respondents)

Argument By way of written submissions

Decided on 03.02.2022.

**K.K.A.V. SWARNADHIPATHI, J.**

### **JUDGMENT**

The original Plaintiff filed a partition action at the District Court of Ratnapura to partition the land described in the schedule to the Plaint. A preliminary survey was carried out, and the report and the Plan were submitted to the court by M.W. Ratnayake - Commissioner who was appointed to carry out the survey. He has produced his Plan No.1608 dated 07.11.1974. This Plan was accepted as the preliminary Plan. However, a subsequent Plan was produced marked as [Y], and all parties agreed to accept the Plan marked as [Y] as the preliminary Plan. The Plan marked [Y] was prepared by the same surveyor, and its number was 3623, dated 22.10.1996.

As the parties agreed to accept, the land depicted in Plan marked [Y] judgment was entered, and the amended interlocutory decree was entered on 27.08.1997. Up to this point, the parties were in agreement as far as the judgment and the interlocutory decree were concerned. After that, a commission was issued to prepare the final Plan. Commissioner G.M. Gunadasa, Licensed Surveyor, submitted Plan No.2201 dated 22.08.2000.

Many Defendants filed their objections to the final scheme. The 11<sup>th</sup> (A) Defendant has filed his objections. An inquiry was held under Section 36 of the Partition Act No.21 of 1977 as amended by Act No.17 of 1997.

At this inquiry, the learned District Judge had recorded testimonies of the parties. Further, he had a scene inspection and then delivered his order on the 27<sup>th</sup> of March 2001. Being aggrieved by the said order, the 11<sup>th</sup> (A) Defendant had invoked the jurisdiction of this court. Having granted leave to proceed, the parties agreed to abide by written submissions. Even though the 11<sup>th</sup> (A) Defendant-Petitioner-Petitioner requested to file further written submissions in reply to the Defendant-

Respondent-Respondent and the 1<sup>st</sup> (A) Substituted-Plaintiff-Respondent, he failed to file submissions in reply. Since this case is over forty years from the inception date without further delay, the judgment is prepared on written submissions already filed by parties as agreed on the 4<sup>th</sup> of August 2021.

The present appeal is regarding the order made on the 27<sup>th</sup> of March 2001. 11<sup>th</sup> (A) Defendant-Petitioner-Petitioner had, among other prayers had, prayed to set aside the order dated 27.03.2000 and to order a fresh inquiry in terms of the interlocutory decree and seeking to allocate Lot No.22 of the Plan No.1608 to the Petitioner.

When studying the entire issue, it is evident that Lot No.22 is, in the extent of 01R:0.007P out of that, according to the interlocutory decree 11<sup>th</sup> defended was given undivided 2380/30240 portion and  $\frac{3}{4}$  share of the building. Plaintiff was given lot 21B, which is six perchers. The 11<sup>th</sup> defended object for giving lot 21B to Plaintiff and requesting 2.89 perchers from Lot21. His reason was that by giving the entire lot 21B to Plaintiff, the view from the front of his property is damaged, reducing his property's value.

However, in his order dated 27.03.2000, the learned District Judge had made some changes to the Plan of G.M. Gunadasa, Licensed Surveyor. Regarding the facts forwarded by the 11<sup>th</sup>(A) Defendant, the learned District Judge had rejected the request. The reasons given were if to accommodate the 11<sup>th</sup> (A) Defendant's request, the Plaintiff will have to be given the land in two portions which the Plaintiff had refused. On the other hand, even though the 11<sup>th</sup>(A) Defendant claims that the value of his land will be affected. The learned District Judge had not observed such a loss when he visited the land.

It is challenging to satisfy all parties' needs in a partition case. Here the parties have got land as one unit without separating. Even the Appellant has got the land as a unit. Furthermore, he had got an undivided 2380/3240 share with  $\frac{3}{4}$ <sup>th</sup> share of the buildings marked as "A", "B", and "C" in Lot No.22, which is according to the amended interlocutory decree entered on 27.08.1997. The Appellant had not challenged the above. The Appellant's main grievance is that his front compound is given to Plaintiff; therefore, the value of his land had diminished.

When reading Section 31 of the Partition Act No.21 of 1977 as amended by Act No.17 of 1997, it is clear that the court cannot allocate a portion of land less than the minimum extent required by law regarding the sub-division of lands for development purposes. It is clear that if the Appellant's request is complied with, it will leave a portion to Plaintiff, which will be against the provisions discussed above. If 2.89 perches of Lot No.21B of the final Plan of G.M. Gunadasa is given to the Appellant as prayed by him, it will leave only 3.2 perches to the Plaintiff, which is against the requirement for development purposes.

Therefore, it is clear that the Appellant's request cannot be granted according to the requirement of the written law, which requires a minimum of six perches.

Another important fact is that the Appellant had not invoked the proper jurisdiction from this court. The Partition Law is a special law which had provided for appeals regarding inquiries under Section 36 of the Partition Act No.21 of 1977 as amended Section 36A of the Partition Law reads as "***Any person dissatisfied with an order of court made under Section 36 may prefer an appeal against such an order with the leave of the Court of Appeal first had and obtained.***"

The position was discussed in *Munidasa Vs. Nandasena*<sup>1</sup>. Therefore, it is settled law that since partition law provides a specific remedy, the Appellant is not entitled to seek remedies under Sections of the Civil Procedure Code. The Appellant had filed this case under Section 754(2) of the Civil Procedure Code. Therefore, this court is not empowered to grant remedies prayed for by the Appellant.

Sri Lankan courts held that law does not help lashers of parties many times. For over six years after granting leave to proceed, the Appellant had failed to make the essential party, namely the Substituted Plaintiff-Respondent-Respondent, a party. The delay in finalizing the case was entirely on the shoulder of the Appellant. Even if one considers that sections of the Civil Procedure Code apply, bringing the necessary parties to court is essential. It becomes more severe when applied to Partition Law. Since the judgment of a partition action is in rem, all necessary parties must be named.

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<sup>1</sup> 2001 (2) SLR page 224

Finally, even if the Appellant had invoked the jurisdiction of this court according to partition law, since the Appellant had not proved why this court should set aside the order made by the learned District Judge is not explained. It is the duty of the contesting party to prove the reasons given by the learned District Judge are against the law or unsatisfactory. Therefore, this court rejects the appeal of the 11<sup>th</sup> (A) Defendant-Petitioner-Petitioner on two grounds. Firstly, the appeal is not under the correct provisions of the law. Secondly, the Appellant had not proved sufficient reasons to set aside the order of the learned District Judge. Therefore, the appeal is dismissed subject to taxed costs.

**Judge of the Court of Appeal**

**PRESANTHA DE SILVA, J.**

I agree.

**Judge of the Court of Appeal**