

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

In the matter of an Appeal under Article 138 of  
the Constitution of the Democratic Socialist  
Republic of Sri Lanka.

**C.A. Appeal Case**

**No. 65/98 (F)**

**D.C. Kalutara Case No.**

**4746/P**

Karunamuni Samson De Silva  
Nagoda, Kalutara.

**Plaintiff**

**Vs.**

1. Sandradura Indralatha  
Kandapansala Road, Mahawaskaduwa,  
Waskaduwa.
2. Karunamuni Disna Kusumawathie De  
Silva (Deceased)  
Mahawaskaduwa, Waskaduwa.
- 2A. Mesthrige Bandula Yogananda De Silva  
Mahawaskaduwa, Waskaduwa.
3. Arumadura Nandawathie Wijayatilake  
No.128, Galle Road, North Kalutara.
4. Seekku Arachchige Milis Wijayatilake  
No.128, Galle Road, North Kalutara.
5. Arumadura Suwineetha Kalani  
Wijayatilake  
No.128, Galle Road, North Kalutara.
6. Arumadura Priyantha Jayanath  
Wijayatilake  
No.128, Galle Road, North Kalutara.
7. Umange Herbert Seneviratne  
Kandapansala Road, Mahawaskaduwa,  
Waskaduwa.
8. Induruwage Loranona  
Mahawaskaduwa, Waskaduwa.

9. Umange Herbert Seneviratne  
Mahawaskaduwa, Waskaduwa.
10. Munasinghege Selbinona  
Mahawaskaduwa, Waskaduwa.
11. Weerakkodi Disilin Nona  
Wele Pansala Road, Mahawaskaduwa,  
Waskaduwa.
12. Induruwage Lora Nona  
Wellabada, Mahawaskaduwa, Waskaduwa
13. Sandradura Menuwel Silva  
Mahawaskaduwa, Waskaduwa.
14. Munasinghe Saldin Nona  
Mahawaskaduwa, Waskaduwa.
15. A. Donald Perera  
Udowita, Naebada.

**Defendants**

**AND BETWEEN**

1. Sandradura Indralatha  
Kandapansala Road, Mahawaskaduwa,  
Waskaduwa,
7. Umange Herbert Seneviratne  
Kandapansala Road, Mahawaskaduwa,  
Waskaduwa.

**1<sup>st</sup> and 7<sup>th</sup> Defendant-Appellants**

**Vs.**

Karunamuni Samson De Silva (Deceased)  
Nagoda, Kalutara.

**Plaintiff-Respondent**

1A. Karunamuni Chandrika De Silva  
(Deceased)  
1A(i) Weeraddana Thusitha Vijith De Silva  
1A(ii) Nuwandi Chaturtya De Silva  
No. 386/1A, Mathugama Road, Katukurunda,  
Nagoda, Kalutara.

- 2A. Karunamuni Kanthi De Silva  
3A. Karunamuni Mahinda Thilakasiri De Silva

**Substituted Plaintiff-Respondents**

2. Karunamuni Disna Kusumawathie De Silva  
(Deceased)  
Mahawaskaduwa, Waskaduwa.
- 2A. Mesthrige Bandula Yogananda De Silva  
Malhawaskaduwa, Waskaduwa.
3. Arumadura Nandawathie Wijayatilake No.128,  
Galle Road, North Kalutara.
4. Seekku Arachchige Milis Wijayatilake No.128,  
Galle Road, North Kalutara.
5. Arumadura Suwineetha Kalani Wijayatilake  
No.128, Galle Road, North Kalutara.
6. Arumadura Priyantha Jayanath Wijayatilake  
No.128, Galle Road, North Kalutara.
8. Induruwage Loranona  
Mahawaskaduwa, Waskaduwa.
9. Umange Hlerbert Seneviratne  
Mahawaskaduwa, Waskaduwa,
10. Munasinghe Selbinona  
Mahawaskaduwa, Waskaduwa.
11. Weerakkodi Disilin Nona  
Wele Pansala Road, Mahawaskaduwa,  
Waskaduwa.
12. Induruwage Lora Nona  
Wellabada, Mahawaskaduwa, Waskaduwa
13. Sandradura Menuwel Silva  
Mahawaskaduwa, Waskaduwa.
14. Munasinghe Saldin Nona  
Mahawaskaduwa, Waskaduwa.
15. A. Donald Perera (Deceased)  
Udowita, Naebada

**2<sup>nd</sup> to 6<sup>th</sup> & 8<sup>th</sup> to 15<sup>th</sup> Defendant-  
Respondents**

**AND NOW BETWEEN**

1. Sandradura Indralatha  
Kandapansala Road, Mahawaskaduwa,  
Waskaduwa,
7. Umange Herbert Seneviratne  
Kandapansala Road, Mahawaskaduwa,  
Waskaduwa.

**1<sup>st</sup> and 7<sup>th</sup> Defendant-Appellants**

**Vs.**

Karunamuni Samson De Silva (Deceased)  
Nagoda, Kalutara.

**Plaintiff-Respondent**

- 1A. Karunamuni Chandrika De Silva  
(Deceased)
- 1A(i) Weeraddana Thusitha Vijith De Silva
- 1A(ii) Nuwandi Chaturtya De Silva  
No. 386/1A, Mathugama Road, Katukurunda,  
Nagoda, Kalutara.
- 2A. Karunamuni Kanthi De Silva
- 3A. Karunamuni Mahinda Thilakasiri De Silva

**Substituted Plaintiff-Respondent-  
Respondents**

2. Karunamuni Disna Kusumawathie De Silva  
(Deceased)  
Mahawaskaduwa, Waskaduwa.
- 2A. Mesthrige Bandula Yogananda De Silva  
Malhawaskaduwa, Waskaduwa.
3. Arumadura Nandawathie Wijayatilake No.128,  
Galle Road, North Kalutara.
4. Seekku Arachchige Milis Wijayatilake No.128,  
Galle Road, North Kalutara.
5. Arumadura Suwineetha Kalani Wijayatilake  
No.128, Galle Road, North Kalutara.

6. Arumadura Priyantha Jayanath Wijayatilake  
No.128, Galle Road, North Kalutara.
8. Induruwage Loranona  
Mahawaskaduwa, Waskaduwa.
9. Umange Hlerbert Seneviratne  
Mahawaskaduwa, Waskaduwa,
10. Munasinghege Selbinona  
Mahawaskaduwa, Waskaduwa.
11. Weerakkodi Disilin Nona  
Wele Pansala Road, Mahawaskaduwa,  
Waskaduwa.
12. Induruwage Lora Nona  
Wellabada, Mahawaskaduwa, Waskaduwa
13. Sandradura Menuwel Silva  
Mahawaskaduwa, Waskaduwa.
14. Munasinghe Saldin Nona  
Mahawaskaduwa, Waskaduwa.
15. A. Donald Perera (Deceased)  
Udowita, Naebada

**Defendant-Respondent-Respondents**

1. Arumakutti Waruna Viraj Perera
2. Arumakutti Kasun Darshana Perera
3. Agampodi Girty Premalatha De Zoysa  
All of Udowita, Naebada.

**Respondents**

**Before:** M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

**Counsel:**

Upendra Walgampaya with O. Fernando instructed by Ms. D.M. Niluka Sanjani  
Dissanayake for the 1<sup>st</sup> and 7<sup>th</sup> Defendant -Appellants

Ranjan Suwandarantne P.C. with Yowin Mathugama and Yashodha  
Dharmaratne instructed by Ms. Surekaha D. Withanage for the 15<sup>th</sup> A  
Defendant- Respondent

**Written submissions tendered on:**

15.02.2022 by the 1<sup>st</sup> and 7<sup>th</sup> Defendant -Appellants

**Argued on:** 08.02.2022

**Decided on:** 05.04.2022

**S.U.B. Karalliyadde, J.**

The Plaintiff- Respondent (hereinafter referred to as the Plaintiff) instituted a partition action by the plaint dated 30.10.1987 in the District Court of Kalutara for partitioning the land known as '*Kongahawatta*' alias '*Gulngahawatta*' in the extent of 0A 3R 37.2P situated in Mahawaskaduwa in Kautara. After the statements of claim were filed, the case proceeded to trial between the plaintiff and the 1<sup>st</sup>, 2<sup>nd</sup>, 7<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Defendant- Respondents (hereinafter referred to as the 1<sup>st</sup>, 2<sup>nd</sup>, 7<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Defendants) on 29 points of contest. After the conclusion of the trial, by judgement dated 02.12.1997 the learned Additional District Judge decided that the land sought to be partitioned in the action is shown as lots 1 and 2 in the preliminary plan No. 4040 dated 06.02.1985 (marked X) prepared by N. Seneviratne Licenced Surveyor and lots 3 to 7 in plan X does not form the corpus of the subject matter. Even though, the learned Additional District Judge has identified the land sought to be partitioned as lots 1 and 2, the action has been dismissed on the basis that the Plaintiff has failed to prove his title to the land. It has been concluded that the 7<sup>th</sup> Defendant has proved his title to lots 1 and 2 and therefore, he is entitled to the entire land identified as the subject matter of the action.

The 1<sup>st</sup> and 7<sup>th</sup> Defendants preferred his appeal seeking to exclude certain portions of the judgment that the Court has made observations and /or findings about the lots 3 to 7 and a building stand on lot 3 in plan X. As mentioned hereinbefore, the learned Additional District Judge has decided that those lots does not from the corpus. In the

judgment, he has observed *inter alia*, that lots 6 and 7 has become parts of the main road, the land situated to the east of the main road is a separate land, lot 4 has been bought by the 13<sup>th</sup> Defendant to get excess to his land, he has used that lot without any obstruction of the other parties as a right of way, lot 3 has been devolved on the 15<sup>th</sup> Defendant on deeds as a separate land and therefore, he should be entitled to that lot and the building marked “A” standing thereon (at pages 277 and 278 of the Appeal brief).

In terms of section 25 of the Partition Law, No. 21 of 1977, at the trial, the court is required to examine the title of each party and try and determine all questions of law and fact arising in the action in regard to the right, share or interest of each party to, of, or in the land to which the action relates and should consider and decide which of the orders mentioned in section 26 should be made.

Section 26(1) and (2) of the Partition Act, No. 21 of 1977 provides thus;

26 (1) At the conclusion of the trial of a partition action, or on such later date as the court may fix, the court shall pronounce judgment in open court, and the judgment shall be dated and signed by the Judge at the time of pronouncing it. As soon as may be after the judgment is pronounced, the court shall enter an interlocutory decree in accordance with the findings in the judgment, and such decree shall be signed by the Judge.

26 (2) The interlocutory decree may include one or more of the following orders, so however that the orders are not inconsistent with one another: -

- (a) order for a partition of the land;
- (b) order for a sale of the land in whole or in lots;
- (c) order for a sale of a share or portion of the land and a partition of the remainder;
- (d) order that any portion of the land representing the share of any particular party only shall be demarcated and separated from the remainder of the land;
- (e) order that any specified portion of the land shall continue to belong in common to specified parties or to a group of parties;

(f) order that any specified portion of the land sought to be partitioned or surveyed be excluded from the scope of the action;

(g) order that any share remain unallotted.

Therefore, in a partition action, the District Judge could make any order/orders mentioned in section 26 (2) of the Partition Act. In the case of *Hewavitharana Vs. Themis De Silva*<sup>1</sup> it was decided that there is no provision in the Act, providing for a declaration of title to a land solely owned by a person which has been wrongly included in the corpus sought to be partitioned. If the trial Judge decides to exclude any portion of the land shown in the preliminary plan from the corpus he may do so, but he is not entitled to investigate the title to that portion or make any determination about the improvements standing thereon. Under such circumstances, I hold that the conclusions of the learned Additional District Judge regarding the entitlement of parties to lots 3 to 7 in plan X and the improvements standing thereon are against the partition law and those findings could cause prejudice to the rights of the parties who are the owners of those lots. Therefore, I hold that the observations and/or conclusions of the trial judge in respect of lots 3 to 7 should be excluded from the judgment. The dismissal of the action is affirmed. No costs ordered.

**JUDGE OF THE COURT OF APPEAL**

**M.T. MOHAMMED LAFFAR, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**

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<sup>1</sup> 63 NLR 68.