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

Vithanage Themis Singho,
No. 186/1, Nakandapola,
Henegama.

Plaintiff

C.A No. 1143/2000 (F)

Vs.

DC Pugoda Case No. 64/P

1. Vithanage Juliyana Hamine,
   of Nakandapola, Henegama.

2. Vithanage Alosius Perera,
   of Keragala.

3. Vithanage Agnes Hamine,
   of Keragala.

4. Don George Visidagama,
   of Nakandapola, Henegama.

5. Mabula Marapperuma Arachchige Sirisena,
   of Nakandapola, Henegama.

6. Mabula Marapperuma Arachchige Karunaratne,
   of Belummahara.

7. Mabula Marapperuma Arachchige Piyasena,
   of Belummahara.

8. Mabula Marapperuma Arachchige Somawathi,
   of Belummahara.

(Dead) 9. Wickramarachchige Soida Perera,
   of Belummahara.

9A. Mabula Marapperuma Arachchige Sirisena,
   of Nakandapola.

(Dead)

10. Wickramarachchige Sampin Singho,
of Keragala.

10A. Wickramarachchige Premadasa,
of Keragala.

11. Wickramarachchige Somadasa,
of Keragala.

12. Juandarage Saibaran Singho,
of Nakandapola, Henegama.

13. Juandarage Pemaratne,
of Nakandapola, Henegama.

(Dead) 14. Wickramarachchi Lokusingho,
of Nakandapola, Henegama.

14A. R.P. Kusumawathie Menike,
Nakandapola, Henegama.

(Dead) 15. Mabula Mannapperuma Arachchige Albin,
Singho,
of Nakandapola, Henegama.

15A. P.K. Elisa Nona,
Nakandapola, Henegama.

16. Vithanage Somasiri,
of Keragala.

17. Panduwawale Kankanamalage Jayasiri
Kalyanawathi,
of Ballathewa, Kosgama.

Defendants

AND

5. Mabula Marapperuma Arachchige Sirisena,
of Nakandapola, Henegama.

5th Defendant-Appellant

Vs.

(Dead) Vithanage Themis Singho,

No. 186/1, Nakandapola,
Henegama.

Plaintiff-Respondent

1(A). Withanage Gnanawathie,
No. 186/1, Nakandapola, Henegama.

1A Substituted Plaintiff-Respondent

(Dead) 1. Vithanage Juliyana Hamine,
of Nakandapola, Henegama.

1(A). Peter Joseph.
1(B). Don Jorch Francis,
Both of Nakandapola, Henegama.

1(A) & 1(B) Substituted Defendant-Respondents

2. Vithanage Alosius Perera,
of Keragala.

3. Vithanage Agnes Hamine,
of Keragala.

4. George Visidagama,
of Nakandapola, Henegama.

2nd, 3rd & 4th Defendant-Respondents

(Dead) 6. Mabula Marapperuma Arachchige
Karunaratne,
of Belummahara.

6A. Herbert Ranjith Marepperuma,
6B. Gamini Douglas Marepperuma,
6C. Nimal Chandrasiri,
6D. Indrani Padmalatha Karunaratne,
6E. Uditha Damayanthie Marepperuma.
All of No. 98, Keragala, Henagama.

6A-6D Substituted Defendant-Respondents

7. Mabula Marapperuma Arachchige Piyasena,
of Belummahara.

7A. Mabula Marapperuma Arachchige Chithra,
No. 364, Medalanda,
Dompe.

7A Substituted Defendant-Respondent

8. Mabula Marapperuma Arachchige Somawathi,
of Belummahara.

(Dead) 9. Wickramarachchige Soida Perera,
of Belummahara.

9A. Mabula Marapperuma Arachchige Sirisena,
of Nakandapola.

(Dead) 10. Wickramarachchige Sampin Singho,
of Keragala.

10A. Wickramarachchige Premadasa,
of Keragala.

11. Wickramarachchige Somadasa,
of Keragala.

(Dead) 12. Juandarage Saibaran Singho,
of Nakandapola, Henegama.

12A. Juandarage Saibaran Nihal Shantha,
of Nakandapola, Henegama.

13. Juandarage Pemaratne,
of Nakandapola, Henegama.

(Dead) 14. Wickramarachchi Lokusingho,
of Nakandapola, Henegama.

14A. R.P. Kusumawathie Menike,

Nakandapola, Henegama.

(Dead) 15. Mabula Mannapperuma Arachchige Albin, Singho,
of Nakandapola, Henegama.

15A. P.K. Elisa Nona,
Nakandapola, Henegama.

16. Vithanage Somasiri,
of Keragala.

17. Panduwawale Kankanamalage Jayasiri Kalyanawathi,
of Ballathewa, Kosgama.

8th-17th Defendant-Respondents

Before: **Prasantha De Silva, J.**
K.K.A.V. Swarnadhipathi, J.

Counsel: M.C. Jayaratne P.C with H.A. Nishani A.A.L and H. Hettiarachchi A.A.L for the 5th Defendant-Appellant.
Nimal Wickramasinghe A.A.L for the 10th-16th Respondents.

Written Submissions tendered on: 02.11.2021 by the 5th Defendant-Appellant.
07.12.2021 by the 10th-16th Respondents.

Argued on: 04.10.2021

Decided on: 04.10.2022

Prasantha De Silva, J.

Judgment

The Plaintiff instituted the instant action to partition the land namely Kakungahawatte alias Mawathahena described in the 2nd schedule to the amended plaint dated 05.11.1983. The said 2nd schedule which described the corpus of the instant action is as follows:

ඉහත සඳහන් 2වන උපලේඛණය:

ඉහත කී නාකදපොල පිහිටි කැකුණගහවත්ත හෙවත් මාවතහේන නමැති ඉඩමේ බෙදා වෙන් කල කැබැල්ලට මායිම්: උතුරට හේනේපුර දේවගේ බබානිස් ප්‍රනාන්දු සහ තව අයට අයිති ඉඩම වෙන් වන අගලද, නැගෙනහිරට මාඹුල මාරප්පෙරුම ආරච්චිගේ දාවිත් පීස් ඔපිසරට සහ තවත් අයට අයිති දැනට ඩී. බී. ජයසිංහට අයිති ඉඩමද, දකුණට මිල්ලගහකුඹුර සහ මෙම ඉඩමේ බෙදා වෙන් කල කොටසද, බස්නාහිරට මෙම ඉඩමේ බෙදා වෙන් කල කොටස සහ මහ පාරද, යන මෙකී මායිම් තුල පිහිටි අක්කර හතරහමාර (අ4,රූ2,ප0) පමණ විශාල ඉඩම හා එකී පිහිටි ගහකොල පළතුරු ගොඩනැගිලි ආදී සියලු දේද වේ.

මෙම ඉඩම දැන් ආර්.ඒ. චන්ද්‍රරත්න බලයලත් මිනින්දෝරු තැනගේ 15.09.1980 දිනැති අංක. 1352 දරණ මූලික සැලැස්මේ කැබලි අංක 1 සිට 9 වශයෙන් පෙන්වන අතර නිවැරදිව අක්කර පහයි පර්චස් තිස්හතරහමාර (අ5,රූ0,ප34.5) විශාල ඉඩම වේ.

It appears that the corpus of the instant action is a divided portion of a large land called and known as “Kakungahawatte” alias “Mawathahena”, 16 acres in extent; which is described in the 1st schedule to the amended plaint.

According to the Plaintiff, the original owners of the said large land were Baron Athukorala and Ariyapperuma Ramanayakege Maththes Police Vidana Rala. They got rights upon the said land by Deed bearing No. 783 dated 22.10.1855.

Thereafter, the said Baron Athukorala was in possession of the Northern half share of the said land and said Police Vidana Rala was in possession of the Southern half share of the large land. Later, the said Baron Athukorala and Police Vidana by mutual agreement separately possessed the said Northern and Southern portions and became separately entitled to the same by title and as well as prescriptive possession.

The amended plaint proceeded to state that the said Baron Athukorala who separately possessed the said Northern portion of the land died leaving his children Luci Hamy alias

Laiso Hamy, Pesona Hamy, Don Abraham, Don Davith and Marthina Hamy. However, said Marthina Hamy died unmarried and issueless whose half share of the property devolved according to paragraph 3 of the amended plaint.

A portion of the said land had been offered for Sangha and it is separately possessed by the temple. After the said portion was offered to the temple, the parties possessed the remaining land as separate portions and out of that, a portion of 4 and half acres was subject to a partition action bearing No. 3221/P and the remaining portion which is described in the 2nd schedule to the plaint is the subject matter of this action.

The 2nd schedule runs as follows;

ඉහත සඳහන් 2වන උපලේඛණය:

ඉහත කී නාකඳපොල පිහිටි කැකුණගහවත්ත හෙවත් මාවතහේන නමැති ඉඩමේ බෙදා වෙන් කල කැබැල්ලට මායිම්: උතුරට හේනේපුර දේවගේ බබානිස් ප්‍රනාන්දු සහ තව අයට අයිති ඉඩම වෙන් වන අගලද, නැගෙනහිරට මාඹුල මාරප්පෙරුම ආරච්චිගේ දාවිත් පීස් ඔපිසරට සහ තවත් අයට අයිති දැනට ඩී. බී. ජයසිංහට අයිති ඉඩමද, දකුණට මිල්ලගහකුඹුර සහ මෙම ඉඩමේ බෙදා වෙන් කල කොටසද, බස්නාහිරට මෙම ඉඩමේ බෙදා වෙන් කල කොටස සහ මහ පාරද, යන මෙකී මායිම් තුල පිහිටි අක්කර හතරහමාර (අ4,රූ2,ප0) පමණ විශාල ඉඩම හා එකී පිහිටි ගහකොල පළතුරු ගොඩනැගිලි ආදී සියලු දේද වේ.

මෙම ඉඩම දැන් ආර්.ඒ. චන්ද්‍රරත්න බලයලත් මිනින්දෝරු තැනගේ 15.09.1980 දිනැති අංක. 1352 දරණ මූලික සැලැස්මේ කැබලි අංක 1 සිට 9 වශයෙන් පෙන්වන අතර නිවැරදිව අක්කර පහයි පර්චස් තිස්හතරහමාර (අ5,රූ0,ප34.5) විශාල ඉඩම වේ.

Thereafter, the Plaintiff averred how the title devolved in the rest of the averments and prayed for a partition decree according to the shares mentioned therein.

However, the 10th to 16th Defendants in their amended statement of claim denied the devolution of title and specifically stated that they do not accept the preliminary plan

bearing No. 1352 dated 15.09.1980 prepared by R.A. Chandrarathna licensed surveyor which does not show the land described in the 2nd schedule to the plaint.

The said Defendants disputed the pedigree of the Plaintiff and sought a dismissal of the Plaintiff's action.

Trial commenced afresh on the amended pleadings on 05.08.1986 and on behalf of the Plaintiff 1st, 2nd and 3rd points of contest were raised while 1st, 3rd, 5th and 8th Defendants raised 4th, 5th, 6th and 7th points of contest and on behalf of the 10th-16th Defendants, 8th-29th points of contest were raised. However, after the conclusion of the trial, learned Additional District Judge dismissed the action of the Plaintiff and held,

a) That the proper co-owners of the subject matter of the action are the heirs of Persona Hamy and Lucia Hamy, and that the heirs of Don Abraham and Don Davith had taken their undivided rights from the corpus in action No.3221/P, and that the 5th to the 9th Defendants do not inherit rights as they are the heirs of the said Don Davith and Don Abraham,

b) That the 5th Defendant has acquired rights under the document "5V1" and that he is entitled to his rights from the land, and that the Plaint is correct in respect of the rights of the 5th Defendant.

c) That the Deed No. 10V17 marked on behalf of the 10th to 16th Defendants is a fraudulent and invalid Deed and that several allotments of land not forming the original land, namely "Puwakgahakumbura" and "Puwakdolekumbura" have been included in Plan No. 912 and that 10th to 17th Defendants have not proved their tittles.

d) That the Plaintiff has not proved his title, and that Lucia Hamy and Persona Hamy have both divested their rights by Deed No. 3136.

Being aggrieved by the said Judgment, the 5th Defendant-Appellant had preferred this appeal on the following grounds:

a) The learned Additional District Judge erred when she held that the plaint should be dismissed on the ground that the Plaintiff has not proved the case as this is an action for partition and that the proper co-owners were before the court and had proved their title, and the 5th Defendant-Appellant whose rights have been proved, is entitled to a divided portion as pleaded by him in his statement of claim.
b) The learned Additional District Judge failed to consider the fact that the 5th Defendant-Appellant who had acquired the title from '5V1', which in fact has been accepted by the Learned Additional District Judge, has a better title than the 10th to 16th Defendant-Respondents who enjoy the property. The Learned Additional District Judge has held that the 10th to 16th Defendant–Respondents have not proved their titles. Therefore, the Learned District Judge should have held in favour of the 5th Defendant-Appellant who has successfully proved his case.
c) The evidence in this case clearly proves that only the Plaintiff and the 1st to 5th Defendants are entitled to rights and title in the land, and therefore the Plaintiff and the 1st to 5th Defendants are entitled to have the land partitioned among them and therefore the plaint should not have been dismissed.
d) The Judgment itself is contradictory as the Learned District Judge has held that the heirs of Laisa Hamy and Pesona Hamy are entitled to the rights in the land, but has also held that the Plaintiff and the 1st to 3rd Defendants had failed to file a partition action until 1978 and therefore it is doubtful whether they had possession. It is respectfully submitted that even if they were not in possession, they are entitled to obtain possession and therefore have a right to have the land partitioned.
e) The said judgment dated 06.12.2000 is not based on evidence before the Court and therefore is unreasonable and wrong and, that the 5th Defendant-Appellant is therefore deprived of his rights to have peaceful possession of a divided portion of land.

It is seen that the Learned District Judge having dismissed the Plaintiff's action and also the claim of the 5th Defendant-Appellant, the Learned Additional District Judge of

Pugoda had not answered the 1–15 points of contest raised on behalf of the parties. The learned trial Judge must examine and evaluate the evidence of the witnesses and documents and thereupon answer all the points of contest among the parties. Further, it should be stated why she prefers to accept the evidence of one party and refuses the evidence of the other with reasons.

It is observable that the 5th Defendant-Appellant did not dispute the corpus and had claimed his rights upon the statement of claim filed by the 1st, 3rd, 5th and 8th Defendants.

The attention of Court was drawn to the points of contest No. 4, 5, 6 and 7 raised by the 1st, 3rd, 5th and 8th Defendants.

The aforementioned points of contest are as follows;
"<u>පැමිණිලි පක්ෂයේ උගත් නීති උපදේශක මහතා පහත සඳහන් විසඳිය යුතු කරුණු සකස් කරයි:</u>

(1) මෙම නඩුවෙන් බෙදා වෙන්කර ගැනීමට ඉල්ලා සිටින ඉඩම මෙම නඩුවට ගොනුකොට තිබෙන **1980.09.15** වෙනි දින සහ අංක **1352** දරණ මූලික පිඹුරේ දක්වා තිබේද?

(2) මෙම ඉඩමේ අයිතිය සංශෝධිත පැමිණිල්ලේ දක්වා ඇති පරිදි හිමිවේද?

(3) එසේ නම් එම හිමිකම් අනුව මෙම ඉඩම බෙදා වෙන්කර ගත යුතුද?

<u>**1, 3, 5** සහ **8** වෙනි විත්තිකරුවන් වෙනුවෙන් නීති උපදේශක ජේ. ආර්. කරුණාරත්න මහතා පහත සඳහන් විසඳිය යුතු කරුණු සකස් කරයි:</u>

(4) සංශෝධිත පැමිණිල්ලේ සඳහන් ඒබ්‍රහම් සහ දාවිත්ගේ හිමිකම් මෙම අධිකරණයේ අංක **3221** දරණ බෙදුම් නඩුවෙන් බෙදා වෙන් කර ගෙන තිබේ ද?

(5) **1**, **2**, **5** සහ **8** වෙනි විත්තිකරුවන්ගේ හිමිකම් ප්‍රකාශයේ දක්වා ඇති කරුණු අනුව මූලික සැලැස්මේ දක්වා ඇති ඉඩම් කොටස හිමිවන්නේ බාරොන්

අතුකෝරලගේ දරුවන් දෙදෙනා වූ ලූසිහාමි සහ පෙසෝනා හාමිගේ උරුමකරුවන්ට පමණක්ද?

(6) අංක **3221** දරණ බෙදුම් නඩුවේ සමථය අනුව ඒබ්‍රහම් සහ දාවිත්ගේ උරුමකරුවන්ට මෙම මූලික සැලැස්මේ දක්වා ඇති ඉඩමට හිමිකම් කිව හැකිද?

(7) මෙම නඩුවේ **10** සිට **16** දක්වා විත්තිකරුවන්ට **3221** දරණ බෙදුම් නඩුවේ සමථයට පටහැනිව මෙම නඩුවේ ක්‍රියා කළ හැකිද?

<u>**10** සිට **16** දක්වා විත්තිකරුවන් වෙනුවෙන් නීති උපදේශක සේනානායක මහතා පහත සඳහන් විසඳිය යුතු කරුණු ඉදිරිපත් කරයි:</u>

(8) එකී අංක **1352** දරන මුල් පිඹුරේ දැක්වෙන්නේ 10 සිට **16** දක්වා විත්තිකරුවන්ගේ සංශෝධිත හිමිකම් ඉල්ලීම ප්‍රකාශයේ **4** වන උපලේඛණයේ සඳහන් ඉඩම සහ 5 වන උප ලේඛණයේ සඳහන් ඉඩම් කොටසක් ඒකාබද්ධ වීමෙන් සෑදුණු ඉඩමක් ද?

(9) එකී සංශෝධිත හිමිකම් ප්‍රකාශයේ 4 වන උපලේඛණයේ විස්තර වන්නේ එකී සංශෝධිත හිමිකම් ප්‍රකාශයේ **1** වන, **2** වන සහ තුන්වන ලේඛණයන්හි සඳහන් කොටස් ඒකාබද්ධ වීමෙන් සෑදුනු ඉඩමද?

(10) එකී සංශෝධිත හිමිකම් ප්‍රකාශයේ 1 වන, 2 වන, 3 වන සහ 5 වන උපලේඛණයන්හි විස්තර කෙරෙන ඉඩම් වල හිමිකම් එම සංශෝධිත හිමිකම් ඉල්ලීම ප්‍රකාශයේ සඳහන් පරිදි පාර්ශවකරුවන්ට ලැබේද?

(11) **10** සිට 17 දක්වා විත්තිකරුවන් එම පිඹුරේ දක්වා ඇති ඉඩම කාලාවරෝධයෙන් බුක්තියට හිමිකරගෙන ඇති ද?

(12) පැමිණිල්ලේ සඳහන් අංක **783** දරණ ඔප්පුව එකී **1352** දරණ පිඹුරේ දැක්වෙන ඉඩමට අදාළ වූවක් ද?

(13) පැමිණිල්ලේ බාරොන් අතුකෝරලගේ අයිතිය ලැබුනේ යයි සඳහන් අය ඔහුගේ දරුවෝ ද?

(14) පැමිණිල්ලේ සඳහන් වික්ටෝරියා හාමි සහ ආනාහාමි, ලූවිසාහාමි නොහොත් ලැයිසෝහාමිගෙ දරුවෝද?

(15) එකී ලුවිසාහාමිගේ අයිතිවාසිකම් **3136** ඔප්පුව පිට විසිදාගමගේ ජුවන්ට පැවරී ඇති ද?

(16) එසේ නම් ලුවිසාහාමිගේ කිසිදු උරුමක්කරුවෙකුට කිසිම අයිතියක් හිමිවේද?

(17) පැමිණිල්ලේ සඳහන් අංක. **2055** සහ **35**11 දරන ඔප්පු එකී අංක. **1352** දරණ පිඹුරේ දැක්වෙන ඉඩමට අදාල ඔප්පු ද?

(18) පැමිණිල්ලේ පෙසෝනාහාමිගේ දරුවන් යැයි සඳහන් කර ඇති තැනැත්තන් ඇගේ දරුවෝ ද?

(19) කෙසේ වෙතත් පෙසෝනාහාමිද ඉහත කී අංක. **3136** දරන ඔප්පුව මත ඇගේ සියලු අයිතිවාසිකම් ඉහත කී ජුවන්ට පවරා ඇති ද?

(20) පැමිණිල්ලේ හෙන්රි පෙරේරා හා පොඩි නෝනාගෙ දරුවන් යැයි සඳහන් කර ඇති තැනැත්තන් ඔවුන්ගේ දරුවෝ ද?

(21) පැමිණිල්ලේ සඳහන් සයිමන් පෙරේරා මංගොනෝනාගේ දරුවෙක්ද?

(22) පැමිණිල්ලේ සඳහන් සීලවතී, ලෙනෝරිස්ගේ භාර්යාවද?

(23) පැමිණිල්ලේ ලෙනෝරිස්ගේ දරුවන් හැටියට දක්වා ඇති අය ඔහුගේ දරුවෝ ද?

(24) ඉහත කී සංශෝධිත හිමිකම් ඉල්ලීම ප්‍රකාශයේ 11 වන ඡේදයේ සඳහන් ආබ්‍රහම් ගේ අයිතිය පැවරෙන්නේ කාටද?

(25) ඒබ්‍රහම්ගේ අයිතිය ලැබී ඇති බව පැමිණිල්ලේ සඳහන් කිසිවෙකුට එකී **1352** සැලැස්මේ සඳහන් ඉඩමේ කිසිදු අයිතියක් ලැබේද?

(26) එකී සංශෝධිත හිමිකම් ඉල්ලීම ප්‍රකාශයේ **4** වන උපලේඛණයේ විස්තර කරන ඉඩමේ කිසිදු අයිතියක් දාවිත්ට තිබුණේ ද?

(27) චාර්ලිස්ගේ අයිතිවාසිකම් පැවරෙන්නේ එකී සංශෝධිත හිමිකම් ඉල්ලීම් ප්‍රකාශයේ 17 වන ඡේදයේ සඳහන් පරිදි ද?

(28) කෙසේ වෙතත් ජයවර්ධන හාමිනේ සහ ඇගේ දරුවන්ද, 10-16 දක්වා විත්තිකරුවන් ද, අංක. 1352 දරණ සැලැස්මේ අංක. **1** සිට **9** දක්වා කැබලි වලට කලාවරෝධයෙන් භුක්තිය ලබා ඇතිද?

(29) එම පිඹුරේ දැක්වෙන මුළු ඉඩමේ සියලු වගාව, වැඩිදියුණු කිරීම් සහ ගොඩනැගිලි ඔවුන්ට පමණක් හිමි ද?”

" (4) සංශෝධිත පැමිණිල්ලේ සඳහන් ඒබ්‍රහම් සහ දාවිත්ගේ හිමිකම් මෙම අධිකරණයේ අංක **3221** දරණ බෙදුම් නඩුවෙන් බෙදා වෙන් කර ගෙන තිබේ ද?

(5) **1**, **2**, **5** සහ **8** වෙනි විත්තිකරුවන්ගේ හිමිකම් ප්‍රකාශයේ දක්වා ඇති කරුණු අනුව මූලික සැලැස්මේ දක්වා ඇති ඉඩම් කොටස හිමිවන්නේ බාරොන් අතුකෝරලගේ දරුවන් දෙදෙනා වූ ලූසිහාමි සහ පෙසෝනා හාමිගේ උරුමකරුවන්ට පමණක්ද?

(6) අංක **3221** දරණ බෙදුම් නඩුවේ සමථය අනුව ඒබ්‍රහම් සහ දාවිත්ගේ උරුමකරුවන්ට මෙම මූලික සැලැස්මේ දක්වා ඇති ඉඩමට හිමිකම් කිව හැකිද?

(7) මෙම නඩුවේ **10** සිට **16** දක්වා විත්තිකරුවන්ට **3221** දරණ බෙදුම් නඩුවේ සමථයට පටහැනිව මෙම නඩුවේ ක්‍රියා කළ හැකිද?"

After the hearing of the case, the learned Additional District Judge of the District Court of Pugoda delivered her Judgment on 06.10.2000 answering the said issue Nos. 4, 5, 6, and 7 of the 1st, 3rd, 5th and 8th Defendants as follows;

"(4) ඔව්.

(5) මෙම විසඳිය යුතු ප්‍රශ්ණයට පිළිතුරු දෙන මෙම අධිකරණය කියා සිටින්නේ 3136(10වි 3) දරණ ඔප්පුව මඟින් ලූසිහාමි සහ පෙසෝනාහාමි අයිතිය පවරා අවසන් ඇති බවටය.

6 සහ 7 වන විසඳිය යුතු ප්‍රශ්ණයන්ට පිළිතුරු දෙමින් කියා සිටින්නේ බෙදුම් 3221 දරණ නඩුව විනිශ්චිත කරුණක් බවටය".

It was the contention of the 5th Defendant-Appellant that his claim cannot be rejected by answering the above issue No.4 in their favour and upon stating erroneously that the said Lusihamy and Pesonahamy had conveyed their rights by deed No. 3136 (10වි 3), wherein, it does not refer to the corpus of the instant partition Case "**KAKUNGAHAWATTE**" but it is for some other land called "**MAWATHHENA.** Therefore, the land referred to in the former partition Case 3221/P depicted in the said preliminary

plan No.1352 vide second schedule of the amended plaint dated 05.09.1983 has not referred to a land called **MAWATHHENA**, whereby the 5th Defendant-Appellant got title by deed No. 3516 (5වි 1), to **KAKUNGAHAWATTE** which is the corpus to be partitioned and therefore the said issue No.5 should have been decided in favour of the 1st, 3rd, 5th and 8th Defendants.

It is to be noted that the learned Additional District Judge had stated in the Judgment "මෙම අධිකරණය විසින් පැමිණිල්ල නිෂ්ප්‍රභා කරන හෙයින් මෙම ප්‍රශ්න වලට පිළිතුරු දීමේ අවශ්‍යතාවයක් පැන නොනගින බවය."

However, learned Additional District Judge had answered the points of contest 1, 2, 3,4,5,6,7,8,9 and 10 vaguely and had not answered the points of contest 11,12,13,14 and 15. It is relevant to note that the learned Additional District Judge had not properly analyzed and evaluated the evidence placed before Court. Thus, the title of parties had not been properly investigated. Moreover, the learned Additional District Judge had not specifically answered to the points of contest raised in the instant action.

The case of ***Madduma Ralalage Sunil and others Vs. Madduma Ralalage MaryNona and others [2016] 1 SLR 49*** was a case where the learned District Judge had ordered to partition the land. The main grievance of the Appellants against the Judgment of the District Court was that all the issues raised at the trial were not answered by the trial Judge and by doing so the Court has not investigated the title or parties concerned. The Supreme Court held that the learned District Judge had not investigated a title of the parties to the action. *Justice Eva Wanasundara* has observed as follows,
"According to the way he has written the judgment, if it is decided that the Plaintiff is correct, it is not necessary to look into other issues raised and/ or other claims placed before Court by others even though they all lead evidence of the trial."

In that case the learned District Judge had failed to investigate title of all the parties by not answering the issues raised by the Appellants on their title. The learned District

Judge had just held that the shares should be allocated according to the pedigree of the Plaintiff without considering the claim of the Appellants put forward in their issues.

A similar situation arose in the case of ***SopiNona Vs. PitipanaArachchi and two others [2010] 1 SLR 87***. In that case also, the District Judge had ordered to partition the corpus. The Respondent's allegation before the Court of Appeal was that their deeds were not at all considered. The learned District Judge had decided on the allocation of shares in accordance with the pedigree of the Plaintiff without examining the title of all the parties and without examining and considering the deeds produced by the Appellants. Thus, the learned District Judge failed to analyze the totality of the evidence led at the trial. The learned District Judge had answered only one issue-namely issue No. 01 raised by the Plaintiff which he had answered in the affirmative. That issue was based not only on the devolution of title of the Plaintiff but also on the prescriptive rights of the Plaintiff. Therefore, it became necessary to consider and analyze the evidence to ascertain whether parties disclosed in the plaint had prescribed the land in question. However, the learned District Judge had failed to do.

In view of the aforementioned judicial decisions, it is pertinent to note that it is a prime duty of a trial judge to examine and evaluate the totality of the evidence available and answer all the points of contest giving reasons as to why they are accepted or rejected. At the commencement of the trial, all parties had formulated 29 points of contest. However, the learned trial Judge had answered only 1-10 points of contest and had not answered points of contest 11-29 after going through the entire trial.

Presumably, if the learned trial Judge analyzed and considered the evidence led on points of contest and answered the rest of the issue, the decision would have been different. It is observable that the learned Trial Judge had not analyzed and evaluated the evidence with regard to the investigation of title.

Thus, I hold that the Judgment of the learned Additional District Judge is a nullity. Hence, we set aside the Judgment of the District Court dated 06.10.2000 and send this case back to the District Court of Pugoda directing the present District Judge to adopt

the evidence placed before court and write a fresh Judgment on the available evidence answering all the points of contest raised at the trial, within 3 months from the date of this Judgment.

The Registrar is directed to send this case record back to the District Court of Pugoda forthwith. Thus, we allow the appeal of the 5th Defendant-Appellant.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL