

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

**LANKA**

Pathirannahalage Mudalihamy,  
Hamangalla, Narangoda.  
(Deceased)

**Plaintiff**

Pathirannahalage Kusumawathi,  
Hamangalla, Narangoda.

**Substituted Plaintiff**

Court of Appeal Case No:  
**CA 582/2000 (F)**

District Court of Kuliyaipitiya  
Case No: 7202 / P

**Vs.**

1. Jayakody Mudiyansele  
Dingiribanda,  
Narangoda Post, Hamangalla.
2. Seetha Jayasooriya  
No: 8/11, Nimalka Gardens,  
Colombo 03.
3. Manthri Samarasinghe  
No: 53/25,  
Torrington Avenue,  
Colombo 07.
4. Pathirannahalage Sumanawathie  
Narangoda Post, Hamangalla.
5. Jayakody Mudiyansele  
Karunaratne  
Narangoda Post, Hamangalla.  
(Deceased)
- 5a. Jayakody Mudiyansele Udula  
Ruwansirir Jayakody,  
Narangoda Post, Hamangalla.
- 5b. Jayakody Mudiyansele  
Sandalal Jayakody,  
Narangoda Post, Hamangalla.
- 5c. Jayakody Mudiyansele  
Dhammika Priyadharshini  
Jayakody  
Narangoda Post, Hamangalla.
6. Siriwardhana Arachchilage  
Seelawathie,

Narangoda Post, Hamangalla.

7. Jayakody Mudiyansele  
Kusumawathi,  
Narangoda Post, Hamangalla.
8. Jayakody Mudiyansele  
Dayananda,  
Narangoda Post, Hamangalla.
9. Kurunegala District  
Development Sabahawa.
- 9a. Chairman,  
Pradeshiya Sabahawa,  
Pannala.  
(Legal Representative)
10. Pathirannehelage Ukkubanda,  
Narangoda Post, Hamangalla.
11. Mary Carolin Eugin Amarasekara,  
No.3, 36<sup>th</sup> Lane, Buddhaloka  
Mawatha, Colombo 03.

**Defendants**

**AND**

Jyakody Mudiyansele Udula  
Ruwansiri Jayakody,  
Narangoda Post, Hamangalla.

**5a Defendant-Appellant**

**Vs.**

Pathirannehelage Kusumawathi,  
Hamangalla, Narangoda.

**1a Substituted Plaintiff-  
Respondent**

1. Jayakody Mudiyansele  
Dingiribanda,  
Narangoda Post, Hamangalla.
2. Seetha Jayasooriya,  
No: 8/11, Nimalka Gardens,  
Colombo 03.
3. Manthri Samarasinghe  
No: 53/25,  
Torrington Avenue,

Colombo 07.

4. Pathirannahalage Sumanawathie,  
Narangoda Post, Hamangalla.

5b. Jayakody Mudiyansele  
Sandalal Jayakody,  
Narangoda Post, Hamangalla.

5c. Jayakody Mudiyansele  
Dhammika Priyadharshini  
Jayakody,  
Narangoda Post, Hamangalla.

6. Siriwardhana Arachchilage  
Seelawathie,  
Narangoda Post, Hamangalla.  
(Deceased)

7. Jayakody Mudiyansele  
Kusumawathie,  
Narangoda Post, Hamangalla.

8. Jayakody Mudiyansele  
Dayananda,  
Narangoda Post, Hamangalla.

9. Kurunegala District Development  
Sabahawa.

9a. Chairman,  
Pradeshiya Sabahawa,  
Pannala.  
(Legal Representative)

10. Pathirannehelage Ukkubanda,  
Narangoda Post, Hamangalla.

11. Mary Carolin Eugin Amarasekara,  
No.3, 36<sup>th</sup> Lane, Buddhaloka  
Mawatha,  
Colombo 03.

**Defendant-Respondents**

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

**Counsel:** Ranjan Suwandarathne P.C with Anil Rajakaruna and I.Hendawitharana

for the 5a Defendant-Appellant in 582/2000(F).

R. Chula Bandara for 1a Substituted Plaintiff-Respondent.

Argued on: 15.10.2021

Written Submissions 30.11.2021 by the 1a Substituted Plaintiff-Respondent.

tendered on: 06.12.2021 by the 5a Defendant-Appellant.

Decided on: 25.11.2022

\*\*\*\*\*

Pathirannahalage Mudalihamy,  
Hamangalla, Narangoda.  
(Deceased)

**Plaintiff**

Pathirannahalage Kusumawathi,  
Hamangalla, Narangoda.

**Substituted Plaintiff**

Court of Appeal Case No:  
**CA 583/2000 (F)**

**Vs.**

District Court of Kuliyaipitiya Case No:  
7202/P

1. Jayakody Mudiyansele,  
Dingiribanda,  
Narangoda Post, Hamangalla.

And 10 others.

**AND**

Mary Carolin Eugin Amarasekara,  
No.3, 36<sup>th</sup> Lane, Bauddhaloka  
Mawatha, Colombo 03.

**11<sup>th</sup> Defendant-Appellant**

**Vs.**

Pathirannehelage Kusumawathi,  
Hamangalla, Narangoda.

**1a Substituted Plaintiff-  
Respondent**

1. Jayakody Mudiyansele,  
Dingiribanda,  
Narangoda Post, Hamangalla.

2. Seetha Jayasooriya,  
No: 8/11, Nimalka Gardens,  
Colombo 03.

3. Manthri Samarasinghe  
No: 53/25,  
Torrington Avenue,  
Colombo 07.
  4. Pathirannahalage Sumanawathie,  
Narangoda Post, Hamangalla.
  - 5a. Jayakody Mudiyansele Udula  
Ruwansiri Jayakody,  
Narangoda Post, Hamangalla.
  - 5b. Jayakody Mudiyansele Sandalal  
Jayakody,  
Narangoda Post, Hamangalla.
  - 5c. Jayakody Mudiyansele  
Dhammika Priyadharshini  
Jayakody,  
Narangoda Post, Hamangalla.
  6. Siriwardhana Arachchilage  
Seelawathie,  
Narangoda Post, Hamangalla.
  7. Jayakody Mudiyansele  
Kusumawathie,  
Narangoda Post, Hamangalla.
  8. Jayakody Mudiyansele  
Dayananda, Narangoda Post,  
Hamangalla.
  - 9a. Chairman,  
Pradeshiya Sabahawa,  
Pannala.
  10. Pathirannehelage Ukkubanda,  
Narangoda Post, Hamangalla.
- Defendant-Respondents**

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

**Counsel:** Manohara De Silva P.C with Hiroshan Munasinghe AAL and Sasiri Chandrasiri AAL for the 11<sup>th</sup> Defendant-Appellant.

R. Chula Bandara for the 1a Substituted Plaintiff-Respondent.

Argued on: 15.10.2021

Written Submissions 30.11.2021 by the 1a Substituted Plaintiff-Respondent.

tendered on: 20.12.2021 by the Substituted 11<sup>th</sup> Defendant-Appellant

Decided on: 25.11.2022

\*\*\*\*\*

1. Pathirannahalage Mudalihamy,  
Narantota Post Office,  
Hamangalla. (Deceased)

1a. Pathirannahalage  
Kusumawathie,  
Hamangalla, Narangoda.

**Substituted Plaintiff**

**Vs.**

Court of Appeal Case No:  
**CA 584/2000 (F)**

District Court of Kuliyaipitiya Case No:  
7202/P

1. Jayakody Mudiyansele Dingiri  
Banda,  
Narantota Post, Hamangalle.

2. Seetha Jayasuriya,  
8/11, Nimalka Gardens,  
Colombo 03.

3. Manthri Samarasinghe,  
53/25, Torrington Avenue,  
Colombo.

4. Pathirannahalage Sumanawathie,  
Narangoda Post, Hamangalle.

5. Jayakody Mudiyansele  
Karunaratne,  
Narangoda Post, Hamangalla.  
(Deceased)

5a. Jayakody Mudiyansele Udula  
Ruwansiri Jayakody,

5b. Jayakody Mudiyansele  
Sandalal Jayakody,

5c. Jayakody Mudiyansele

Dhammika Priyadharshini  
Jayakody,

6. Siriwardene Arachchilage  
Seelawathie,
7. Jayakody Mudiayanselage  
Kusumwathie,
8. Jayakody Mudiayanselage  
Dayananda,
9. District Development Sabahawa,  
Kurunegala
- 9a. Chairman,  
District Development Sabahawa,  
Pannala.
10. Pathirannehelage Ukkubanda,  
Narangoda Post, Hamangalla.
11. Mary Caroline Eugin Amarasekara,  
No. 3, 36<sup>th</sup> Lane, Bauddhaloka  
Mawatha,  
Colombo 08.

**Defendants**

**AND**

Pathirannahalage Sumanawathie,  
Narangoda Post, Hamangalle.

**4<sup>th</sup> Defendant-Appellant**

**Vs.**

Jayakody Mudiayanselage  
Kusumwathie,  
Narangoda Post, Hamangalle.

**1a Substituted Plaintiff-Respondent**

1. Jayakody Mudiayanselage  
Dingirihamy,  
Narantota Post, Hamangalle.
2. Seetha Jayasuriya,  
8/11, Nimalka Gardens,  
Colombo 03.
3. Manthri Samarasinghe,  
53/25, Torrington Avenue,

Colombo.

5a. Jayakody Mudiyansele Udula  
Ruwanisiri Jayakody,

5b. Jayakody Mudiyansele  
Sandalal Jayakody,

5c. Jayakody Mudiyansele  
Dhammika Priyadharshini  
Jayakody,

6. Siriwardene Arachchilage  
Seelawathie,

7. Jayakody Mudiyansele  
Kusumwathie,

8. Jayakody Mudiyansele  
Dayananda,

9. District Development Sabahawa,  
Kurunegala

9a. Chairman,  
District Development Sabahawa,  
Pannala.

10. Pathirannehelage Ukkubanda,  
Narangoda Post, Hamangalla.

11. Mary Caroline Eugin Amarasekara,  
26<sup>th</sup> Lane, Baudhaloka Mawatha,  
Colombo 03.

**Defendant-Respondents**

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

**Counsel:** Ranjan Suwandarathne P.C with S. Balasuriya for the 4a Defendant-Appellant.  
R. Chula Bandara for 1a Substituted Plaintiff-Respondent.

**Argued on:** 15.10.2021

**Written Submissions  
tendered on:** 17.07.2019 and 03.10.2019 by the 4a Defendant-Appellant.  
30.11.2021 by the 1a Substituted Plaintiff-Respondent.

**Decided on:** 25.11.2022



**Prasantha De Silva, J.**

### **Judgment**

The Plaintiff instituted action bearing No. 7202/P, in the District Court of Kuliypitiya praying to have the land morefully described in the schedule to the plaint partitioned in terms of the Partition Act No. 21 of 1997.

It appears that originally, the Plaintiff only made 1<sup>st</sup> to 3<sup>rd</sup> Defendants as parties but subsequently 4<sup>th</sup> to 11<sup>th</sup> Defendants intervened and claimed rights in respect of the corpus sought to be partitioned. The Plaintiff died on 24.01.1991 pending action and on his demise, Jayakodi Mudiyanseleage Kusumawathie, the daughter of deceased Plaintiff was substituted in place of the deceased Plaintiff, and the substituted Plaintiff proceeded to prosecute the action originally filed by the deceased Plaintiff.

The Registered Attorney of the 1<sup>st</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendant-Respondents had filed their statements of claim on 21.03.1995 and 11<sup>th</sup> Defendant-Respondent had filed her statement of claim on 31.10.1995. The trial commenced on 03.05.1999 and 31 points of contest were entered by the parties.

While the trial was going on, the 5<sup>th</sup> Defendant-Respondent had died on 20.10.1996 and three children of the 5<sup>th</sup> Defendant-Respondent had been substituted on his behalf. At the trial, evidence was adduced by the Substituted Plaintiff and S.M Abeykoon (Licensed Surveyor). The 1<sup>st</sup> Defendant, 3<sup>rd</sup> Defendant, M.S.T.P Senadeera (Licensed Surveyor), K. Ranjith Pieris, S.M Podirathna (husband of the 4<sup>th</sup> Defendant-Respondent) had given evidence on behalf of the Defendants.

However, at the conclusion of the trial the learned District Judge of Kuliypitiya had delivered his Judgment dated 12.09.2000 granting relief to the deceased Plaintiff as prayed for in the plaint.

Being aggrieved by the said Judgment, 5A Defendant-Appellant had preferred appeal bearing No. CA 582/2000 (F), 11<sup>th</sup> Defendant-Appellant and 4<sup>th</sup> Defendant-Appellant also preferred appeals bearing Nos. 583/2000 (F) and 584/2000(F) respectively.

The position taken up by the 5A Defendant-Appellant and the Substituted 4<sup>th</sup> Defendant-Appellant was that the Judgment of the District Court of Kuliypitiya in case bearing No. 7202/P is invalid because the 6<sup>th</sup> Defendant and the 10<sup>th</sup> Defendant had died prior to the delivery of the Judgment and the Substituted Plaintiff-

Respondent had failed to take necessary steps to substitute legal heirs of the 6<sup>th</sup> Defendant and the 10<sup>th</sup> Defendant to proceed with the trial.

The said Appellant had relied on the case *Gamaralalage Karunawathie Vs. Godayalage Piyasena S.C. Application No. 09A/2010* decided on 05.12.2011 reported in **[2012] BLR 81** in which the Supreme Court held that in a situation where the Plaintiff had failed to take steps to substitute in room of the deceased parties and has delivered a Judgment, such Judgment is bad in law and the case should be remitted back to the District Court for substitution in room of the deceased party and to be re-heard.

However, *Chitrasiri, J.* held in the case of *Jane Nona and others Vs. Surabiel and others [2013] 1 SLR 346* that the decision in *Gamaralalage Karunawathie Vs. Godayalage Piyasena [supra]* was made *per incuriam* on the ground that a binding authority or a statute has not been brought to the attention of Court and it was decided in ignorance or forgetfulness of that authority or the statute.

The decision in *Gamaralalage Karunawathie Vs. Godayalage Piyasena [supra]* is not absolutely binding on the Court of Appeal since there had been a failure to consider specific provisions in the Partition Law (Section 81 of the amending Act No. 17 of 1997) in respect of non-substitution of deceased parties in partition actions.

It was held in the case of *Jane Nona and others Vs. Surabiel and others [supra]* that the decision in *Gamaralalage Karunawathie Vs. Godayalage Piyasena [supra]* was given *per incuriam* and accordingly, it is an exception to the application of the doctrine of *stare decisis*. This is because case law cannot overrule statutory provisions laid down by an enactment of the legislature.

It is apparent that Section 81 (9) was introduced in 1997 after the original Partition Act was enacted. Since the Court of Appeal is not bound by the said Judgment of *Gamaralalage Karunawathie Vs. Godayalage Piyasena [supra]*, the Judgment in the instant case is valid, effective and enforceable and need not be remitted back to the District Court of Kuliypitiya.

In this instance, Court observes that the 6<sup>th</sup> Defendant died on 18<sup>th</sup> May 1987, prior to the introduction of Section 81 to the Partition Law.

However, Section 48 (1) of the Partition Act stipulates:

“(1) Save as provided in subsection (5) of this section, the interlocutory decree entered under section 26 and the final decree of partition entered under section 36 shall, subject to the decision on any appeal which may be preferred therefrom, and in the case of an interlocutory decree, subject also to the provisions of subsection (4) of this section, be good and sufficient evidence of the title of any person as to any right, share or interest awarded therein to him and be final and conclusive for all purposes against all persons whomsoever, whatever rights title or interest they have, or claim to have to or in the land to which such decree relates and notwithstanding any omission or defect of procedure or in the proof of title adduced before the court or the fact that all persons concerned are not parties to the partition action; and the right, share or interest awarded by any such decree shall be free from all encumbrances whatsoever other than those specified in that decree.

In this subsection “omission or defect of procedure” shall include an omission or failure-

(a) .....

(b) to substitute the heirs or legal representatives of a party who dies pending the action or to appoint a person to represent the estate of the deceased party for the purposes of the action; or

(c) .....”

Hence, it is imperative to note that non-substitution of the deceased 6<sup>th</sup> Defendant and the 10<sup>th</sup> Defendant does not invalidate the Judgment delivered on 12.09.2000 by the learned District Judge of Kulliyapitiya.

The 5A Defendant-Appellant had contended that Punchimenike purchased rights along with Mudalihamy from Kiribanda by 5V1.

In this respect, it is worthy to note the points of contest raised on behalf of the 1, 5අ, 5ආ, 5ඇ and 6, 7, 8 Defendants.

“1, 5අ, 5ආ, 5ඇ සහ 6, 7, 8 විත්තිකරුවන් වෙනුවෙන් පහත සඳහන් විසඳිය යුතු ප්‍රශ්න ඉදිරිපත් කරයි:

13. පැමිණිලිකරු විසින් බෙදා වෙන් කර ගැනීමට ඉල්ලා ඇති මාචනයායේ වත්ත නමැති ඉඩමෙහි මුල් අයිතිකරුවන් වූයේ නොබෙදූ ½ පංගුව බැගින් හිමිව සිටි මුදලිහාමි සහ හේතුහාමි යන දෙදෙනා ද? නැත.

14. ඔවුන් දෙදෙනා විසින් ඉහත කී ඉඩම මීට අවුරුදු 65 කට පමණ පෙර සිට නිරවුල්ව භුක්ති විඳ ගෙන එන ලද්දේ ද? නැත.

15. 1, 5, 6, 7 දරණ විත්තිකරුවන්ගේ හිමිකම් ප්‍රකාශය අනුව එකී ඉඩමෙහි නොබෙදූ කොටස් 1, 5, 6 සහ 7 විත්තිකරුවන්ට හිමි වී ඇති ද? 1, 5, 6 සහ 7 විත්තිකරුවන්ට කොටස් හිමිවේ.

16. දීර්ඝකාලීන බුක්ති විඳීම හේතු කොට ගෙනද ඔවුන්ට එකී කොටස් හිමි වී ඇති ද? 1, 5, 6 සහ 7 විත්තිකරුවන් උරුම අයිතීන් ලබයි."

The learned District Judge had answered the points of contest Nos. 13 and 14 in the negative and Nos. 15 and 16 as follows;

"15. 1, 5, 6 හා 7 විත්තිකරුවන්ට කොටස් හිමිවේ.

16. 1, 5, 6 හා 7 විත්තිකරුවන්ට උරුම අයිතීන් ලැබේ."

It appears that the 1<sup>st</sup> Defendant adduced evidence on behalf of the 1,5,6,7,8 Defendants and closed their case by marking documents 1වි1 සිට 1වි5, 5වි1 සිට 5වි3 and 8වි1.

It is significant to note that the said document 5වි1 was marked in evidence at the examination in chief of the Substituted Plaintiff namely Kusumawathie and also led in evidence of the 1<sup>st</sup> Defendant indicates that Kiribanda had transferred undivided 1/6 share to Jayakodi Mudiyansele Mudalihamy and Pathirannehelage Punchimenika by Deed bearing No. 7530 dated 03.04.1923 marked as 5වි1. Subsequently, the said Jayakodi Mudiyansele Mudalihamy and Pathirannehelage Punchimenika had transferred 2 acres, 1 rood and 24 perches to Jayakodi Mudiyansele Kusumawathie by Deed bearing No. 1900 dated 02.12.1976 marked as 5වි2.

Similarly, the said Jayakodi Mudiyansele Mudalihamy and Pathirannehelage Punchimenika had transferred 2 rood and 32 perches from their balance entitlement to Jayakodi Mudiyansele Karunaratne and Siriwardene Arachchilage Seelawathi,

the 5<sup>th</sup> Deceased Defendant and the 6<sup>th</sup> Defendant, by Deed bearing No. 1902 dated 02.12.1976 marked as 503.

Therefore, it is noteworthy that the 5<sup>th</sup> Deceased Defendant and the 6<sup>th</sup> Defendant-Respondent are entitled to 112 perches of the corpus sought to be partitioned. As such, the learned District Judge has erroneously allocated only 43.04 perches to the 5<sup>th</sup> Deceased Defendant and the 6<sup>th</sup> Defendant-Respondent. Thus, it has to be corrected as 112 perches.

Hence, we allow the appeal bearing No. 582/2000 (F) preferred by 5<sup>th</sup> Defendant Appellants and amend the schedule of shares accordingly.

It is to be noted that the 4<sup>th</sup> Defendant-Appellant had preferred appeal bearing No.584/2000(F) and sought to have the Judgment of the District Court set aside and prayed to have the corpus partitioned among the parties according to the evidence available in the instant case or to dismiss the plaint.

Court draws the attention to the petition of appeal preferred by the 4<sup>th</sup> Defendant-Appellant. The 4<sup>th</sup> Defendant-Appellant has stated in paragraph 12 of the petition that the original Plaintiff is not entitled to an undivided 21/48 share or 830.97 perches according to the documents tendered and the evidence adduced at the trial and that the entire land has to be partitioned again and further stated that the 4<sup>th</sup> Defendant-Appellant is entitled to more than 158.28 perches.

However, the 4<sup>th</sup> Defendant-Appellant had not substantiated the above position by giving sufficient reasons in the argument and it is apparent that there is no merit in his appeal.

Hence, we dismiss the appeal bearing No 584/2000(F) preferred by the 4<sup>th</sup> Defendant-Appellant.

It was the contention of the 11<sup>th</sup> Defendant that the land described in the statement of claim of the 11<sup>th</sup> Defendant was possessed by the predecessors and 11<sup>th</sup> Defendant for more than 40 years and hence had claimed a prescriptive right.

Accordingly, the 11<sup>th</sup> Defendant in her statement of claim prayed inter alia;

(a) To dismiss the Plaintiff's action;

(b) To exclude Lot No. 2, 13, 14, 15 depicted in Plan No. 278/84 dated 21.08.1984, from the corpus subjected to the Partition action;

(c) If Court makes an Order to partition the said Lots, make an Order that 11<sup>th</sup> Defendant is the owner to the Lot No. 2, 13, 14, 15 depicted in Plan No. 278/84 dated 21.08.1984,

At the trial, the 11<sup>th</sup> Defendant raised points of contest No. 29 to 31.

Attention of Court was drawn to Survey Plan No. 278/84 marked X and Survey Report marked Y.

It is important to note that Lot No. 2 which the 11<sup>th</sup> Defendant is seeking an exclusion from the corpus of this Partition action is situated in the northern side of the land depicted in the Commission Plan. Further, between Lot No. 2 and 3 there is a separate demarcation which is depicted as "Kambi and Pala Ini Weta". Lot No. 2 is shown as 3A:1R:27P. Furthermore, in the Survey Report, the 1<sup>st</sup> Defendant has made a claim that the entire plantation in Lot No. 2 is possessed by Amarasekara who is the 11<sup>th</sup> Defendant.

It was submitted by the 11<sup>th</sup> Defendant-Appellant that the Survey Report and the Survey plan substantiate the fact 11<sup>th</sup> Defendant and her predecessors have separated Northern Part of MAWATHA YAYA WATTA as "divided Northern part of MAWATHA YAYA WATTA" and had possessed as a defined and separate portion of land from far back as 1949. Accordingly, the 11<sup>th</sup> Defendant has separated Lot No. 2 and has amalgamated with adjoining land called "Valli Kanda Watta" and had possessed as a defined and distinct portion of land.

It is observable that the learned District Judge while answering points of contest No. 31 and deciding Lot No.1 and 2 should not be excluded, nevertheless decided issue No. 1 on the basis that corpus should consist of Lot Nos. 3,4,7,8,9, and 10. This appears to contradict the above position. Since the learned District Judge determined that the corpus consists of Lots 3,4,7,8,9 and 10, it is apparent that Lots 1,2,13, 14, 15 cannot be part of the corpus.

It is important to note that the learned District Judge considers the evidence of the 1<sup>st</sup> Defendant who had informed the surveyor that the 11<sup>th</sup> Defendant (Amerasekara)

is claiming plantation on Lot No.2. It is relevant to note that the aforesaid evidence has not been properly considered on the basis that it is "secondary evidence".

In view of the aforesaid reasons, it clearly manifests that the learned District Judge had not considered the said Lot 2 claimed by the 11<sup>th</sup> Defendant as part of the corpus. It is seen that none of the parties claimed Lot 2 before the survey and also at the trial. However, the 11<sup>th</sup> Defendant had claimed Lot No.2 and also substantiated that Lot No.02 had been possessed by the 11<sup>th</sup> Defendant as a defined and distinct entity of the impugned corpus.

Therefore, it appears that the learned District Judge has erroneously answered point of contest No. 31 by deciding Lot No.01 and Lot No.02 should not be excluded from the corpus.

Since the 11<sup>th</sup> Defendants sought an exclusion of Lot 2,13,14,15 depicted in Plan bearing No. 278/84 dated 21.08.1984, and the learned District Judge decided that the corpus should consist of Lot No.3,4,7,8,9 and 10, it clearly shows that Lots No. 1,2,13,14,15 are not part of the corpus. The learned District Judge has excluded only Lots 13, 14, 15. However, Lot.1 and 2 also should be excluded from the corpus.

As such, we direct the learned District Judge to exclude Lot.1 and 2 depicted in Plan bearing No.278/84 dated 21.08.1984. Hence, we allow appeal No. 583/2000(F) preferred by the 11<sup>th</sup> Defendant-Appellant.

Therefore, I hold that the corpus sought to be partitioned consists of Lots. 3,4,7,8,9 and 10 depicted in Plan bearing No. 278/84 dated 21.08.1984 marked as X and that Lots 1,2,13,14 and 15 should be excluded from the corpus.

Hence, schedule of shares has to be amended as follows.

Original Plaintiff	- 830.97 P
1 <sup>st</sup> Defendant	- 320.00 P
4 <sup>th</sup> Defendant	- 158.00 P
5 <sup>th</sup> Defendant	- 56.00 P
6 <sup>th</sup> Defendant	- 56.00 P
7 <sup>th</sup> Defendant	- 297.08 P
8 <sup>th</sup> Defendant	- 86.08 P

Unallotted - 118.81 P

(1/16 or 3/48 share, entitled to Punchi Manika)

In view of the aforesaid reasons, we allow appeal bearing No. 582/2000(F) and 583/2000(F) and dismiss appeal bearing No. 584/2000(F) with cost.

**JUDGE OF THE COURT OF APPEAL**

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

I agree.

**JUDGE OF THE COURT OF APPEAL**