

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

Court of Appeal No: CA 562/96(F)

D.C. Horana Case No: 4803/P

Liyanage Sisira Senarathna

**2nd Substituted Plaintiff
Appellant and also 1st
Substituted Defendant**

-Vs-

2.a Jayalathge Sumanadasa

b. Jayalathge Indrani

c. Jayalathge Somalatha

d. Jayalathge Chandralatha

e. Veragamage Asilin Nona

**Substituted Defendant –
Respondent- Respondent**

3. Jalajjage Leelarathna

**3rd Defendant – Respondent-
Respondent**

C.A. No. 562/96(F)

D.C.Horana No.4803/P

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Kamal Dissanayake with Atheek Ian and
Nadeeka Guruge for the 2nd substituted
plaintiff-appellant.

Lasitha Chaminda with Srimathi Rajaguru
for the 2nd defendant-respondent

ARGUED AND

DECIDED ON : 02nd April 2013.

UPALY ABEYRATHNE, J.

This is an appeal preferred against the order of the learned District Judge of Horana dated 1st August 1996. It appears from the said order that the issues number 3 and 4 raised by the learned Counsel for the 2nd defendant has been taken up for inquiry as preliminary issues of law. Both Counsel conceded that with regard to the said issues, in making the order of the learned District Judge dated 26.02.1991, he had failed to consider the requisite documentation and the evidence. I have perused the said order and I am of the view that the learned

District Judge had failed to consider the necessity of leading the evidence pertaining to the matters raised in issues number 3 and 4. In any event since it had been alleged that part of the land was a subject matter of a previous partition action, the relief would have been granted was an exclusion of the said portion from the land to be partitioned and to proceed with the action in respect of the balance portion of land. In view of the said circumstances, both Counsel agreed to send the case back for a retrial. I am also of the view that the order of the learned District Judge should be set aside on the same basis. Considering the said circumstances, I set aside the order of the learned District Judge dated 01st August 1996. I direct the learned District Judge of Horana to proceed with the trial on the issues raised by the parties. Parties should bear their own costs. Registrar is directed to send the main case record to the relevant District Court with the order made by this Court. The learned District Judge is directed to conclude this matter expeditiously.

Case sent back for trial.

JUDG OF THE COURT OF APPEAL

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