

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

CA No: 319/98(F)

DC Kalutara 6175/P

HathuruSinghe Premadasa Silva
Kuda Waskaduwa,
Waskaduwa.

Defendant-Appellant

Vs.

Mahadurage Sisiwathi Perera
No: 01,
Station Road,
Kuda Waskaduwa,
Waskaduwa.

Complainant-Respondent

C.A. 319/98(F)

D.C.Kalutara No. 6175/P

BEFORE : K. T. CHITRASIRI, J.

COUNSEL : Srinath Kumarasinghe for the 7th , 8A and 9A
Defendant-Appellants.
Athula Perera for the 5th & 21st Defendant-
Respondents.
Malaka Herath for the Plaintiff-Respondent.

ARGUED AND

DECIDED ON : 14th June, 2013

K. T. CHITRASIRI, J.

This is an appeal seeking to set aside the order dated 06th February 1998 of the learned District Judge of Kalutara. By that order, learned District Judge refused an application to add the parties who were disclosed in the amended statement of claim of the 7th. 8th and 9th defendants. Being aggrieved by that order, this appeal had been preferred by them. However, the case had proceeded despite the delivery of the impugned order and finally the District Judge had even pronounced the judgment.

Under those circumstances, learned Counsel appearing for the defendant-respondent submits that the appellants cannot have and maintain this appeal since they have file a final appeal without leave of

the Court been obtained, it being an "order" not amounting to a "judgment".

At this stage, Mr. Kumarasinghe appearing for the three appellants submits that his clients were given due shares, according to their rights to the land and he has no complain to make as far as the land to which the order to partition had been made. Accordingly, he submits that he is willing to withdraw this appeal if the 7th, 8th and 9th defendant-appellants are free to file a partition action to have the balance land that was not the corpus in this case, partitioned. Counsel for the respondents have no objections to this application. Accordingly, the application to withdraw this appeal is allowed having retained their right to file a partition action in respect of the lots 2 and 3 referred to in the plan bearing No.670B of B.K.P.W.Gunawardena, Licensed Surveyor since those two lots were not part of the corpus in this case. In the circumstances, application to withdraw this appeal is allowed.

Accordingly, the appeal is dismissed without costs.

Appeal dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Kwk/-