

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

In the matter of an appeal under Sec.  
755(3) of the Civil Procedure Code.

Kumara Pattiyage Allis Peiris,

“Sunil Paya”,

Panapitiya,

Waskaduwa.

**C.A. Case No. 378/97(F)**

**Plaintiff**

**D.C.(Kalutara)**

**Vs.**

**Case No. 5301/P**

1. Ranawaka Aratchige Thomas

Appuhamy of Panapitiya,

Waskaduwa.

1A.Liyanage Dona Liyanora Hamine

Of Ambalanwatta, Panapitiya,

Waskaduwa.

2. Matota Aratchige Edilin Nona

2A. Matota Aratchige Maggie Nona

3. Matota Aratchige Auther both of  
Panagoda, Galpatha.

4. Matota Aratchige Maggie Nona of  
Panapitiya, Waskaduwa.

5. Matota Aratchige Abeydasa

5A. Rajapakse Arachchige Siriawathie of  
Panagoda.

6. Matota Aratchige Ariyadasa

7. Matota Aratchige Kusumawathie

8. Matota Aratchige Nona Hamy all of  
Panagoda, Galpatha.

9. Abeysinghege Dona Baby Nona

9A. Maddage Dona Jayawathie alias  
Janawathie

10. Maddage Dona Jayawathie alias

Janawathie

11. Undugodage Dona Eatin Padmasiri

Rodrigo

12. Undugodage Don Nandasiri Rodrigo

all of Panapitiya, Waskaduwa.

13. The Chairman,

Fisheries Corporation,

Colombo.

14. Liyanage Dona Liyanora Jayasinghe

15. Ranawaka Arachchige Dona

Karunarathne

16. D. Liyanage Jayasinghe of Panapitiya,

Waskaduwa.

17. Matota Aratchige Kusumawathie of

'Sirisara', Kolamediriya, Bandaragama.

18. Dorine Luxmie Suriyapperuma of

Panapitiya, Waskaduwa.

**Defendants**

And now between

Kumara Pattiyage Allis Peiris,

“Sunil Paya”,

Panapitiya,

Waskaduwa.

**Plaintiff Appellant**

Kumara Pattiyage Hemasiri Peiris

Panapitiya,

Waskaduwa.

**Substituted – Plaintiff- Appellant**

**Vs.**

1. Ranawaka Aratchige Thomas

Appuhamy of Panapitiya,

Waskaduwa.

1A.Liyanage Dona Liyanora Hamine

Of Ambalanwatta, Panapitiya,

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Waskaduwa.

17. Matota Aratchige Kusumawathie of  
'Sirisara', Kolamediriya, Bandaragama.

18. Dorine Luxmie Suriyapperuma of  
Panapitiya, Waskaduwa.

**Defendant - Respondent - Respondents**

**BEFORE**

: P.W.D.C. JAYATHILAKE, J

**COUNSEL**

: Thilak Wijesinghe for the  
Plaintiff Appellant.

Rohan Sahabandu P.C. for the

14<sup>th</sup> and 15<sup>th</sup> Defendant

Appellants.

C.J. Ladduwahetti with Lakmi

Silva for the Respondents.

**ARGUED ON** : 23.03.2015

**DECIDED ON** : 24.07.2015

**P.W.D.C. Jayathilake, J**

This partition action has been filed by the Plaintiff Appellant seeking a partition of the land called “Ambalan Watta” alias “ Ambalame Watta” situated in Panapitiya. The Appellant and the 1<sup>st</sup> to 13<sup>th</sup> Defendant Respondents were co-owners, according to the pedigree shown by the Appellant. The commissioner of the case has prepared the Plan No. 219 marked as X depicting the subject matter which is 01 acre and 31.5 perches in extent.

I A, 14/16, and 15<sup>th</sup> Defendant Respondents had not accepted the Plaintiff's pedigree, instead they had disclosed a different pedigree. According to the said pedigree, there had been four original owners in respect of four different undivided shares of the subject matter.



The Plaintiff Appellant's case had been presented on his evidence and deeds marked P 1 to P 17. Though the Plaintiff Appellant's position was that Johanis was the original owner of the entire land, he has admitted in his evidence that he was unable to find any documentary evidence to prove that fact.

The deed P 1 which he has marked to show that Johanis Appuhamy has transferred undivided 1/5 share to Semaneris Appuhamy is actually a transfer of 1/60 share of the land. The Plaintiff Appellant, throughout in the cross examination, in his evidence had either accepted the position suggested by the contesting defendants or remained silent. The learned trial judge has carefully analyzed the evidence of the Plaintiff Appellant comparative to the evidence of the 15<sup>th</sup> Defendant Respondent. He has come to the conclusion that the court was unable to act upon the evidence of the Plaintiff as the evidence of the Plaintiff was contrary to the contents of the deeds produced by the Plaintiff.

In contrast, the learned trial judge had been of the view that the evidence of the 15<sup>th</sup> Defendant which is corroborated by the deeds produced in his evidence was acceptable to the court.

Though the Plaintiff Appellant has stated in his petition of appeal that the land had been possessed according to the devolution of the title set out in the plaint, such a situation had not been suggested in the Plaintiff's case. However,

the Plaintiff Appellant has admitted that there had been certain discrepancies in the shares mentioned in the deeds.

The judgment of the learned District Judge is purely based on oral and documentary evidence. The learned judge has accepted the case presented by contesting defendant respondents on evidence placed before him.

Therefore, the opinion of this court is that there is no ground of appeal to interfere with the judgment of the learned District Judge. As such, this court dismisses the appeal subject to costs.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**