

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

In the matter of an application for leave  
to Appeal notwithstanding lapse of time  
under section 765 of the Civil Procedure  
Code.

**C.A. No. 1130/02**

Thalegana Koralage Samawathie

**D.C.(Galle)**

Tewatta, Nagoda, Galle.

**Case No. 9317/P**

**Plaintiff**

**Vs.**

1. Thaleganas Koralage Lucinona
- 1A. Defendant Manel Wijewickrema
2. Kudagodage Charlis
3. Gammaddage Dharmathilaka Thero
4. Manel Wijewickrema
5. Kusuma Wijewickrema
6. Kottagoda Kankanamge Cyril
7. Kottagoda Kankanamge Mindula

8. Kottagoda Kankanamge Dayan

9. Kottagoda Kankanamge Neville

10. Kottagoda Kankanamge Kapila

All of No. 19/1, Colombo Road,  
Galle.

11. K.K. Sirisena

12. K.K. Piyasena

13. K.K. Jayasena

14. K.K. Albert

15. K.K. Leelawathie

All of Indurukumbura Udawa,  
Livitiya, Thalawa, Nagoda, Galle.

16. Pahalagamage Leelawathie

17. Suratissa Halkewatta Liyanaarachchi

Madawalamulla, Galle.

18. K.K. Ravindra

19. K.K. Sirira

20. K. Kdharmadasa

21. K.K. Nandasena

22. K.K. Samy

All of Indurukumbura Udawa,  
Livitiya, Thalawa, Nagoda, Galle.

**Defendants**

And between

K.K. Piyasena,

Indurukumbura, Udawelivitiya.

**12<sup>th</sup> Defendant – Petitioner**

**Vs.**

1. Thalegana Koralage Samawathie

Tewatta, Nagoda, Galle.

Plaintiff – Respondent

2. Defendant Manel Wijewickrema

3. Kudagodage Charlis

4. Gammaddage Dharmathilaka Thero

5. Manel Wijewickrema

6. Kusuma Wijewickrema

7. Kottagoda Kankanamge Cyril

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21. K.K. Nandasena

22. K.K. Samy

All of Indurukumbura Udawa,

Livitiya, Thalawa, Nagoda, Galle.

1<sup>st</sup> to 11<sup>th</sup> and 13<sup>th</sup> to 22<sup>nd</sup>

Defendants – Respondents

BEFORE

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

COUNSEL

: Manohara R. De Silva P.C.

with Hirosha Munasinghe

for the Defendant Petitioner.

Rohan Sahabandu P.C. for

the 16<sup>th</sup> Defendant

Respondent.

ARGUED ON

: 20.01.2015

DECIDED ON

: 23.07.2015

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

This is an appeal against the judgment of the partition case bearing No. 9317 pronounced on 25.03.2002. This case has been filed to terminate the co-ownership attached to the land called Kanukiriyana watta situated in Udawelivitiya. The commissioner appointed in this case, namely, W.A. Garvin De Silva, licenced surveyor has surveyed the land and submitted the preliminary plan No. 3362 depicting the subject matter. There had not been a contest with regard to the devolution of the title to the co-owners disclosed in the pedigree of the Plaintiff. The contest in regard to the subject matter was that as the Petitioner, the 12<sup>th</sup> Defendant and 16<sup>th</sup>, 17<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> Defendants disputed by claiming that the lots A, B, E, and F of the preliminary plan of be excluded as those lots are not portions of the subject matter.

The Plaintiff's case was presented on the evidence of the Plaintiff and that of the commissioner, Garvin De Silva, the licenced surveyor. The matter of identification of the subject matter had been entirely decided on the evidence of the commissioner. According to his evidence, he had first surveyed the land on the boundaries pointed out by the Plaintiff. But as he had not been satisfied with the said survey he had obtained a tracing lot 152 of the Title Plan No. 611 from the provincial office of Survey General Department and superimposed on

the plan prepared by him. The commissioner, in his evidence, has stated that it is a precise superimposition which falls into the category a of surveyor's practice. It has been alleged that the commissioner had gone out of the way to obtain a tracing of the title plan and superimposed it in the preliminary plan without a directive of court to do so. The opinion of this court is that the commissioner had acted with the sense of responsibility to identify the corpus as an officer appointed by the court for the purpose. The commissioner of the partition action has been entrusted with this task by partition law. The learned trial judge has correctly observed that the commissioner had assisted the court in adjudicating the question of identification of the corpus by taking such a step.

The learned trial judge has further observed that there is no boundary called Paulukanatta to the land described in the deed marked 11 B 1 which is claimed to be the deed which devolved the title to the 12<sup>th</sup> Defendant. As the learned trial judge has answered the issue in respect of the identification of the subject matter purely on evidence, this court sees no reason to interfere with the judgment of the learned trial judge and therefore this court dismisses the appeal subject to costs.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**