

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

**Court of Appeal case no : CA CC 04 / 2017**

Matarage Upali Sarath Danstan  
Amarasiri,  
195/20, Weera Mawatha,  
Depanama,  
Pannipitiya.

**Petitioner**

**Vs.**

Ethiligoda Vi dana Gamage  
Menike Chandrika  
14A, Wakwella Road,  
Galle.

**Respondents**

**CA(CC)04/2017**

Before : L. T. B. Dehideniya, J(P/CA)  
A. L. Shiran Gooneratne, J

Counsel : Moditha T. B. Ekanayake  
for the Petitioner.

Decided on : 26.10.2017

**L. T. B. Dehideniya, J(P/CA)**

The learned counsel for the petitioner submit that the 1<sup>st</sup> to 8<sup>th</sup> respondents have entered in to a partition deed disregarding the dismissal of the partition action tried in the district court of Galle between the same parties. The counsel's contention is that the court has decided that the parties to have failed to established tittle and therefore writing a partition deed among the same parties of that action is a contempt of court.

We do not agree with this submissions. In the partition action court has decided that the parties have failed to establish their tittle. If doesn't mean that if the parties have any tittle, it has been erased. If the parties believe that they have title and if they are in such terms that they can enter in to an amicable partition the dismissal of a partition action will not bar them in entering into an amicable partition deed.

The petitioner in this case was an intervenient in to the said partition action on the basis that his land was also included in to the partition action. If the petitioner's rights have been infringed by the respondents by entering in to this amicable partition deed, he has to go for civil litigation to vindicate his rights. We refused to issue notice and dismissed this application.

**President of the Court of Appeal**

**.A. L. Shiran Gooneratne, J**

I agree

**Judge of the Court of Appeal**

Na/-