

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

Paliya Ralalage Don Laus Almeda  
St. Anthony Mawatha,  
Kuda Payagala,  
Payagala.

**PLAINTIFF**

Vs.

Appeal No. C.A 408/2000 (F)  
D.C. Kalutara Case No. 5932/P.

1. Siddhammarakkalage Malcus Laksman  
Fernando  
No. 56/3, P.M. Fernando Mawatha,  
Moratuwa.
2. Siddhammarakkalage Marshiyana  
Cleopatra Norma Fernando,  
Harden Cottage,  
Idama,  
Moratuwa.
3. Siddhammarakkalage Bernadette Deljin  
Fernando,  
'St. Valentine'  
No. 500, Negombo Road,  
Waligampitiya,  
Ja-Ela.
4. Francis Hettige Lucien Silva.
5. Francis Hettige Girty Silva.
6. Francis Hettige Camillus Silva.
7. Francis Hettige Ethel Silva.  
All of  
No. 87, Katukurunda,  
Moratuwa.

8. Kottagodage Joyce Perera
  9. Kottagodage Noelin Perera
  10. Kottagodage Girlyn Perera
  11. Kottagodage Rita Perera
  12. Kottagodage Nimmi Perera
  13. Kottagodage Jeni Perera
- All of  
No. 22(formerly 20), Albert Place,  
Dehiwala.
14. Krissy Bologna.
  15. Siddhammarakkalage Macky Fernando,
  16. Siddhammarakkalage Eisenhower Fernando,
  17. Siddhammarakkalage Hisynth Fernando,
  18. Siddhammarakkalage Mary Fernando,
  19. Senapathi Anthony Clinton Fernando,

All of  
St. Anthony Mawatha,  
Kuda Payagala,  
Payagala.

### **DEFENDANTS.**

AND BETWEEN.

14. Krissy Bologna.
15. Siddhammarakkalage Macky Fernando,
16. Siddhammarakkalage Eisenhower Fernando,
17. Siddhammarakkalage Hisynth Fernando,
18. Siddhammarakkalage Mary Fernando,
19. Senapathi Anthony Clinton Fernando

All of  
St. Anthony Mawatha,  
Kuda Payagala,  
Payagala.

**14<sup>TH</sup> TO 19<sup>TH</sup> DEFENDANTS- APPELLANTS**

Vs.

Paliya Ralalage Don Laus Almeda  
St. Anthony Mawatha,  
Kuda Payagala,  
Payagala.

**PLANTIFF- RESPONDENT**

AND

1. Siddhammarakkalage Malkus Laksman  
Fernando  
No. 56/3, G.M. Fernando Mawatha,  
Moratuwa.
2. Siddhammarakkalage Marshiyana  
Cleopatra Norma Fernando,  
Harden Cottage,  
Idama,  
Moratuwa.
3. Siddhammarakkalage Bernadette Deljin  
Fernando,  
'St. Valentine'  
No. 500, Negombo Road,  
Waligampitiya,  
Ja-Ela.
4. Francis Hettige Lucien Silva.
5. Francis Hettige Girty Silva.
6. Francis Hettige Camillus Silva.
7. Francis Hettige Ethel Silva.  
All of  
No. 87, Katukurunda,  
Moratuwa.
8. Kottagodage Joyce Perera
9. Kottagodage Noelin Perera



10. Kottagodage Girlyn Perera
  11. Kottagodage Rita Perera
  12. Kottagodage Nimmi Perera
  13. Kottagodage Jeni Perera
- All of  
No. 22(formerly 20), Albert Place,  
Dehiwala.

**1<sup>ST</sup> To 13<sup>th</sup> DEFENDANT – RESPONDENTS.**

Before : E.A.G.R. Amarasekara, J.

Counsel : Kuvera de Zoysa P.C. with Ameer Maharoo for the 14<sup>th</sup> – 19<sup>th</sup>  
Defendant – Appellant.  
Ruwantha Cooray for the Plaintiff – Respondent.

Decided on : 2018.12.28.

**E.A.G.R. Amarasekara, J.**

This is an appeal filed against the judgment dated 14.07.2000 delivered by the learned Additional District Judge of Kalutara in the partition action No. 5932/P. By that Judgment the learned Additional District Judge has decided to Partition the lot no. 2 in Plan No. 6407 made by W. Seneviratne, Licensed Surveyor. The learned Additional District Judge has further held that the Plaintiff and the 1<sup>st</sup> to 18<sup>th</sup> Defendants are entitled to the said lot in the manner disclosed by the plaintiff's evidence. Being dissatisfied with the said Judgment the 14<sup>th</sup> to 19<sup>th</sup> Defendant – Appellant (hereinafter sometimes referred to as the Defendants) preferred this appeal praying;

1. To dismiss the Plaint.

2. To exclude Lot 2A and 2C of Plan No. 561 marked as 14V1 from the partition by declaring that the said lots as part of the land belonging to the Defendants.
3. For Costs and other reliefs this Court shall deem fit to grant.

To amend or vary, first of all there should be a valid Judgment before law. For the reasons mentioned below I decide to set aside the aforesaid Judgment dated 14.07.2000 and direct the learned District Judge to hold a fresh trial.

The learned Additional District Judge has consumed the first two pages of his Judgment to summarize the contents of the plaint, preliminary plan and its report and the statement of claims of the 14<sup>th</sup> to 19<sup>th</sup> Defendants. The learned Additional District Judge has then spent the 3<sup>rd</sup> page and the 1<sup>st</sup> paragraph of the 4<sup>th</sup> page of his Judgment to explain the nature of the points of contest raised by the parties and to summarize the evidence led by the parties.

It should be noted that without giving any reason, in the 2<sup>nd</sup> paragraph of page 4 of his Judgment, the learned Additional District Judge has come to the conclusion that as disclosed by the notarial documents related to the Plaintiff's pedigree, the land depicted in the plan marked as P18 is the land sought to be Partitioned. The said P18 appears to be a plan used for the superimposition by the commissioner.

The said plan marked as P18 depicts a land containing 1 rood 15 perches. The said document appears to have been issued by the Surveyor General's office. As per the contents of P18, it is a trace taken from the field sheet No O2/10 and it



represents lot L59 in PP 4766. Notarial documents pertaining to the Plaintiff's pedigree have been marked as P2, P3, P5, P6, P8, P10, P11, P12, P13, P14, P15 (14v6) and P17 (14v9) during the trial, but all these notarially executed deeds refer to a land called Dondangahawatta of 1 acre in extent. None of these refers to a land of 1 rood and 15 perches depicted in the Surveyor General's preliminary plan no. 4766. It is only in the schedule to the plaint that such a proposition is found stating that aforesaid one-acre land (160 perches) is the same land depicted in P.P. 4766 which is of 1 rood and 15 perches (55 perches) in extent. The learned Additional District Judge has not given any reason why he accepts the said proposition in the schedule to the plaint, namely that 1-acre land named Dodangahawatta found in the aforesaid deeds is the same 1 rood 15 perches land depicted in P18. In a partition action, it is the duty of the learned District Judge to investigate the title. To investigate title, he must first ascertain the corpus sought to be partitioned. Even if the parties agree as to the identity of the corpus, since partition action is an action in rem, it is the duty of the Judge to satisfy himself with regard to the identity of the corpus. Since the Learned Additional District Judge has not given any reasons for his conclusions, this court cannot confirm the learned Additional District Judge's finding that the land sought to be partitioned as disclosed by the notarial documents in the Plaintiff's pedigree is found in P18.

The learned Additional District Judge has further stated that the 14<sup>th</sup> to 19<sup>th</sup> Defendants had claimed prescriptive title to lot 2A and lot 2C (presumably in Plan No. 561 of B.K.P.W. Gunawardane, Licensed Surveyor marked as 14v1) but during the trial they claimed to exclude those lots only as part of Thenhamiyawattha. Therefore, the learned Additional District Judge has come to the conclusion that the land sought to be partitioned is depicted as Lot 2 in plan marked as X, which is

the preliminary plan made by the Commissioner. It should be noted that even in the statement of claims, the said Defendants had prayed to exclude those lots on the same basis. The learned Additional District Judge has not given a single reason for the refusal of the Defendants' stance. The learned Additional District Judge has not given his reason explaining why he accepts the superimposition done by the Commissioner and rejects the evidence and superimposition done by B.K.P.W. Gunawardena, licensed surveyor.

The learned Additional District Judge has answered the 13 points of contest framed at the trial but without giving reasons for his answers. He has answered issues nos. 1, 2 and 3 in the affirmative and issues nos. 4, 8 and 10 in the negative. His conclusions with regard to issues nos. 4, 6, 7, 9, 11, 12 and 13 were that they did not arise to answer, but no reason can be found in the Judgment in support of such conclusions.

Though, the learned Additional District Judge has answered the aforesaid issue no. 2 in the affirmative which cause the aforesaid lot 2 of plan marked as X to be partitioned as per the plaint, the share list approved in the Judgment differ from what is mentioned in the Plaint. No reasons were indicated in the Judgment to find how the learned Additional District Judge calculated the share entitlement of each party.

In that backdrop it is my considered view that;

1. The learned Additional District Judge has not given reasons in support of his conclusions in the Judgment.



2. The learned Additional District Judge has merely narrated a summary of evidence and has not given reasons why he accepted the Plaintiff's version and rejected the aforesaid Defendants' case.
3. The impugned Judgment lacks critical analysis of the evidence led at the trial.

In ***Warnakula Vs Ramani Jayawardane (1990) 1 SLR 206*** it was held that bare answers to issues without reasons are not in compliance with the requirements of section 187 of the Civil Procedure Code. The evidence germane to each issue must be reviewed or examined. The Judge must evaluate and consider the totality of evidence. Giving a short summary of the evidence of the parties and witnesses and stating that he prefers to accept the evidence of one party without giving reasons are insufficient.

Even in ***Victor Vs Cyril De Silva (1998) 1 SLR 41*** it was laid down that the failure to evaluate evidence is an obvious error on the part of the trial Judge.

In that backdrop it is my considered view that the Judgment dated 14.07.2000 delivered by the learned Additional District Judge cannot stand as there is a total failure from the part of the learned Additional District Judge who heard the case.

Therefore, I have no other option than setting aside the said Judgment dated 14.07.2000.



Hence, I set aside the Judgment dated 14.07.2000 of the Additional District Judge of Kalutara and direct the learned District Judge of Kalutara to hold a fresh trial and conclude the matter without delay since this action is pending from 1991.

.....

E.A.G.R. Amarasekara.

Judge of the Court of Appeal.