

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

1A. Don Asoka Dayarathne (deceased)  
2A. Thakshila Erandi Dayarathne  
2B. Wikum Madhura Sampath Dayarathne  
3. Chandrawathi Devasurendra Dayarathne  
All of Kahawandala, Udamulla.  
Substituted Plaintiff-Appellant-Appellants

**SC/APPEAL/101/2015**

**SP/HCCA/KAG/680/2010 (F)**

**DC MAWANELLA 676/L**

Vs.

1. T.G. Wijerathne  
2. T.G. Panditharathne  
3. T.G. Wilson,  
All of Acharige Watte,  
Kahawandala, Udamulla.  
Defendant-Respondent-Respondents

Before: Hon. Justice S. Thuraiaraja, P.C.  
Hon. Justice Mahinda Samayawardhena  
Hon. Justice Menaka Wijesundera

Counsel: Dr. Sunil Abeyratne with Buddika Alagiyawanna for the 1A,  
2A, 2B and 3<sup>rd</sup> Substituted Plaintiff-Appellant-Appellants.  
L.M.C.D. Bandara for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendant-  
Respondent-Respondents.

Argued on: 28.04.2025

Decided on: 03.06.2025

**Samayawardhena, J.**

The plaintiffs instituted this action in the District Court seeking a declaration of title to the land described in the second schedule to the plaint, which forms part of the land described in the first schedule, and the ejectment of the defendants therefrom. The land described in the second schedule to the plaint is depicted in Plan marked P1. The defendants sought dismissal of the action on the ground that the land in suit had not been properly identified. Upon conclusion of the trial, the District Court, by its judgment dated 18.01.2010, upheld the position taken by the defendants and dismissed the plaintiffs' action. On appeal, the High Court of Civil Appeal, by judgment dated 23.09.2014, affirmed the judgment of the District Court. The plaintiffs are now before this court.

A previous Bench of this court had granted leave to appeal on the following question of law:

*Did the High Court and the District Court err in law in holding that the withdrawal of the previous Partition Action No. 23321/P of the District Court of Kegalle prior to the entering of the final decree amounts to res judicata between the parties?*

I must state at the outset that neither the District Court nor the High Court had taken up such a position in their respective judgments, and therefore, I am unable to answer that question. The plaintiffs' action was dismissed by both courts on the ground that the corpus had not been properly identified, noting, *inter alia*, that the identification of the corpus in the present action had become a real issue in light of the manner in which the land was identified in the earlier partition action.

Let me explain the connection between this action and the earlier partition action, and the manner in which the outcome of the former action bears upon the plaintiffs' action in the present matter.

There is no dispute that the plaintiffs in the present action are connected to the plaintiffs in the earlier partition action, and that the previous partition action was also filed in respect of the same land. The Preliminary Plan prepared for the partition action was marked 1V2, and this plan was superimposed on Plan P1, which was prepared for the instant action. The superimposed plan was marked 1V4. The superimposition demonstrates that Lot 3 in Plan P1 does not fall within the land described in the first schedule to the plaint in the instant action, which corresponds to the land described in the schedule to the partition action. It is therefore evident that the plaintiffs have failed to properly identify the corpus in the present action, which is a *sine qua non* for the plaintiffs to succeed in this action.

After the interlocutory decree was entered, the plaintiffs withdrew the partition action. However, in terms of section 48, subject to the conditions set out therein, both the interlocutory decree entered under section 26 and the final decree of partition entered under section 36 are final and conclusive. In other words, the interlocutory decree does not become invalid merely because the action did not proceed to finality.

For the aforesaid reasons, the appeal is dismissed but without costs.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court