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

In the matter of an Appeal from the Judgement of the High Court of the Western Province, exercising Civil Appellate jurisdiction Holden at Gampaha.

Solanga Arachchige Kulawardena,
No. 320/2, Kendaliyaddapaluwa,
Ganemulla.

Plaintiff

Vs.

SC/Appeal /40/2018
SC/HCCA/LA 611/2016
WP/HCCA/GPH/254/2010(F)
D.C. Gampaha Case No. 301/P

1. Solanga Arachchige Nomananda,
   No. 320, Kendaliyaddapaluwa,
   Ganemulla.

2. Ranasinghe Arachchige Magilin Nona
   alias Magilin Ranasinghe,
   No. 320, Kendaliyaddapaluwa,
   Ganemulla.

Defendants

And Between

Solanga Arachchige Kulawardena,
No. 320/2, Kendaliyaddapaluwa,
Ganemulla.

Plaintiff- Appellant

Vs.

1. Solanga Arachchige Nomananda,
   No. 320, Kendaliyaddapaluwa,
   Ganemulla.

2. Ranasinghe Arachchige Magilin Nona
   alias Magilin Ranasinghe,
   No. 320, Kendaliyaddapaluwa,
   Ganemulla.

Defendant-Respondents

AND NOW BETWEEN

1. Solanga Arachchige Nomananda,
   No. 320, Kendaliyaddapaluwa,
   Ganemulla.

2. Ranasinghe Arachchige Magilin Nona
   alias Magilin Ranasinghe,
   No. 320, Kendaliyaddapaluwa,
   Ganemulla.

Defendant-Respondent-Petitioner/Appellants

Vs.

Solanga Arachchige Kulawardena
No. 320/2, Kendaliyaddapaluwa,
Ganemulla.
(since deceased)

Plaintiff-Appellant- Respondent

1A. Solanga Arachchige Nandasena
1B. Solanga Arachchige Siriyalatha
1C. Solanga Arachchige Hema Kanthi
all of 320/2, Kendaliyaddapaluwa,
Ganemulla.

Substituted Plaintiff – Appellant-Respondents

Before: **Murdu N.B. Fernando, PC.J.,**
Kumudini Wickramasinghe J. and
Janak de Silva J.

Counsel: H. Withanachchi with Shantha Karunadhara for Defendant-Respondent-Appellant

Sudarshani Cooray for the Substituted Plaintiff-Appellant-Respondent

Argued on: 06-10-2022

Decided on: 01-04-2025

Murdu N.B. Fernando, PC. CJ.,

This is an Appeal against the judgement of the Civil Appellate High Court of the Western Province, Holden in Gampaha ("the High Court").

The Plaintiff- Appellant- Respondent ("the Plaintiff/ the Respondent") instituted a partition action against the Defendant- Respondent- Appellants ("the Defendant/ the Appellants") in the District Court of Gampaha, seeking *inter-alia* partitioning of a land named 'Polgahawatta' in Kendaliyaddapaluwa village, Mahara, in extent 1A 2R 15P between the Plaintiff and the 1st Defendant in equal shares. The Plaintiff and the 1st Defendant are siblings.

The District Court dismissed the partition action, upon the basis that the Plaintiff has failed to identify the land to be partitioned.

The Plaintiff went up in Appeal to the High Court and the learned judges of the High Court upheld the appeal and permitted the partitioning of the land in extent 1A 2R 15P in equal shares.

Being aggrieved by the said judgement the Defendants are now before this Court, having obtained Leave to Appeal on three questions of law which are as follows;

i. Did the Civil Appellate High Court err in law by reversing the findings reached by the learned District Judge in the circumstances of this case?
ii. Did the learned Civil Appellate High Court Judges err in law by not taking cognizance that the Plaintiff has failed to establish that the land depicted in Preliminary Plan marked "X" formed the subject matter of this partition action?
iii. Have the learned High Court Judges misdirected themselves by not appreciating the contents in the surveyor's report marked "**X1**" when the learned High Court Judges arrived at a finding that lots 1, 2 and 3 in the Preliminary Plan "**X**" formed the subject matter of this action?

The Plaintiff's Case

The Plaintiff's case is that the land to be partitioned in extent 1A 2R 15P devolved on the Plaintiff and the 1st Defendant in equal shares by a Deed bearing No. 23113 dated 27-04-1954. **(P1)**

The plaint dated 04-04-2003 refers to the pedigree and states that the land to be partitioned, was originally owned by two persons and the share of one such person, by a Deed bearing No. 3265 dated 05-03-1920 was transferred to the Plaintiff's father. The plaint further avers that the other person too, transferred his share to the Plaintiff's father but the said deed is lost. Thus, the Plaintiff fails to aver or produce the instrument of transfer or give details pertaining to the manner and mode of transfer of the said share to the Plaintiff's father.

The contention of the Plaintiff was that the father of the Plaintiff and the 1st Defendant, *viz.,* the predecessor in title, was the absolute owner and was entitled to the entire extent of 1A 2R 15P and also prescribed to such land. Therefore, the Plaintiff averred the entire extent of land was transferred to the Plaintiff and the 1st Defendant in equal portions.

The Plaintiff further averred that whilst the Plaintiff possessed the southern portion of the land, the balance portion was possessed by the 1st Defendant and hence moved to partition the corpus between the two of them.

The schedule to the plaint only referred to the land based on a plan prepared by I.V. Koelmeyer bearing No. 10054 dated 02-07-1914, wherein three boundaries (North- East, South- West and North- West) were indicated as parts of the same land and the other (South-East) as a road. It's observed that the Plaintiff has failed to refer to any other plan or deed or to the existing boundaries of the land to be partitioned as at the date of the plaint.

The Defendant's case

The 1st and 2nd Defendants (husband and wife) by their answer and statement of claim, moved to exclude a portion of land from the corpus, based upon a different pedigree. On such pedigree and chain of title, a portion of the 1A 2R 15P land referred to above had been transferred to the 2nd Defendant, by way of a conditional transfer Deed bearing No. 3784 dated 20-10-1975 (**2V4**).

The Defendants further averred, that the father of the Plaintiff and 1st Defendant *i.e.,* the predecessor in title, when he transferred his rights to the Plaintiff and the 1st Defendant by Deed bearing No. 23113 dated 27-04-1954 (**P1**) transferred only a portion of the land depicted in the Plan bearing No. 10054 dated 02-07-1914 and not the entire extent as averred to by the Plaintiff in the plaint. The contention of the Defendant was the land referred to in the conditional transfer Deed bearing No. 3784 dated 20-10-1975 (**2V4**) should be excluded from the corpus to be partitioned.

In the answer, the Defendant traced the pedigree to the said portion of land, to a Deed bearing No. 4135 dated 25-04-1947. It is significant to note, that the said deed bears a date, which is very much prior to **P1**. *i.e.,* prior to the predecessor in title [*viz.,* the father of the Plaintiff and the 1st Defendant] transferring the title to the land in dispute to the Plaintiff and the 1st Defendant in 1954.

Thus, the contention of the Defendants was that since the 2nd Defendant, on her own merits became the owner of a portion of land as depicted in Deed bearing No. 3784 dated 20-10-1975, that such portion of land, should be excluded from the corpus.

Furthermore, the Defendant pleaded that the balance portion of land *i.e.,* excluding the land the 2nd Defendant on her own merits received, was amicably partitioned between the Plaintiff and the 1st Defendant and produced Plan No. 4070 dated 21-07-1988 **(1VI)** to substantiate same.

Hence, the crux of the issue in this appeal, is whether a portion of a land was excluded, from the corpus to be partitioned between the Plaintiff and the 1st Defendant, or not.

The trial

At the trial, the Plaintiff failed to produce any plans. The Plaintiff's contention was that the 1914 plan drawn up by Surveyor Koelmeyer, referred by him in the schedule to the plaint, was in the custody of the 1st Defendant and that the 1st Defendant failed to produce the said plan at the trial court.

At the trial, the land in issue was initially surveyed by a Court Commissioner named Wijeratne. Since the 2nd and 3rd questions of Law raised before this Court, refer to the said Court Commissioner's Plan (**X**) and the Report (**X1**), it is intended to consider the said plan and report in detail.

The said Court Commissioner Wijeratne's Plan, bearing No. 936 dated 10-02-2004 depicts the land, shown to him by the Plaintiff and the 1st Defendant. The said plan denotes three lots of lands, bearing No. 1, 2 and 3, totaling an extent of 1A 2R 2.04P. At the trial the Court Commissioner Wijeratne's plan was marked as **'X'** and the report as **'X1'**.

The Court Commissioner Wijeratne, in his report (**X1**) observes, the difficulty in superimposing his plan (**X**) on the plan referred to in the schedule to the plaint i.e., surveyor Koelmeyer's plan said to be prepared in 1914, as there are no corresponding or common points or boundaries. The **X1** report goes on to state even the extent of the land area surveyed, cannot be reconciled with the plan prepared in 1914.

The Court Commissioner also notes that the land said to be depicted in the Koelmeyer plan prepared in 1914 and referred to in the schedule to the plaint, is a square area - 167 meters in length and 39.5 meters in width, whereas the land physically shown on the ground and surveyed by him, is an area- 95 meters in length and 65 meters in width. Based on the said metes and bounds, the Court Commissioner's observation was in order to reconcile the two plans, more land from the North-East boundary should be included, and a portion of the land surveyed should be excluded.

The Court Commissioner Wijeratne's Report **X1** also refers to the fact, that he has seen the plan prepared by surveyor Koelmeyer dated 02-07-1914 bearing No. 10054 and that the land to be partitioned was transacted last, in the year 1947. Further the report indicates that, the land shown and said to be occupied by the parties from 1947 onwards does not appear to be the land referred to in the plan, said to have been drawn up in the year 1914.

However, based upon the said Court Commissioner's plan and report **'X'** and '**X1**'respectively, the contention of the Plaintiff was that all three lots, namely, lots 1, 2 and 3 should be partitioned between the Plaintiff and the 1st Defendant.

Contrary to same, the position of the 1st Defendant was that lot 1, should be excluded and only lots 2 and 3 should be partitioned between the Plaintiff and the 1st Defendant. Further, the contention of the Defendants was that the said division had already taken place, amicably, by virtue of a Plan bearing No. 4070 drawn up on 21.07.1988 (**IVI**) by Surveyor Jayasekera, wherein both parties were entitled to land in extent of 2R 20P each.

Furthermore, in order to substantiate its contention the Defendants obtained a commission on another Court Commissioner, Patrick Reginald, to superimpose the aforesaid '**IVI**' Plan prepared in 1988, on **'X'** the Court Commissioner Wijeratne's Plan, bearing No. 936 dated 10-02-2004. The plan based on the second commission bearing No. 1252-2K dated 05-09-2004 and the Surveyor Reginald's Report were produced by the Defendants at the trial as **'1V2'** and **'1V2A'** respectively.

According to the said survey done in September 2004 (**IV2**) the land to be partitioned was shown as three lots, namely lots A, B and C. The extents of the said lots were lot A -

1R 15P; lot B - 2R 15.56P and lot C - 2R 20P respectively. Lot A according to the narration in the report '**1V2A**' was owned by the 2nd Defendant.

Thus, the contention of the Defendants was that lot A referred to in the said plan (**IV2**), comprised of a portion of land for which the 2nd Defendant obtained title through a different pedigree and that lot A does not comprise of the corpus or the land to be partitioned in this application and therefore should be excluded. The Defendants further argued, in view of the said exclusion, only lots B and C would comprise the corpus to be partitioned between the Plaintiff and the 1st Defendant, and not the entire area depicted in the Survey Plan bearing No 1252-2K dated 05-09-2004 (**IV2**).

District Court Judgement

Upon perusal of the District Court judgement dated 01-11-2010, it is observed that the learned trial judge had analysed and evaluated in detail, the evidence led before the trial court and came to the finding, that the Plaintiff had failed to establish the identity of the land. Therefore, the partition action filed by the Plaintiff was dismissed.

In coming to such finding, the learned District Judge disregarded two plans, namely, Surveyor Koelmeyer's Plan bearing No. 10054 dated 02-07-1914 referred to in the plaint, which was not produced by the Plaintiff at the trial, and the Surveyor Jayasekera's plan drawn up in 1988, produced by the Defendants, bearing No. 4070 (**1V1**), said to be the plan by which the land was amicably partitioned between the Plaintiff and the 1st Defendant.

The reason for rejection of the said two plans was clearly spelt out in the judgement, being the 1914 plan was not produced before the trial court and the 1988 plan does not refer to the 1914 plan, said to be the genesis of the Plaintiff's action.

Upon reading of the judgement, it is seen, that the learned trial judge has thereafter, carefully gone onto examine the plans prepared by the two Court Commissioners and produced at the trial, namely the Court Commissioner Wijeratne's plan prepared in February 2004, bearing No. 936 (**X**) and its report (**X1**) and the Court Commissioner Reginald's plan prepared in September 2004, bearing No. 1252-2K (**1V2**) and its report (**1V2A**).

Furthermore, the trial judge has commented on the failure of the Plaintiff to lead the evidence of Court Commissioner Wijeratne who prepared the 1st Commission Plan or the Preliminary Plan bearing No. 936 (**X**). The trial judge notes that Surveyor Wijeratne, is an independent witness who could have assisted court and upon whose evidence the court could have relied upon in determining this matter.

It is observed that the learned trial judge has analysed the evidence of the Plaintiff, who was the only witness who gave evidence on behalf of the Plaintiff and the common pedigree referred to in the deeds **P1** and **P2** and also the evidence of the 1st and 2nd Defendants in great detail, in addition to the plans drawn up by the said two Court Commissioners **X** and **1V2** and the respective reports **X1** and **IV2A** referred to earlier.

Moreover, it is seen that the learned trial judge in the judgement has drawn special attention to the observations of the Surveyor Wijeratne (in his report **X1**), wherein it is stated that the land, said to be depicted in the 1914 plan referred to in the schedule to the plaint, is

'not the land physically depicted on the ground to be partitioned', in the partition action before the trial court.

Furthermore, it is observed that the trial judge had looked at the metes and bounds referred to in the two Court Commissioners' plans. The judge had made special emphasis upon the peculiar aspects of the land surveyed, the drains, the ditches, the mounds of sand, the live fences and had examined in detail, the extent of the land *vis-a-vis* 1914 plan referred to in the schedule to the plaint, but which the plaintiff failed to produce before the trial court.

Based upon its analysis and evaluation, the trial judge has come to the finding that the Plaintiff has failed to establish the identity of the land and especially that the land to be partitioned referred to in the schedule to the plaint is the very same land physically depicted on the ground, by way of the Preliminary Plan bearing No. 936 dated 10-02-2004, *i.e.,* the Court Commissioner Wijeratne's Plan **'X'** and more fully explained to in the report **'X1'**. The learned judge thus, dismissed the plaint, upon the basis that the Plaintiff has failed to identify the land to be partitioned between the Plaintiff and the 1st Defendant.

High Court Judgement

In a very short judgement dated 01-11-2016, the learned judges of the High Court, overturned the judgement of the trial court. No critical analysis pertaining to the grounds upon which the learned trial judge dismissed the application *i.e.,* failure to identify the corpus, was discussed or considered. Only a bald statement to say that the trial judge has failed to evaluate the evidence.

No reference whatsoever is made by the High Court Judges to the 1914 Koelmeyer's plan. As discussed earlier, this plan referred to in the schedule to the plaint, was the foundation of the Plaintiff's case.

Similarly, the High Court has failed to analyse or examine the failure of the Plaintiff to call the Court Commissioner Wijeratne who prepared the Preliminary Plan (**X**) to give evidence on behalf of the Plaintiff and to consider the observations of the Court Commissioner (in the report '**X1**'), that the land physically shown on the ground to the Court Commissioner by the parties, cannot be identified *vis-a-vis* the land referred to in the schedule to the plaint.

It appears the High Court judges have only considered the extent of the land in deciding this appeal. The learned Judges have referred to the extent stated in the schedule to the plaint *i.e.,* 1A 2R 15P, and the extent referred to in Court Commissioner Wijeratne's Plan (**X**). *i.e.,* 1A 2R 2.4P, and based only upon the said two figures, had come to the finding, that if Lot 1 referred to in Court Commissioner Wijeratne's plan (**X**) is excluded, it would reduce the total extent of land to be partitioned by 40 perches and upon that sole reason, overturned the trial court judgement.

Furthermore, the learned judges of the High Court have considered somewhat in detail the Plan bearing No. 4070 (**1V1**), the plan relied upon by the Defendants as an amicable settlement of the corpus between the parties. As stated earlier in this judgement, the learned trial judge disregarded and rejected the said plan bearing No. 4070 (**1V1**), since it was not based on the 1914 Koelmeyer's plan referred to in the schedule to the plaint or based on any other plan.

Furthermore, the trial judge, made no reference whatsoever to the purported settlement of the corpus between the parties based upon the plan **1V1**, since the said plan was totally rejected by the trial judge for reasons alluded in the order and referred to earlier in this judgement. However, it is observed that the learned Judges of the High Court who considered the said plan, were silent on the findings of the trial judge enumerated earlier in this judgement, when he rejected the plan **1V1**, the purported amicable partitioning of the land, between the Plaintiff and the 1st Defendant.

The learned judges of the High Court referred to the 'extent' stated in the said plan **1V1**, *i.e.,* 1A 1R 0P and thereafter drew a comparison. They compared the difference of extents of land, as stated in the schedule to the plaint and the Preliminary Plan '**X**' (1A 2R 15P and 1A 2R 2.4P) *vis-a-vis* the extent of land referred to in the schedule to the plaint and the aforesaid **1V1** plan (1A 2R 15P and 1A 1R 0P) and came to a finding that the difference is lesser in the first instance, *viz* between the extent stated in the schedule to the plaint and the extent referred to in the Preliminary Plan (**X**) and therefore came to the conclusion, that the Preliminary Plan is more in line with the plaint. For me it is difficult to understand the logic behind this finding, as there is no reasoning or legal basis whatsoever, given for the said finding. A passing reference was also made stating the metes and bounds of the land in the Preliminary Plan (**X**) matched the land referred to in the schedule to the plaint, although no physical verification of metes and bounds took place as specifically stated in Surveyor Wijeratne's report **X1**.

The learned High Court Judges also considered the contention of the Defendants pertaining to the amicable settlement based on the plan **1V1** and came to the conclusion since there was no deed of settlement executed pursuant to the preparation of the plan **1V1,** the said plan prepared by Surveyor Jayasekera should be rejected upon the said ground.

It is further observed, that though the High Court rejected the plan **1V1** on the said ground, the High Court did not find the trial judge faulted in the trial judge's reasoning for rejection of the defendant's contention, *viz,* that the said plan **1V1**, should be rejected at it is not based upon the 1914 plan or on any other plan.

Having rejected the plan **1V1** for the aforesaid reason, the learned judges of the High Court relying heavily on the 'extent' given in the preliminary plan '**X**', (as discussed earlier in this judgement) permitted the partitioning of the corpus, completely ignoring the paramount duty of a trial judge to be satisfied, that the land to be partitioned has been correctly identified.

The Appeal before the Supreme Court

Upon reading of the judgement of the High Court, it is apparent that there is no examination or analysis of evidence, nor reasoning as to why the findings of the trial court should be disputed or rejected.

Furthermore, in determining the appeal in favour of the Plaintiff and permitting the partitioning, the High Court has not considered the provisions of the Partition Law nor in the least examined as to whether the land sought to be partitioned as referred to in the plaint, has been correctly identified on the ground. This is particularly important because the Court Commissioner Wijeratne, in the Preliminary Plan bearing No. 936 (**X**) and in his report (**X1**)

categorically stated, that he is not satisfied that the land to be partitioned has been correctly identified.

The High Court judgement is silent on the said statement of the Surveyor Wijeratne but based on a purported examination of the extents of land referred to in the Preliminary Plan '**X**' and the extent referred to in the schedule to the plaint, had come to a finding in favour of the Plaintiff and permitted the partitioning of the corpus as prayed for in the plaint, which in my view is a complete misstatement of the law and a miscarriage of justice.

Moreover, as discussed earlier in this judgement, the identity of the corpus has not been a priority issue for the High Court. The fact that the trial court rejected the plaint on the basis that the land has not been identified had not been considered nor examined.

Thus, having failed to consider the identity of the land, but based only upon the purported extent of the land, the High Court overturned the trial court finding and permitted the partitioning of the corpus, which goes against the jurisprudence pertaining to the Law of Partition and specifically the provisions of Section 25(1) of the Partition Act, bearing No. 21 of 1977 as amended.

The said section reads as follows;

> *"...the court shall examine the title of each party and shall hear and receive evidence in support thereof and shall try and determine all question of law and facts* ***arising in that action in regard to the right, share or interest of each party to, of, or in the land to which the action relates****...."* (emphasis added)

This court, time and time again, has analysed the aforesaid provisions and the similar provisions that appeared in the earlier ordinances and laws pertaining to partition and has been unanimous in its decisions that a trial court has a bounden duty to examine and investigate the title [see **Juliana Hamine v. Don Thomas (1957) 59 NLR 546; Cooray v. Wijesuriya (1958) 62 NLR 158; Jane Nona v. Dingiri Mahatmaya (1968) 74 NLR 105**]

In the case of **Mohamedaly Adamjee v. Hadad Sadeen (1956) 58 NLR 217** this court observed that in the event the investigations are defective a decree could be set aside in appeal.

Moreover, in **Jayasuriya v. Ubaid (1957) 61 NLR 352** Sansoni, J., succinctly observed that there is a duty cast on the trial judge to satisfy himself as to the identity of the land sought to be partitioned in a partition action. In **Sopinona v. Pitipanaarachchi and two others (2010) 1 SLR 87** too, this Court held that clarity with regard to the identity of a corpus is a fundamental factor to be considered in a partition action.

The aforesaid judicial pronouncements clearly establish the role of a trial judge in a partition action.

Having considered the factual matrix of this appeal discussed in detail earlier in this judgement, I am of the view, that the trial judge's finding, that the Plaintiff has failed to identify the land is in accordance with the law.

Furthermore, I am of the view, the learned judges of the High Court have failed to appreciate the ratio of the said judgements referred to earlier and were in error, when they decided to set aside the judgement of the trial court and permit the partitioning of the corpus.

The main reasons which in my view enumerate as erroneous and wrongful, are as follows;

- the 'extent' of the corpus, which in any event was not established by the Plaintiff, cannot be used as the only criterion to identify the corpus in a partition action.
- the statement of the Court Commissioner reflected in the report **X1** of the preliminary plan **X,** that the land referred to in to plaint cannot be identified on the ground, cannot be merely brushed aside and ignored as irrelevant.

The submissions of the learned Counsel for the Respondents however, pertaining to the Court Commissioner's statement was that it was only the Surveyor's opinion as reflected in Section 18(1) of the Partition Act and cannot be used to decide the matter finally.

Nevertheless, upon reading of the judgement of the learned District Judge, it's quite apparent, the learned trial judge in coming to his findings has not only looked at the opinion of the Surveyor but has clearly considered plan **X** and the entirety of the report **X1**, including the terrain, the ditches, the drains, the sand mounds referred to in the report **X1** as well as the failure of the Plaintiff to call the said Surveyor, whom the judge referred to as an independent witness, to give evidence. The learned judge also considered the totality of the evidence led before court, including the two plans '**X**' and '**1V2**' prepared by the two Court Commissioners appointed by Court, to assist in its findings in arriving at its decision.

Thus, I see merit in the submissions of the learned Counsel for the Appellant, that the High Court was in error in its findings, when it decided to set aside the judgement of the trial court.

Moreover, in a recent judgement of this Court, **SC Appeal No. 161/2015 - SCM 09-02-2017**, Anil Gooneratne, J., re-iterated with approval the judgement of S.N. Silva J (as he then was) in the Court of Appeal case of **Sopaya Silva v. Magilin Silva (1989) 2 SLR 105**.

In the said judgement it was held, considering the finality and conclusiveness attached to the provisions of Section 48(1) of the Partition Act to a decree in a partition action, court should insist upon due compliance by the Surveyor of the requirement under Section 18(1)(a)(iii) of the Partition Act and specifically state in his report, whether or not the land surveyed by him is substantially the same as the land sought to be partitioned as described in the schedule to the plaint.

In the instant appeal, the Court Commissioner Wijeratne specifically stated in his report **X1** based on the preliminary plan **X**, that the land referred to in the schedule to the plaint *viz.,* said to be depicted in Koelmeyer's plan prepared in 1914, is not the land physically shown by the parties and depicted on the ground to be partitioned.

The learned trial judge considering the said statement of Court Commissioner Wijeratne and the Plaintiff's failure to call the said Surveyor to give evidence, and also based upon the second commission issued by the trial court on Surveyor Reginald, to assist its

findings, and the said Surveyor's plan (**1V2**) and report (**1V2A**), came to the finding that the Plaintiff has failed to identify the corpus and thus, dismissed the partition action filed by the Plaintiff.

I see no reason to interfere with the said judgement of the District Court. It's in order and in accordance with the law.

For the reasons adumbrated in detail in this judgement, the findings of the High Court to reverse the judgement of the learned trial judge, is erroneous, misdirected and misconceived in law.

In the aforesaid circumstances, I answer the three Questions of Law raised before this Court in the affirmative.

The Judgement of the Civil Appellate High Court of the Western Province Holden in Gampaha delivered on 1st November, 2016 is set aside.

The Judgement of the District Court of Gampaha dated 1st November, 2010 is affirmed.

The Appeal is allowed. Parties may bear their own costs.

Chief Justice

Kumudini Wickramasinghe J.
I agree

Judge of the Supreme Court

Janak de Silva J.

I agree

Judge of the Supreme Court