

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

In the matter of an appeal in terms of  
Section 5(c) of the High Court of the  
Provinces (Special Provisions) Act No 19  
of 1990 as amended by High Court of the  
Provinces (Special Provisions)  
(Amendment) Act No 54 of 2006.

SC / Appeal / 162/2012  
SC/HCCA/LA/77/2012  
WP/HCCA/KAL/125/2004 (F)  
DC/HORANA/3449/P

1A. Godallawattage Somawathie  
1B. Suduwadewage Wasantha Ramyalatha  
1C. Suduwadewage Dekma Ramyalatha  
All of Remuna Anguruwatota.

Substituted Plaintiffs

**Vs.**

1A. Hewahakuruge Evgin,  
Thuththiripitiya, Halhota.  
2A. Mahadurage Opisa,  
Remuna, Anguruwathota.  
3A. Mahadurage Ariyaratna,  
Mahahena, Horana.  
4. Mahadurage Opisa,  
Remuna, Anguruwathota.  
5. Mahadurage Saraneris,  
Anguruwathota.  
6. P. Leelawathie,  
Remuna, Anguruwathota.  
7. Godellawaththage Nandasena,  
8. Godellawaththage Carolis,  
9. Godellawaththage Darmasena,

10. Godellawaththage Caralain,
11. Godellawaththage Karunawathie,
12. Godellawaththage Seelawathie,
13. Godellawaththage Yasawathie,  
All of Mahagama.
14. Godellawaththage David,
- 14A. Godellawaththage Menso,
- 15A. Godellawaththage Upaneris alias  
Somasiri,
16. Panawannage Adwin,
17. Sarathchandra Hettiwatta,
- 17A. Hettipathira Kankanamlage  
Kusumawathie,
- 17B. Harsha Kumara Hettiwaththa,
- 17C. Yamuna Rani Hettiwaththa,
- 17D. Wimala Kumara Hettiwaththa,
- 17E. Padmanjali Hettiwaththa,
18. Bothalage Kirineris,
- 18A. Godellawaththage Cicilin,  
All of Remuna, Anguruwathota.
19. Bothalage Jayadasa,
20. Bothalage Wimaladasa,
- 20A. Prema samaranayaka,  
All of Gungamuwa, Bandaragama.
21. H. Ranjo,
- 21A. B. Wilson,
22. B. Wilbert,
23. B. William,
24. B. Disilin,
25. B. Melin Jayawqathie,
26. Suduwage Mulin,
27. Kodithuwakku Arachchige  
Jayathilake,
28. S. A. Edirisinghe,
29. Piyasena Edirisinghe,

30. S. D. Agnes,
31. S. Norman Edirisinghe,
- 31A. S. Chaminda Edirisinghe,
32. S. Magilin.  
All of Remuna, Anguruwathota.
33. H. Dharmasiri,
34. H. Sunil Chandrasiri,
35. H. Martin,  
All of Siriniwasa, Withanawatta,  
Mahagama North.
36. H. Geethani Dharmalatha,  
Temple Road, Neboda.
37. S. D. Admond,  
Pinnakolawatta, Walpita, Horana.
38. Thilaka Hewage,  
Dawasa, Temple Road, Neboda.
39. G. James Fernando,  
Arambakanda, Horana.
- 39A. C. Punnyadasa,  
Arambawatta, Remuna, Horana.
40. H. Noisa,  
Kaduganmulla, Kiriella.
41. G. Dayawathie,  
Kaduganmulla, Kiriella.
42. G Somawathie,
43. G. H. Hemasiri Wanigadewa.  
Both of Remuna, Anguruwathota.
44. G. Piyasiri Munidasa,
45. G. Hemantha Munidasa,
46. G. Premawathie Munidasa,  
All of 26, Uyankele Road, Panadura.
47. G. Nandawathie Munidasa,  
Bombuwala, Temple Road,  
Elhenakanda.

Defendants

AND BETWEEN

- 1A. Godallawattage Somawathie
- 1B. Suduwadewage Wasantha Ramyalatha
- 1C. Suduwadewage Dekma Ramyalatha  
All of Remuna Anguruwatota.

Substituted Plaintiff Appellants

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- 3A. Mahadurage Ariyaratna,  
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- 4. Mahadurage Opisa,  
Remuna, Anguruwathota.
- 5. Mahadurage Saraneris,  
Anguruwathota.
- 6. P. Leelawathie,  
Remuna, Anguruwathota.
- 7. Godellawaththage Nandasena,
- 8. Godellawaththage Carolis,
- 9. Godellawaththage Darmasena,
- 10. Godellawaththage Caralain,
- 11. Godellawaththage Karunawathie,
- 12. Godellawaththage Seelawathie,
- 13. Godellawaththage Yasawathie,  
All of Mahagama.
- 14. Godellawaththage David,
- 14A. Godellawaththage Menso,

- 15A. Godellawaththage Upaneris alias  
Somasiri,
16. Panawannage Adwin,
17. Sarathchandra Hettiwatta,
- 17A. Hettipathira Kankanamlage  
Kusumawathie,
- 17B. Harsha Kumara Hettiwaththa,
- 17C. Yamuna Rani Hettiwaththa,
- 17D. Wimala Kumara Hettiwaththa,
- 17E. Padmanjali Hettiwaththa,
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- 21A.B. Wilson,
22. B. Wilbert,
23. B. William,
24. B. Disilin,
25. B. Melin Jayawqathie,
26. Suduwage Mulin,
27. Kodithuwakku Arachchige  
Jayathilake,
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29. Piyasena Edirisinghe,
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34. H. Sunil Chandrasiri,

35. H. Martin,  
All of Siriniwasa, Withanawatta,  
Mahagama North.
36. H. Geethani Dharmalatha,  
Temple Road, Neboda.
37. S. D. Admond,  
Pinnakolawatta, Walpita, Horana.
38. Thilaka Hewage,  
Dawasa, Temple Road, Neboda.
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Arambakanda, Horana.
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All of 26, Uyankele Road, Panadura.
47. G. Nandawathie Munidasa,  
Bombuwala, Temple Road,  
Elhenakanda.

Defendant Respondents

**AND NOW BETWEEN**

26. Suduwage Mulin,
27. Kodithuwakku Arachchige  
Jayathilake,

30. S. D. Agnes,  
All of Remuna, Anguruwathota.

Defendant Respondent-Appellants

**Vs.**

- 1A. Godallawattage Somawathie  
1B. Suduwadewage Wasantha Ramyalatha  
1C. Suduwadewage Dekma Ramyalatha  
All of Remuna Anguruwatota.

Substituted Plaintiff Appellant  
Respondents

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Thuththiripitiya, Halhota.  
2A. Mahadurage Opisa,  
Remuna, Anguruwathota.  
3A. Mahadurage Ariyaratna,  
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4. Mahadurage Opisa,  
Remuna, Anguruwathota.  
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Anguruwathota.  
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 Mahagama North.



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Temple Road, Neboda.
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Pinnakolawatta, Walpita, Horana.
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Dawasa, Temple Road, Neboda.
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- 39A. C. Punnyadasa,  
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47. G. Nandawathie Munidasa,  
Bombuwala, Temple Road,  
Elhenakanda.

Defendant Respondent Respondents

BEFORE : PRIYASATH DEP, PC, J. (as he was then)  
SISIRA J DE ABREW, J.  
UPALY ABEYRATHNE, J.

COUNSEL : Chandana Premathilake with Y. Liyanage  
for the 26<sup>th</sup>, 27<sup>th</sup> and 30<sup>th</sup> Defendant  
Respondent Appellants

Samanth Vithana with H. Mendis for the  
substituted Plaintiff Appellant Respondents

S.A.D.S. Suraweera for the 4<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> and  
17<sup>th</sup> Defendant Respondent Respondents

WRITTEN SUBMISSION ON: 07.11.2012 by the 26<sup>th</sup> 27<sup>th</sup> & 30<sup>th</sup> Defendant  
Respondent Appellants.  
07.01.2013 by the substituted Plaintiff  
Appellant Respondents

ARGUED ON : 09.08.2016

DECIDED ON : 29.06.2017

UPALY ABEYRATHNE, J.

The original Plaintiff instituted an action in the District Court of Horana against the Defendant Respondent Respondents seeking to partition a land called Bomaluwe Godella containing in extent of 02 acres as described in the schedule to the plaint. 04<sup>th</sup> and 17<sup>th</sup> Defendants, 6<sup>th</sup> Defendant, 7A to 13<sup>th</sup> Defendants, 26<sup>th</sup> 27<sup>th</sup> and 30<sup>th</sup> Defendants, 30<sup>th</sup> Defendant and 43<sup>rd</sup> Defendant have filed separate statements of claims seeking to partition the said land as averred in their statements of claims. Accordingly, the case proceeded to trial on 52 issues. At the end of the trial, the learned District Judge has dismissed the Plaintiff's action without answering the said 52 issues framed by the parties.

Being aggrieved by the said judgment dated 23.09.2004 the substituted Plaintiff Appellant Respondents (hereinafter referred to as the Respondent) preferred an appeal to the Court of Appeal. Said appeal was heard and concluded by the High Court of Civil Appeal of the Western Province holden at

Kalutara and the High Court by its judgment dated 23.09.2004 has set aside the said judgment of the learned District Judge directing him to deliver a fresh judgment on the evidence already led. In addition, the High Court has concluded that the District Judge may hear additional evidence if necessary, in order to arrive at a reasonable conclusion.

The 26<sup>th</sup> 27<sup>th</sup> and 30<sup>th</sup> Defendant Respondent Appellants (hereinafter referred to as the Appellants) sought leave to appeal to this court from the said judgment of the High Court and leave was granted on the questions of law set out in paragraph 18(i), (ii), (v) and (vi) of the petition dated 29.02.2012.

At the hearing of this appeal, it was contended before this court that the High Court has no power upon hearing an appeal to direct the trial judge to deliver a fresh judgment upon the evidence already led in the case. I first deal with this question of law raised at the hearing. Section 773 of the Civil Procedure Code deals with the provisions with regard to the powers of the Court of Appeal upon hearing of an appeal. Section 773 reads thus;

“Upon hearing the appeal, it shall be competent to the Court of Appeal to affirm, reverse, correct or modify any judgment, decree or order, according to law, or to pass such judgment, decree or order therein between and as regards the parties, or to give such direction to the court below, or to order a new trial or a further hearing upon such terms as to Court of Appeal shall think fit, or, if need be, to receive and admit new evidence additional to, or supplementary of, the evidence already taken in the court of the first instance, touching the matters at issue in any original cause, suit or action, as justice may require or to order a new or further trial on the ground of discovery of fresh evidence subsequent to the trial.”

Needless to state here, that Section 773 does not confer any power to the Appellate Courts, upon hearing of appeal, to order or to direct the trial judge to write a fresh judgment upon the evidence already led at the trial. The High Court is only empowered to order a new trial or further hearing as justice may require. Hence the said order of the High Court, to wit; to write a fresh judgment upon the evidence already led at the trial, contravenes Section 773 of the Civil Procedure Code.

The learned counsel for the Appellant further submitted that the learned District Judge has failed to answer the issues framed by both parties. The judgment manifests that the issues framed by the parties have not been answered by the learned District Judge. He has stated in the judgment dated 23.09.2004 that “since the pedigree has not been proved the land cannot be partitioned. Therefore, I hold that issues No 1 to 52 do not arise. For the above reasons, I dismiss the plaint.”

I regret to note that the learned District Judge has blatantly ignored the provisions contained in Section 187 of the Civil Procedure Code. The paramount duty of the trial judge as required in law is to answer all the issues accepted by court. Section 187 of the Code stipulates the requisites of a judgment. In terms of the said Section, the judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision; and the opinions of the assessors (if any) shall be prefixed to the judgment and signed by such assessors respectively.

Hence a trial judge when writing a judgment should safely consider the points for determination and should record his decision thereon. He should answer the points of contest after due evaluation of the evidence led before court. Issues accepted by trial court should not be left unanswered. Trial judge is bound

by a legal duty under section 187 of the Civil Procedure Code to deliver a proper and complete judgment. In the case of *Dona Lucihamy v. Ciciliyanahamy* 59 NLR 214, L. W. De Silva A.J. observed that “There were 12 issues raised in this case. Some of them do not bring out the real points of contest. The learned District Judge has stated in his judgment: ‘All the issues that have been raised can be crystallized in this one contest’, that is, whether the land in suit is Dawatagahawatte or Hedawakagahawatte. In the result, the evidence germane to each issue has not been reviewed or discussed. No reasons precede or follow the answers which are mostly "yes" or "no" or "does not arise." Such a record has not disposed of the matters which the Court had to decide. Bare answers to issues or points of contest whatever may be the name given to them-are insufficient unless all matters which arise for decision under each head are examined. Section 187 of the Civil Procedure Code (Cap. 86) is in the following terms "The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision."

In the case of *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 s. 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 the 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.”

For the forgoing reasons, I hold that the impugned judgment of the learned District Judge dated 23.09.2004 contravenes the provisions contained in Section 187 of the Civil Procedure Code. The failure of the trial judge to examine

and to evaluate evidence in order to arrive at a correct conclusion answering the issues raised at the trial has caused prejudice to the substantial rights of the parties.

In the circumstances, I hold that the High Court is correct in law concluding that the said judgment of the learned District Judge should stand dismissed. Also, I hold that the order of the High Court to remit the case back to the trial court for a delivery of fresh judgment on the evidence already led is bad in law. Hence, I vary the said judgment of the High Court by setting aside the said portion, namely; “refer to a fresh judgment by the learned District Judge basing on the evidence already adduced at the trial.” I order a trial *denovo*. If the parties are willing to adopt the evidence already led, the learned District Judge is directed to adopt the evidence already led and to proceed with the trial from that point onwards. Parties are at liberty to adduce further evidence if necessary. Subject to the said variations the appeal is dismissed. I make no order with regard to costs.

*Appeal dismissed.*

Judge of the Supreme Court

PRIYASATH DEP, PC, CJ.

I agree.

Judge of the Supreme Court

SISIRA J DE ABREW, J.

I agree.

Judge of the Supreme Court