

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

**In the matter of an Appeal from a Judgment  
of the Civil Appellate High Court.**

Ileperuma Arachchige Edwin Perera Gunathilaka,  
Galapatha, Bahurupola.

**Plaintiff**

K.M. Perera, 111C, Wewalduwa Road, Dalugama,  
Kelaniya.

**Substituted Plaintiff**

**SC APPEAL 27/2011**

SC HC CA LA 363/2010

HC CA (Kalutara ) 25/2001(F)

D.C. Kalutara Case No. 3089/P

**Vs**

1. Dona Yasawathie Weerakkodi of Karannagoda  
(Deceased)
- 1A. Nimal Lakshman Kannangara of Karannagoda.
2. Terlin Lenora Hamine of Doodangoda
3. Shanthilatha Waidyasekara of Karannagoda.
4. Dona Matilda Jayasundera
5. Agnas Edussuriya
6. Kusuma Edussuriya
7. Chandra Edussuriya
8. Richard Edussuriya
9. Gilbert Edussuriya
10. Hilton Edussuriya
11. Grasilda Edussuriya  
All of Galpatha, Bahurupola.

12. Don Babunsinghe Kadanarachchi Of Kandana, Horana.
13. Don Lisi Perera Gunathilaka (Deceased)
- 13A. M.A.D.Chandrarathne of Kalutara, Ukwatte.
  
14. Poththapitiyage Thilonona
15. Poththapitiyage Dhopi Nona  
All of Aluthgama, Bandaragama
16. Yakupitiyage Alonoa of Palpola
17. Thomas Athulathmudali of Galpatha.
18. Y.M.B.Ratnayake of Bahurupola, Galpatha.  
(Deceased)
19. Aslin Perera Ileperuma of Galpatha.
20. Dayawathie Abeysekera of Athurugiriya
21. Dona M. Jayawardhane of 112, Gresland Road, Havelock Town.
22. Titus Jayawardhane of 112, Gresland Road, Havelock Town.
23. M.B.Gunawardhane of 151,Old Road, Kalutara.
24. D.A.Ranasinghe of Iduruwa (Deceased)
- 24A. Thilaka Ranasinghe of Iduruwa.
25. Torrington Jayawardhane of Kosgoda.
26. Biatris Jayawardhane of Kuruwita Kotuwa, Veyangoda.
27. Ianis Perera of Panagoda, Galpatha.  
(Deceased)
- 27A. M.A. Sardharatne of Galpatha
28. Kopyawaththe Podinona of Bahurupola  
(Deceased)
- 28A. K.P.Peris Singho of Bahurupola
29. Robert of Kopyawastte (Deceased)
- 29A. Felix Singho of Kivitiyagala, Bahurupola
30. Edussuriyage Anis Perera (Deceased)
- 30A. K. Thisahami of Bahurupola
31. Kopyawattage David Perera of  
(Bahurupola) (Deceased)

- 31A. Kevitiyagela Withanage Felix Singho,  
32. Kopyawattage Peatin of Bahurupola  
(Deceased)  
**32A. Kopyawattage Haramanis Perera of  
Bahurupola**  
33. Poththapitiyage William of Bahurupola  
34. Poththapitiyage Daisanona of  
Bahurupola  
35. Poththapitiyage Kalo Nona of Bahurupol  
36. Pindo Nona of Bahurupola  
37. Lionel Senevirathne of Ayagama, Horana  
38. D.L.Rajapakshe of Urbun Side, Dehiwala  
39. Karalina Perera Ileperuma (Deceased)  
39A. Kularathne of Ihala Warakagoda,  
Warakagoda.  
40. Sunil Perera of Ileperuma  
41. Wilfred Perera of Galpatha  
42. Kopyawatte Wisimano of Bahurupola  
43. Edussuriyage Romiel of Bahurupola  
44. Kongaha Kankanamge Nimalhami (Deceased)  
45. Edussuriyage Aginona of Galpatha  
46. K. M. Perera of Galpatha.  
47. D.Edwin Edussuriya of Bahurupola  
48. K. Albic Perera of Bahurupola (Deceased)  
49. E.P.Emosingho of Bahurupola  
50. Kongahakankanamalage Somawathie of  
Galpatha.  
51. Poththapitiyage Aslin Nona of Galpatha.  
52. Poththapitiyage Kevich Nona of Koholana.  
53. Edussuriyage Rosalin of Bahurupola.  
54. Ileperuma Acharige Edwin Perera Gunathilake  
Of Galpatha, Bahurupola.

**Defendants**

**AND BETWEEN**

8. Richard Alfred Edussuriya of Galpatha  
Bahurupola.

**8<sup>th</sup> Defendant Appellant**

**Vs**

Ileperuma Arachchige Edwin Perera Gunathilaka,  
Galapatha, Bahurupola.

**Plaintiff Respondent**

1. Dona Yasawathie Weerakkodi of Karannagoda  
(Deceased)

1A. Nimal Lakshman Kannangara of Karannagoda.

2. Terlin Lenora Hamine of Doodangoda

3. Shanthilatha Waidyasekara of Karannagoda.

4. Dona Matilda Jayasundera

5. Agnas Edussuriya

6. Kusuma Edussuriya

7. Chandra Edussuriya

8.

9. Gilbert Edussuriya

10. Hilton Edussuriya

11. Grasilda Edussuriya

All of Galpatha, Bagurupola.

12. Don Babunsinghe Kadanarachchi Of Kandana,  
Horana.

13. Don Lisi Perera Gunathilaka (Deceased)

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- 24A. Thilaka Ranasinghe of Iduruwa.
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32. Kopyawattage Peatin of Bahurupola  
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52. Poththapitiyage Kevich Nona of Koholana.
53. Edussuriyage Rosalin of Bahurupola.
54. Ileperuma Acharige Edwin Perera Gunathilake Of Galpatha, Bahurupola.

### **Defendant Respondents**

### **AND NOW BETWEEN**

Kopiyawattage Herman Perera of Elamodara,  
Galaptha.

**32A Defendant Respondent Appellant**

Kopiyawattage Indika Nalin Perera of Elamodara,  
Galpatha.

**Substituted 32 A Defendant Respondent  
Appellant**

Vs

Richard Alfred Edissuriya, Galpatha, Bahurupola.

**8<sup>th</sup> Defendant Appellant Respondent**

Ileperuma Arachchige Edwin Perera Gunathilaka  
of Galpatha, Bahurupola.

**Plaintiff Respondent Respondent**

1. Dona Yasawathie Weerakkodi of Karannagoda  
(Deceased)
- 1A. Nimal Lakshman Kannangara of Karannagoda.
2. Terlin Lenora Hamine of Doodangoda
3. Shanthilatha Waidyasekara of Karannagoda.
4. Dona Matilda Jayasundera
5. Agnas Edussuriya
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9. Gilbert Edussuriya
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30. Edussuriyage Anis Perera (Deceased)
- 30A. K. Thisahami of Bahurupola
31. Kopiyawattage David Perera of  
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- 31A. Kevitiyagela Withanage Felix Singho,
- 32.
  
- 32A.**
33. Poththapitiyage William of Bahurupola
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Bahurupola
35. Poththapitiyage Kalo Nona of Bahurupol
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38. D.L.Rajapakshe of Urbun Side, Dehiwala
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53. Edussuriyage Rosalin of Bahurupola.
54. Ileperuma Acharige Edwin Perera Gunathilake Of Galpatha, Bahurupola.

**Defendant Respondent Respondents**

**BEFORE**

**: S. EVA WANASUNDERA PCJ.,  
PRASANNA JAYAWARDENA PCJ. &  
L. T. B. DEHIDENIYA J.**

**COUNSEL**

**: Saliya Pieris PC with Lisitha Sachindra for  
the 32 A Defendant Respondent Appellant.  
Ranjan Suwandarathne PC with  
Y.P.Mathugama for the 8<sup>th</sup> Defendant  
Appellant Respondent and 4<sup>th</sup> to 11<sup>th</sup>  
Defendant Respondent Respondents.**

**ARGUED ON**

**: 25.06.2018.**

DECIDED ON : 03. 08. 2018.

**S. EVA WANASUNDERA PCJ.**

This Appeal arises from the judgment of the Civil Appellate High Court which set aside the 'impugned order' of the District Court in a Partition Action. This Court has granted leave to appeal on three questions of law, two of which are as suggested by the Appellant and one of which was suggested by the 8<sup>th</sup> and 4<sup>th</sup> to 11<sup>th</sup> Defendant Respondent Respondents. They read as follows:-

1. Have the learned High Court Judges failed to evaluate and address their minds as to the provisions of the Section 36 A of the Partition Law which specifically states that leave to appeal must be first had and obtained in respect of an appeal against an order relating to final partition?
2. Have the learned High Court Judges erroneously held that the Section 754 with regard to Appellate procedure is applicable to an application made under and in terms of Section 36 of the Partition Law when Section 36A of the Partition Law specifically deals with the Appellate procedure with regard to an **order** made under and in terms of Section 36?
3. Can the 32A Defendant Respondent Petitioner invoke the jurisdiction of the Supreme Court by way of leave without having participated in the case before the Civil Appellate High Court?

First and foremost the factual position has to be understood. The Plaintiff, Ileperuma Arachchige Edwin Perera Gunathilaka had filed a Partition action on 20.05.1969 against 43 Defendants to partition the land named Muruthagaha-aswedduma, Thirimawaladenibima and Godelle situated at the village Bahurupola within the Kalutara District containing in extent of 7 Acres 3 Roods and 14 Perches (A7 R3 14 P). At the trial, the corpus was identified and admitted by all the parties as depicted in the Preliminary Plan No. 486 dated 23.06.1975 prepared by Premaratne, Licensed Surveyor. Shares were allotted by the judgment of the District Court after about 15 years and **no appeal** was preferred by any party against the judgment and the interlocutory decree. The District Court then issued a Commission to the Surveyor, Seneviratne to prepare **the Final Scheme of Partition**. The final Plan No. 9014 dated 08.04.1996 and the commission report was filed in Court.

Both in the Preliminary Plan No. 486 dated 18.03.1972 prepared by Premaratne, Licensed Surveyor and in the **final Plan No. 9014 dated 08.04.1996 by Seneviratne** Licensed Surveyor, a large water hole of an extent of A 1. R 1. P 29 was shown within the land. This area is like a huge basin which contains water and was identified as Lot C in Plan No. 486 and as **Lot 3 in Plan No. 9014**. This had been created due to the removal of soil by various people for a long time for the purpose of making bricks and selling the same to outsiders.

In the Final Scheme of Partition, the said Lot 3 in Plan No. 9014 was allocated to the 4<sup>th</sup> to 11<sup>th</sup> Defendants. They objected to the final scheme on the ground that it is unreasonable to include the said water hole entirely in their allotment and moved for an **alternative plan**. Another ground alleged was that **Lot 3 had been allocated without any road access** to the said Lot 3 in the final plan. Court issued a commission and an **alternative plan dated 21.05.1998 was prepared by Serasinghe**, Licensed Surveyor. This alternative plan bears no number on the copy filed in the brief before this Court. **It provides for an access road to the new Lot 3** and the said new Lot 3 covers only **70%** of the water hole and the **new Lot 3 also includes a portion of the high land as well**. The alternative plan has changed the boundaries to Lots 3,4, and 5 and those who got Lots 4 and 5 in the final plan, namely the 32A Defendant and '19<sup>th</sup> and 41 Defendants together' also got their proper shares as well. In this Partition action, I observe that there is Lot 16 from the high land which is of an extent of 1 A 0 R 16.3 P which was left unallotted and a common access road of 12 Perches marked as Lot 17 was allotted to those who received Lots 7, 12, 13, 14 and 15 in the final plan as well as the alternative land.

I also observe that the Plaintiff, Ileperuma Arachchige Edwin Perera Gunathilaka, had received only Lot 9 which is only 17.3 Perches in extent.

After the alternative plan was filed, the matter regarding the way the Surveyor Seneviratne, the Court Commissioner had allocated the land at the Final Scheme of Partition was fixed for inquiry. At the end of the inquiry, the learned District Judge made **Order dated 23.05.2001** rejecting the alternative plan and **confirming the final plan and entered the final decree accordingly**.

The 8<sup>th</sup> Defendant was aggrieved by that Order of the District Judge and appealed against the same on the ground that the learned District Judge had erred in his

findings on facts by not evaluating the evidence at the inquiry with regard to the Final Scheme of Partition, properly and that the learned District Judge had misled himself by misconceiving in law as well. The Plaintiff raised a preliminary objection with regard to the maintainability of the Appeal on the ground that the 8<sup>th</sup> Defendant had not obtained “leave to appeal” from the Civil Appellate High Court before he filed the Petition of Appeal. The Plaintiff had submitted that the Order of the learned District Judge was made under Section 36(1) (a) of the Partition Law after holding an inquiry regarding the reasonableness of the proposed division of the land into different allotments; that Section 36A of the Partition Law provides that any person who is dissatisfied with an Order of court made under Section 36 should prefer an Appeal against such Order to the Court of Appeal with the leave of the Court of Appeal first had and obtained; and that the 8<sup>th</sup> Defendant who had appealed, instead of first seeking leave to appeal, had therefore not followed the proper procedure which is bad in law and is misconceived in law. The Plaintiff moved for a dismissal of the Appeal.

The 4<sup>th</sup> to 11<sup>th</sup> Defendant Respondents before the Civil Appellate High Court supported the 8<sup>th</sup> Defendant Appellant’s Appeal and moved Court to allow the Appeal of the Appellant. The Plaintiff Respondent, namely Ileperuma Arachchige Edwin Perera Gunathilaka filed written submissions. The 4<sup>th</sup> to 11<sup>th</sup> Defendant Respondents filed one written submission in support of the 8<sup>th</sup> Defendant Appellant. The 8<sup>th</sup> Defendant Appellant also filed written submissions as directed by Court. The learned High Court Judges considered the written submissions of the parties who filed them and delivered their judgment on 23.09.2010, setting aside the Judgment of the District Judge and **confirming the alternative plan marked as 8D dated 21.05.1998 made by Serasinghe, Licensed Surveyor** and directed to demarcate new boundaries to Lots 3, 4, and 5 since the other allotments and the improvements allocated to them are not affected and remained unchanged from the demarcation done in the Final Scheme of Partition plan made by Seneviratne Licensed Surveyor.

Then, **the 32 A Defendant Respondent Appellant** had obtained leave to appeal from this Court, on the three questions of law as aforementioned above against the judgment of the Civil Appellate High Court.

The name of the 32A Defendant Respondent Appellant is named as Kopyawattage Haramanis Perera of Bahurupola. He was also known as

Kopiyawattage Herman Perera. He passed away on 12. 05. 2012 while this Appeal was pending in the Supreme Court and he was substituted by his son, Kopiyawattage Indika Nalin Perera and named in the Caption as “ Substituted 32A Defendant Respondent Appellant”.

At the time oral submissions were made before this Court, the Counsel for the 8<sup>th</sup> Defendant Appellant Respondent alleged that the substituted 32A Defendant Respondent was not a party who contested the Appeal before the Civil Appellate High Court and that due to that reason , he cannot appeal to the Supreme Court against the judgment of the Civil Appellate High Court. The Substituted 32A Defendant Respondent Appellant brought up an argument to the effect that his client was a contesting party before the Civil Appellate High Court even though there was no such contest by him according to the Court record. He explained why he submitted that his client was a contesting party, the reason being that the said 32 A Defendant Respondent Appellant was substituted in the District Court in the room of the Plaintiff when the Plaintiff had passed away while the case was pending in the District Court and that the Plaintiff had contested the Appeal before the Civil Appellate High Court.

The Counsel for the substituted 32A Defendant Respondent Appellant drew the attention of this Court to the journal entry number 194 dated 07.07.1992 which reads as that 32A Defendant is appointed as the Substituted Plaintiff. Even then, in this new Amended Caption which is filed by the said Substituted 32A Defendant Respondent Appellant himself, also, the Plaintiff Respondent Respondent’s name appears as Ileperuma Arachchige Edwin Perera Gunathilaka. Even at the time the 8<sup>th</sup> Defendant Appellant Richard Alfred Edussuriya appealed to the Civil Appellate High Court from the judgment of the District Court , in the caption , the name of any Substituted Plaintiff is not mentioned. It may be that the caption was not corrected to carry out the appointment of the substituted plaintiff mentioning the name of the 32 A Defendant Respondent, Kopiyawattage Haramanis Perera alias Kopiyawattage Herman Perera as the Substituted Plaintiff. Yet, I observe that the name of the Substituted Plaintiff in the District Court is mentioned as ‘K.M.Perera’ and not as ‘K.H.Perera’.

I decide however that this Court sees no need to consider the argument of the Appellant’s counsel, at this hour, that **he was a contesting party before the Civil Appellate High Court** as he was the substituted plaintiff in the case at that time,

since there are complications with regard to the caption of the District Court and the Civil Appellate High Court as well as observing that the caption alone before this court runs to 9 typewritten A4 size papers.

The Partition Law was amended by Act No. 17 of 1997 and the amended Section 36 and Section 36A read as follows:-

Section 36 (1) - On the date fixed under Section 35, or on any later date which the Court may fix for the purpose, **the Court may, after summary inquiry:**

**(a) Confirm with or without modification the scheme of partition proposed by the surveyor and enter final decree of partition accordingly;**

**(b) Order the sale of any lot,** in accordance with the provisions of this Law, at the appraised value of such lot given by the Surveyor under Section 32, where the Commissioner has reported to Court under Section 32 that the extent of such lot is less than the minimum extent required by written law relating to the subdivision of land for development purposes and **shall enter final decree of partition** subject to such alterations as may be rendered necessary by reason of such order of sale.

Section 36(2) – The provisions of Sections 41, 42, 43, 44, 45, 45A, 46, 47 and 48(2) shall mutatis mutandis apply to a sale ordered under paragraph (b) of subsection(1).

The said sections 36(1) and 36(2) are with regard to the **final decree of partition**. Section 36A is with regard to Appeals.

**Section 36A** reads as follows:

Any person dissatisfied with **an order of the court made under Section 36**, may prefer an appeal against such order to the Court of Appeal, **with the leave of the Court of Appeal first had and obtained**.

The 32A Defendant Respondent Appellant **argued** that the 8<sup>th</sup> Defendant Appellant Respondent **had not obtained leave to appeal** when he was aggrieved by the Order of the District Judge and had instead incorrectly preferred the

Appeal against the said Order, contrary to the prevailing law, i.e. Section 36A of the Partition Law.

I observe that the Civil Appellate High Court has not specifically mentioned and /or quoted Section 36A within the judgment. The learned Judges have quoted from Section 36 stating that , “ Firstly it should be noted that the abovementioned contention is baseless because the Section 36 of the Partition Law envisage in the following manner.” He had then placed the exact wording as it is in the amended Section 36(1)(a) and placed the same within inverted commas. The learned High Court Judges then referred to Section 754(4) and 754(5) of the Civil Procedure Code and had come to the conclusion that ‘ the order of the District Judge rejecting the alternative plan ought to be considered as an order having the effect of a final judgment because the said Order has dealt with not only refusal of the alternative scheme of partition but also confirmation of the final scheme of partition and entering the final decree accordingly.’ The finding of the Civil Appellate High Court Judges was that there was no necessity to obtain leave to appeal from the Order of the District Judge.

In the case in hand the question in hand is whether the District Judge when delivering his conclusion in the matter after the summary inquiry, **has delivered an Order as referred to in Section 36A** of the Partition Law as amended by Act No. 17 of 1997. Even though Section 36A refers to “an Order of Court made under Section 36” , does it mean ‘an order made under Section 36 (1)(a)’ or ‘an order made under Section 36(1)(b)’ or both?

Reading Section 36A with Section 36(1) (b) , it is understood that any party who is aggrieved by the **order of a sale of any lot** in the final partition scheme, may prefer an Appeal against such order , **with the leave of the Court of Appeal first had and obtained.** However, reading Section 36A with Section 36(1)(a) ,this Court has to decide whether it can be understood that the **conclusion** reached by “ Court after summary inquiry , confirming the scheme of partition proposed by the surveyor and entering final decree of partition accordingly” is equal to **an Order** as envisaged by Section 36A or whether it can be understood that such conclusion reached by the Court is **not equal to an Order** as envisaged by Section 36A.

The learned District Judge has come to a conclusion after having heard all parties and after considering the final scheme of partition done by the court commissioner and the alternative scheme of partition done again by another court commissioner with the permission of court as requested by some of the affected parties, at the end of the summary inquiry. Therefore the District Judge had come to a decision which is conclusive on merits. It is a confirmation of the scheme of partition proposed by one of the surveyors. It has brought the matter to a finality. The District Judge's conclusion is the confirmation of the final scheme of partition made under Section 36(1)(a).

There are legal authorities which have been followed at different times by our Courts with regard to 'Orders' and 'Judgements' and 'Orders which can be categorized as a final adjudication of the matters before Court' in deciding whether litigants should file a final appeal or an appeal with leave of the Court of Appeal first had and obtained. In the case of ***Dona Padma Priyanthi Senanayake Vs H.G. Chamika Jayantha and two Others***, 2016 BLR 74 which is contained in the 2017 Bar Association Law Journal Reports Vol XXIII at page 74 in case number SC Appeal 41/2015 ( SC Minutes of 04.08.2017 ) decided by a bench of 7 Judges, Chief Justice, Priyasath Dep PC it was held that the proper approach to decide whether an order given by court has the effect of a final judgement or not, is the approach adopted by **Lord Esher in Salaman Vs Warner** [ 1891, 1 QBD 734 ] , 60 L J Q B 624 and cited with approval later by **Lord Denning in Salter Rex and Co. Vs Gosh** [1971, 2 All ER 865].

In ***Salaman Vs Warner,(supra)*** **Lord Esher** stated thus:

“ The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands finally disposed of the matter in dispute, I think that for the purpose of these rules, it is final. On the other hand, if their decision , if given in one way, will finally dispose of the matter in dispute, but if given in the other, will allow the action to go on, then I think it is not final but interlocutory.”

In fact, the decision of the 7 Judge Bench in the case of ***Dona Padma Priyanthi Senanayake Vs H.G. Chamika Jayantha and two Others*** 2016 BLR 74 **confirmed** the stand taken by the 5 Judge Bench presided by Dr. Shirani



Bandaranayake J ( as she then was ) in deciding the case of ***S.R. Chettiar and Others Vs S.N.Chettiar and Others*** **2011 BLR 25, 2011 2 SLR 70.**

In the case in hand, I find that the judgment of the District Judge of Kalutara had given an order / conclusion which finally disposed the matter in dispute because giving that order/conclusion either way, in favour of the Appellants or the Respondents, it had the effect of a finality. In other words, if the District Judge concluded the other way, granting that the alternative scheme of partition was correct instead of granting that the final scheme of partition was correct, then again the matter comes to a finality. Therefore, according to the aforementioned authorities, I am of the view that, the decision of the District Judge was an order/conclusion with a finality and therefore the party who preferred the appeal had taken the correct path of having filed a Final Appeal. It was not an interlocutory order from which a leave to appeal application would have had to be filed by the aggrieved party.

I hold that the confirmation of the final scheme of partition by the District Judge was a decision bringing the matter to a finality and it is not an Order as envisaged by Section 36A of the amended Partition Law. The argument of the 32A Defendant Respondent Appellant against the 8<sup>th</sup> Defendant Appellant Respondent fails.

The learned Judges of the Civil Appellate High Court has correctly analyzed the law and interpreted the Section 754(4) and 754(5) of the Civil Procedure Code and held thus at page 8 of their judgment:

“ When this rule is applied to the facts of this case, it would appear that the order rejecting the alternative scheme of partition and plan while confirming the final partition scheme is an order which has a character of a final judgment because the rights of the 8<sup>th</sup> Defendant is completely denied by the said order.”

Having said that, and then having analyzed the evidence before the inquiry with regard to the nature of the case, the Civil Appellate High Court Judges have concluded that Surveyor Seneviratne had acted in an arbitrary manner when he prepared the Final Scheme of Partition disregarding the directions given in the

interlocutory decree as regards the allotment of shares. According to this final scheme Lot 3 allotted to the Appellant has no access to the main road. No adequate access was given to any roadway from Lot 3, nor to the main road nor to the road depicted in the North Eastern side of the land. In fact the District Judge seems to have turned a blind eye to the said fact of not granting any roadway from Lot 3 to the Appellant. The water hole or the water basin is about 10 feet deep and covers a huge area. Having analyzed the evidence and the plans before the Appellate Court, the High Court has arrived at the conclusion that “ on comparison with the Final Plan, the Alternative Plan is much more pragmatic and realistic”. They have confirmed the demarcations marked in the alternative plan.

I answer the questions of law aforementioned in favour of the Appellant and against the Respondents. I affirm the judgment of the Civil Appellate High Court.

The Appeal is dismissed. However I do not order costs.

Judge of the Supreme Court

Prasanna Jayawardena PCJ.

I agree.

Judge of the Supreme Court

L.T.B. Dehideniya J.

I agree.

Judge of the Supreme Court

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