

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

*In the matter of an appeal under Section 5C of
the High Court of the Provinces (Special
Provisions) (Amendment Act) No. 54 of 2006
read with Article 128(4) of the Constitution of
the Republic of Sri Lanka.*

SC Appeal No. 124/2015

SC/HCCA/LA No. 345/13

SP/HCCA/GA/LA No.
01/2011

D.C. Galle Case No.
13024/P

Koralage Tharalis.

No. 03,

Pettiwatta,

Gammeddegoda,

Rathgama.

PLAINTIFF

Kande Dayawathi De Silva

Kulasekara.

No. 03,

Pettiwatta,

Gammeddegoda,

Rathgama.

(Presently at,

No. 77/81,

Dawatagahawatte,

Polgasowita.)

SUBSTITUTED PLAINTIFF

Vs.

1. Thotagamuwage Uvaneris.
Palliyampitiya,
Rathgama.
2. Reparamadu Crispilatha.
Devinigoda,
Rathgama.
3. Wimalasooriya Wickramanayake
Adigama Mudalige Premawathi.
Devinigoda,
Rathgama.
4. Wimalasooriya Wickramanayake
Adigama Mudalige Chandrapala.
Devinigoda,
Rathgama.
5. Wimalasooriya Wickramanayake
Adigama Mudalige Danapala
Batadandugoda,
Katudampe,
Rathgama.
6. Koralage Soloman.
Devinigoda,
Rathgama.
7. Abeysekara Gunawardana
Sirisena.
Pitiduwa,
Habaraduwa.

8. Kamalawathi Thuppahi
Gunawardana alias Jane.
Pitiduwa,
Habaraduwa.
9. P. H. Lionel De Silva.
Anandigoda,
Rathgama.
10. Manimeldura Padmawathi
'Kokila'.
Devinigoda,
Rathgama.

DEFENDANTS

AND THEN BETWEEN

1. Reparamadu Crispilatha.
Devinigoda,
Rathgama.
2. Wimalasooriya Wickramanayake.
Adigama Mudalige Chandrapala
Devinigoda,
Rathgama.

**2nd and 4th DEFENDANT-
PETITIONERS**

Vs.

1. Koralage Tharalis.
No. 03,
Pettiwatta,
Gammeddegoda,
Rathgama.

PLAINTIFF-RESPONDENT

Kande Dayawathi De Silva
Kulasekara.
No. 03,
Pettiwatta,
Gammeddegoda,
Rathgama.
(Presently at,
No. 77/81,
Dawatagahawatte,
Polgasowita.)

**SUBSTITUTED PLAINTIFF-
RESPONDENT**

2. Thotagamuwage Uvaneris.
Palliyampitiya,
Rathgama.
3. Wimalasooriya Wickramanayake
Adigama Mudalige Premawathi.
Devinigoda,
Rathgama.

4. Wimalasooriya Wickramanayake
Adigama Mudalige Danapala.
Batadandugoda,
Katudampe,
Rathgama.
5. Koralage Soloman.
Devinigoda,
Rathgama.
6. Abeysekara Gunawardana
Sirisena.
Pitiduwa,
Habaraduwa.
7. Kamalawathi Thuppahi
Gunawardana alias Jane.
Pitiduwa,
Habaraduwa.
8. P. H. Lional De Silva.
Anandigoda,
Rathgama.
9. Manimeldura Padamawathi
'Kokila'.
Devinigoda,
Rathgama.

1st, 3rd and 5th-10th

DEFENDANT-RESPONDENTS

AND NOW BETWEEN

1. Reparamadu Crispilatha.
Devinigoda,
Rathgama.

2. Wimalasooriya Wickramanayake
Adigama Mudalige Chandrapala.
Devinigoda,
Rathgama.

**2nd and 4th DEFENDANT-
PETITIONER-APPELLANTS**

Vs.

Koralage Tharalis.
No. 03,
Pettiwatta,
Gammeddegoda,
Rathgama.

**PLAINTIFF-RESPONDENT-
RESPONDENT**

Kande Dayawathi De Silva
Kulasekara.
No. 03,
Pettiwatta,
Gammeddegoda,
Rathgama.
(Presently at,

No. 77/81,
Dawatagahawatte,
Polgasowita.)

**SUBSTITUTED PLAINTIFF-
RESPONDENT-RESPONDENT**

2. Thotagamuwage Uvaneris.
Palliyampitiya,
Rathgama

3. Wimalasooriya Wickramanayake
Adigama Mudalige Premawathi
(Deceased).
Devinigoda,
Rathgama.

5. Wimalasooriya Wickramanayake
Adigama Mudalige Danapala
(Deceased)
Batadandugoda,
Katudampe,
Rathgama.

6. Koralage Soloman.
Devinigoda,
Rathgama.

7. Abeysekara Gunawardana
Sirisena **(Deceased)**.
Pitiduwa,
Habaraduwa.

8. Kamalawathi Thuppahi
Gunawardana alias Jane
(Deceased).
Pitiduwa,
Habaraduwa.
9. P. H. Lionel De Silva
Anandigoda,
Rathgama.
10. Manimeldura Padamawathi
'Kokila'.
Devinigoda,
Rathgama.

DEFENDANT-RESPONDENT-
RESPONDENTS

- 3A. Manimeldura Gamini Kantha.
No. 225/8,
Nature's view,
Vihara Mawatha,
Hewagama,
Kaduwela.
- 5A. Koralage Soloman.
Devinigoda,
Rathgama.
- 7A. Wimalasooriya Wickramanayake
Adigama Mudalige Chandrapala.
Devinigoda,

Rathgama.

8A. Wimalasooriya Wickramanayake
Adigama Mudalige Chandrapala.
Devinigoda,
Rathgama.

BEFORE : **P. PADMAN SURASENA, J.**
MAHINDA SAMAYAWARDHENA, J.
K. PRIYANTHA FERNANDO, J.

COUNSEL : Saliya Pieris, PC with Susil Wanigapura for the 2nd and 4th
Defendant-Petitioner-Appellants.

Prince Perera, Bhashini Dassanayake with Udara
Thilakawardena instructed by Nadeeka Gurusinghe for the
Substituted Plaintiff-Respondent-Respondent.

ARGUED &
DECIDED ON : 01-07-2024

P. PADMAN SURASENA, J.

Court heard the submissions of the learned President's Counsel for the 2nd and 4th
Defendant-Petitioner-Appellants and also the submissions of the learned Counsel for
the Substituted Plaintiff-Respondent-Respondent and concluded the argument of this
case.

The Plaintiff has filed the action relevant to the instant appeal in the District Court
seeking to partition the land referred to in the Plaint.

After the trial, the learned District Judge deciding to partition the land, has pronounced
the Judgment dated 13-05-2002 and directed that the Interlocutory Decree be

entered. The Court then issued a commission on the Surveyor to take steps to submit the Scheme of Partition. The Surveyor thereafter, had submitted the Scheme of Partition which has been produced in this proceeding, marked **P9 A** (Plan No. 422B prepared by A. Weerasinghe, Licensed Surveyor).

Upon the 2nd and 4th Defendants objecting to the said Scheme of Partition (**P9 A**), the learned District Judge had conducted an inquiry. It was in that process that the 2nd and 4th Defendants had submitted an alternative Scheme of Partition which has been produced in this proceeding, marked **P9 B** (Plan No. 265A, dated 15-10-2007, prepared by Weeraddana Kamalaseena, Licensed Surveyor).

After the inquiry, the learned District Judge by his Order dated 14-01-2011, had decided to reject the alternative Scheme of Partition **P9 B** submitted on behalf of the 2nd and 4th Defendants and decided to accept the Scheme of Partition as per the Plan 422B (**P9 A**) which was the Scheme of Partition originally proposed by the Court Commissioner.

Being aggrieved by the said Order dated 14-01-2011, pronounced by the learned Additional District Judge of Galle, the 2nd and 4th Defendants had filed a Leave to Appeal Petition before the Provincial High Court of Civil Appeals. The Provincial High Court of Civil Appeals having considered the submissions at the support stage of the case had refused to grant Leave to Appeal to the said Petition by its Order dated 16-07-2013.

Being aggrieved by the Order dated 16-07-2013, pronounced by the Provincial High Court of Civil Appeals, the 2nd and 4th Defendants have filed the Leave to Appeal Petition relevant to this appeal in this Court.

Upon the said Leave to Appeal Petition being supported, this Court by its Order dated 21-07-2015, had decided to grant Leave to Appeal in respect of the questions of law set out in Paragraphs 18(c), 18(d), 18(e), 18(f), and 18(g) of the Petition dated 22-08-2013. The said questions of law are reproduced (in verbatim) below:

- c) Did the Hon. High Court Judges fail to consider that the learned Additional District Judge of Galle did not apply the principle of fairness which ought to be present in a Scheme of Partition?*
- d) Did the Hon. High Court Judges and the learned Additional District Judge of Galle fail to consider that the plan bearing No: 422B dated 7th of December 2006 has significantly failed to provide a fair Scheme of Partition which is detrimental to the Petitioners, whereas plan bearing No. 265A dated 15th October 2007 presents a fairer Scheme of Partition?*
- e) Did the Hon. High Court Judges fail to consider that the Commissioner A. Weerasinge's plan No. 422B allocates road frontage of the corpus of the Partition Action only to the 1st Respondent while the Surveyor Weeraddana Kamalaseena's plan No. 265A allocates road frontage to all the lots of the corpus?*
- f) Did the Hon. High Court Judges fail to consider that allocating 4.5 perches of land from the corpus to provide a road way is unnecessary and unfair waste of land?*
- g) Did the Hon. High Court Judges fail to consider that the Partition Scheme adopted by the learned Additional District Judge will result in the shares of land being allotted to the Petitioners to become each split into two different lots from two different places some of which cannot be put to any use according to law?*

Having considered the submissions made by the learned Counsel for both parties, we take the view that it would suffice for us to provide answers only to the questions of law set out in afore-stated Paragraphs 18(c), 18(d), and 18(g) of the Petition.

Mr. Saliya Peiris, PC, for the 2nd and 4th Defendants brought to our notice that several sub-divided lots of the corpus are of very small extents. Some of such lots could be

identified as follows: Lot No. 09, the extent of which is 1.6 perches; Lot No. 04, the extent of which is 2.9 perches; Lot No. 06, the extent of which is 1.3 perches; Lot No. 07, the extent of which is 0.4 perches; Lot No. 08, the extent of which is 0.4 perches; Lot No. 10, the extent of which is 2.8 perches; Lot No. 11, the extent of which is 1.7 perches.

We observe that the afore-mentioned Scheme of Partition would result in allotting to the parties, the extents which would become less than the minimum extent required to be maintained by written law regulating the sub-division of lands for development purposes. This is a requirement in terms of Section 31 (2) of the Partition Law (as amended by Act No. 17 of 1997). It is also pertinent in this regard to refer to Section 32 of Partition Law which is reproduced below.

Section 32, Partition Law.

(1) The surveyor shall make his return to the commission, verified by affidavit, substantially in the form set out in the Second Schedule to this Law, on or before the returnable date or the extended date (as the case may be) fixed under section 27, and together with such return he shall transmit to the court-

(a) the plan of partition prepared by him, in duplicate;

(b) a certified copy of his field notes;

(c) a report, in duplicate, explaining the manner in which the land has been partitioned stating the names of the parties, the nature and extent of their respective shares and interests and where any such extent is less than the minimum extent required by any written law relating to sub-division of land for development purposes, a statement to that effect, the dates on which the land was partitioned, and, where a lot is allotted in common to several parties, specifying each party's share of that lot;

(d) the appraised value of each lot and of any improvements thereon and where the Court has directed the Commissioner to allot portions of land together as one lot under section 26, the appraised valuation of portions considered as one lot, and any improvements thereon and the details of the computation of such value ; and

(e) a summary of distribution, such report, appraisal, summary and certificate being substantially in the form set out in the Second Schedule to this Law.

(f) a certificate to the effect that the plan of partition is in conformity with written law relating to the subdivision of land for development purposes

(2) Where no provision is made in the interlocutory decree for the allotment of a lot in common, the surveyor shall not allot a lot in common to any parties without the written consent of those parties.

Thus, where the extent of any sub-divided lot is less than the minimum extent required by any written law relating to sub-division of land for development purposes, Section 32 (1) (c) requires the Surveyor to include in his return to the commission, which must be verified by an affidavit, a statement to that effect.

Similarly, Section 32 (1) (f) requires the Surveyor to include in his return to the commission, which must be verified by an affidavit, a certificate to the effect that the plan of partition is in conformity with written law relating to the subdivision of land for development purposes.

We also observe that the Surveyor is obliged in terms of Section 32 (1) (d) of Partition Law, to divide the corpus as far as practicable, in such a manner as would enable the allotment to a party to be made as one lot.

We observe that the Court Commissioner has failed to comply with Section 32 (1) (c), Section 32 (1) (d) and Section 32 (1) (f) of Partition Law when preparing the proposed Scheme of Partition as per **P9 A** and his report.

There is no dispute by parties before us, that the aforementioned extents of the aforementioned small portions are less than the minimum extent required to be maintained by written law regulating the subdivision of lands for development purposes. Therefore, the Scheme of Partition as per **P9 A** is contrary to Section 31 (2) of Partition Law as amended.

Thus, as regards the report submitted by the Court Commissioner, we observe that the bear averment in his affidavit that he partitioned the corpus in accordance with Section 32 of Partition Law is incorrect.

Moreover, there is no material before Court to satisfy itself that it is in fact possible for the respective allottees of these small portions, to use these small portions of land for some use other than for development purposes, once the possession of those lots are handed over to them. In that sense, it is not only the 2nd and 4th Defendants who have chosen to come before us, but the other respective parties to whom the other small portions have been allotted, would also get adversely affected by the Scheme of Partition (**P9 A**) which the learned Additional District Judge of Galle has accepted. Therefore, it is in the best interest of all such parties that the Court should reject the Scheme of Partition (**P9 A**) and take steps to get a fresh Scheme of Partition prepared. The learned Judges of the Provincial High Court of Civil Appeals have failed to appreciate these aspects of the case.

For the foregoing reasons, we answer the afore-mentioned questions of law as follows.

I. Answer to the question of law set out in 18(c).

In the affirmative.

II. Answer to the question of law set out in 18(d).

The learned Judges of the Provincial High Court of Civil Appeals and the learned Additional District Judge of Galle have failed to appreciate that the Plan bearing No. 422B dated 11th of December 2006, has significantly failed to provide a fair Scheme of Partition.

III. Answer to the question of law set out in 18(g).

The learned Judges of the Provincial High Court of Civil Appeals and the learned Additional District Judge of Galle have failed to appreciate that the Scheme of Partition adopted by the learned Additional District Judge of Galle will result in small plots of land being allotted to some parties which are scattered in different places and hence cannot be put to an effective use according to law.

Accordingly, we decide to set aside the Order dated 16-07-2013, pronounced by the Provincial High Court of Civil Appeals and also set aside the Order dated 14-01-2011, pronounced by the learned Additional District Judge of Galle.

We direct the learned Additional District Judge to take steps to get a fresh Scheme of Partition prepared according to law.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree,

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J.

I agree,

CK/-

JUDGE OF THE SUPREME COURT