

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

In the matter of an appeal.

Mohmed Ibrahim Saheed Noor Badriya,  
199, Garagoda, Yatiyanthota.

**Plaintiff**

**S.C. Appeal No. 170/2012  
SP/HCCA/KAG/489/2007 (F)  
D.C. Kegalle No. 14764/P**

**Vs.**

- 1A. Vijjapedige Somapala,  
Vedamedura Road, Urumeewala,  
Bulathkohupitiya.
- 2A. P. Alice,  
Urumeewala, Bulathkohupitiya.
3. Don Ranil Nishantha Muhandiramge,  
38, Church Road, Colombo 15.
4. M. J. S. Adaviya,  
C/o M. S. M. Nizar, 211, Kothawatta,  
Mavanella.
5. M. J. S. Hasuwa Alias Puthumuttu Beebi,  
Kumarimulla, Pugoda.
6. Vijja Pedige Amali,  
Urumeewala, Bulathkohupitiya.

**Defendants**

**AND THEN BETWEEN**

Mohmed Ibrahim Saheed Noor Badriya,  
199, Garagoda, Yatiyanthota.

**Plaintiff-Appellant**

**Vs.**

- 1A. Vijjapedige Somapala,  
Vedamedura Road, Urumeewala,  
Bulathkohupitiya.
- 2A. P. Alice,  
Urumeewala, Bulathkohupitiya.
3. Don Ranil Nishantha Muhandiramge,  
38, Church Road, Colombo 15.
4. M. J. S. Adaviya,  
C/o M. S. M. Nizar, 211, Kothawatta,  
Mavanella.
5. M. J. S. Hasuwa Alias Puthumuttu Beebi,  
Kumarimulla, Pugoda.
6. Vijja Pedige Amali,  
Urumeewala, Bulathkohupitiya.

**Defendant-Respondents**

**AND NOW BETWEEN**

Don Ranil Nishantha Muhandiramge,  
38, Church Road, Colombo 15.

**3<sup>rd</sup> Defendant-Respondent-Appellant**

**Vs.**

Mohmed Ibrahim Saheed Noor Badriya,  
199, Garagoda, Yatiyanthota.

**Plaintiff-Appellant-Respondent**

- 1A. Vijjapedige Somapala (Deceased),  
Vedamedura Road, Urumeewala,  
Bulathkohupitiya.
- 1B. Piramannage Alice,  
Urumeewala, Bulathkohupitiya.
- 1C. Anura Jayalath,  
Vedamedura Road, Urumeewala,  
Bulathkohupitiya.
- 1D. Samantha Jayalath,  
Vedamedura Road, Urumeewala,  
Bulathkohupitiya.
- 1E. Ajith Jayalath,  
Vedamedura Road, Urumeewala,  
Bulathkohupitiya.
- 1F. Jayantha Jayalath,  
Vedamedura Road, Urumeewala,  
Bulathkohupitiya.
- 2A. P. Alice,  
Urumeewala, Bulathkohupitiya.
4. M. J. S. Adaviya,  
C/o M. S. M. Nizar, 211, Kothawatta,  
Mavanella.
5. M. J. S. Hasuwa Alias Puthumuttu Beebi,  
Kumarimulla, Pugoda.
6. Vijja Pedige Amali,  
Urumeewala, Bulathkohupitiya.

**Defendant-Respondent-Respondents**

**Before: Hon. Jayantha Jayasuriya, P.C., C.J.**

**Hon. A. L. Shiran Gooneratne, J.**

**Hon. Janak De Silva, J.**

**Counsel:**

P. P. Gunasena for the 3<sup>rd</sup> Defendant-Respondent- Appellant

Rohan Sahabandu, P.C. for the Plaintiff-Appellant-Respondent

Thushani Machado for the 1B to 1F Defendant-Respondent-Respondents

**Written Submissions:**

01.03.2013 by the 3<sup>rd</sup> Defendant-Respondent-Appellant

09.07.2020 by the Plaintiff-Appellant-Respondent

03.11.2014 by the 1A Defendant-Respondent-Respondent

**Argued on: 08.08.2022**

**Decided on: 10.07.2024**

**Janak De Silva, J.**

The Plaintiff-Appellant-Respondent (Respondent) instituted this action on 30.11.1987 to partition the corpus.

On 13.12.1990, the 3<sup>rd</sup> Defendant-Respondent-Appellant (Appellant) sought to intervene before entering the interlocutory decree which was allowed.

After all parties filed their respective statement of claims, points of contest were recorded and trial commenced on 08.02.1993.

The learned District Judge delivered judgment on 27.07.2007 dismissing the action.

The Respondent appealed to the High Court of Civil Appeal of the Sabaragamuwa Province holden at Kegalle (High Court).

During the hearing before the High Court, it transpired that on 11.01.1991 the learned District Judge had delivered judgment and ordered that the interlocutory decree be entered. Court as well as the parties appeared to have overlooked this and proceeded to trial again which culminated in the dismissal of the action on 27.07.2007.

The learned High Court Judges acting in revision set aside the judgment dated 11.01.1991 and vacated all proceedings had thereafter and sent the case back to the District Court for the learned District Judge to proceed with the action from the order dated 13.12.1990 allowing the Appellant to intervene.

Aggrieved by this judgment, the Appellant sought leave to appeal.

Court granted leave to appeal on the following questions of law:

- (1) Therefore, a careful perusal and analysis of the principal record of the case does not indicate that the interlocutory Decree was delivered in terms of the mandatory provisions of Section 184 of the Civil Procedure Code on 11.01.1991,
- (2) Accordingly, there was no Interlocutory Decree delivered by the Learned District Judge on 11.01.1991 to be set aside by the Civil Appeal High Court acting in revision,

The Counsel for the Respondent was permitted to raise the following question of law:

- (3) After entering the judgment dated 11.01.1991 by the District Court of Kegalle, is there jurisdiction of the Judge for the District Court to continue with the case?

This matter was heard before us on 08.08.2022. At the end of the hearing, all three Counsel agreed that this matter can be settled and it can be referred back to the High Court to consider the appeal on its merits. Parties undertook to file a joint motion setting out their position for the Court to make an order.

On 18.03.2024, parties filed a joint motion setting out the terms of the amicable settlement. The joint motion has been signed on behalf of the Appellant, Respondent and 1B to 1F Defendant-Respondent-Respondents.

Accordingly, parties have agreed to vary the judgment of the High Court dated 17.12.2010 as follows:

1. Parties agreed to Court deleting the following part from the fourth (4<sup>th</sup>) paragraph of the judgment dated 17.12.2010 of the high Court:  
“and vacate all the proceedings had thereafter and sent back to the District Court for the Learned District Judge to proceed with the action from the order dated 13<sup>th</sup> December 1990 allowing the 3<sup>rd</sup> Defendant-Respondent to intervene”.
2. The parties further agreed that, subject to the aforesaid variations, the Court making a direction to the High Court to re-hear and determine the appeal bearing No. SP/HCCA/KAG/489/07 (F) set forth in the petition of appeal dated 20<sup>th</sup> September 2007 preferred by the Respondent.

Acting pursuant to the terms of settlement entered into between parties, we make order as follows:

(A) We vary the judgment dated 17.12.2010 of the High Court by deleting the following part from the fourth (4<sup>th</sup>) paragraph of the judgment dated 17.12.2010 of the High Court:

*“and vacate all the proceedings had thereafter and sent back to the District Court for the Learned District Judge to proceed with the action from the order dated 13<sup>th</sup> December 1990 allowing the 3<sup>rd</sup> Defendant-Respondent to intervene”.*

(B) We direct the High Court to re-hear and determine the appeal bearing No. SP/HCCA/KAG/489/07 (F) set forth in the petition of appeal dated 20<sup>th</sup> September 2007 preferred by the Respondent.

The High Court should now proceed to re-hear and determine the appeal bearing No. SP/HCCA/KAG/489/07(F) set forth in the petition of appeal dated 20<sup>th</sup> September 2007 preferred by the Respondent against the judgment of the District Court of Kegalle dated 27.07.2007. `

Parties shall bear their costs.

**Judge of the Supreme Court**

**Jayantha Jayasuriya P.C., C.J.**

I agree.

**Chief Justice**

**A.L. Shiran Gooneratne, J.**

I agree.

**Judge of the Supreme Court**