

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

1A. Godayalage Thilakapala,

Madagoda, Warakapola.

Substituted Plaintiff-Appellant-Appellant

Vs.

SC/APPEAL/102/2019

SP/HCCA/KEG/65/2016(F)

DC KEGALLE 24666/P

1. Liyanaarachchige Romel Nona,

Madagoda, Warakapola

And Others

Defendants-Respondents-Respondents

Before: Hon. Chief Justice Murdu N.B. Fernando, P.C.

Hon. Justice A.L. Shiran Gooneratne

Hon. Justice Mahinda Samayawardhena

Counsel: Chaminda Seneviratne for the Appellant.

Malaka Herath for the Respondents.

Argued on: 18.10.2024

Decided on: 27.03.2025

Samayawardhena, J.

The plaintiff instituted this action in the District Court of Kegalle on 08.05.1987 seeking to partition the land described in the schedule to the plaint among the plaintiff and the 1st to 5th defendants. In the plaint, the

plaintiff stated that he was entitled to an undivided $\frac{1}{4}$ share of the land, while the balance $\frac{3}{4}$ share devolved on the 1st to 5th defendants.

Following the preliminary survey, the 6th defendant intervened. Thereafter, the plaintiff filed an amended plaint dated 23.09.1988, in which he claimed an undivided $\frac{3}{4}$ share of the land and stated that the balance $\frac{1}{4}$ share should devolve only on the 1st to 3rd defendants.

After trial, by judgment dated 18.10.2001, the District Judge dismissed the plaintiff's action on the ground that the plaintiff had failed to identify the corpus. On appeal, by judgment dated 19.05.2009, the High Court affirmed this finding. However, by order dated 01.10.2010, the Supreme Court directed a retrial on the basis that the judgments of the lower courts had been delivered without substituting some of the deceased parties.

There was no existing plan to identify the land at the stage of the preliminary survey. The land was described in the schedule to the plaint based on the description in the plaintiff's old deeds. The plaintiff identified the land as *Paranawatta*, whereas the contesting defendants identified the whole or part of the land as *Hitinawatta*. The plaintiff was not residing on the land, whereas the contesting defendants were. The contesting defendants have separate deeds for *Hitinawatta*.

In his report, the surveyor who prepared the preliminary plan did not state that he had identified the land described in the schedule to the plaint on the ground. Instead, he merely recorded the different views expressed by the parties during the survey regarding the identification of the corpus. The surveyor was not called to give evidence at the first trial but was called at the second trial. However, his testimony did not provide a clear identification of the land. During cross-examination, he admitted that he could not identify the land either by extent or by boundaries (*vide* page 234 of the brief).

Following the second trial, by judgment dated 31.08.2016, the new District Judge dismissed the plaintiff's action on the same ground—the failure to identify the corpus. This decision was again affirmed by the High Court by judgment dated 08.03.2018.

This Court granted leave to appeal on the same question of identification of the corpus. During the argument, counsel made brief oral submissions and informed the Court that they would file further written submissions. However, none of the parties filed post-argument written submissions.

Having examined the evidence—both oral and documentary—led in the case, I find no reason to interfere with the concurrent findings of two District Judges and four High Court Judges that the plaintiff has failed to identify the corpus. I dismiss the appeal with costs.

Judge of the Supreme Court

Murdu N.B. Fernando, P.C., C.J.

I agree.

Chief Justice

Shiran Gooneratne J.

I agree.

Judge of the Supreme Court