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

In the matter of an Appeal in terms of Article 127, 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5 (C) of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

S.C. Appeal No:

154/2018

SC/HCCA/LA No:

534/2017

WP/HCCA/AV No:

1699/2017/(F)

District Court of Awissawella

Case No: 22233/P

Wijesinghage Nimalawathie,

Rambukkanagama, Ingiriya.

PLAINTIFF

Vs.

1. Wewalpanawa Gamage
   Sugathansingho,
   No.200, Bope,
   Padukka **(Deceased)**

1A. Wewalpanawa Gamage
   Lalitha Ramani,
   No. 277, Bope, Padukka.

2. Kuda Balage Lalitha Ranjani,
   No. 523, Colombo Road,
   Padukka.

3. Gamalajjage Jayathilake,
   No. 278, Ingiriya Road,
   Bope, Padukka.
4. Kuda Balage Rani
   Chandralatha,
   No. 523, Colombo Road,
   Padukka.
5. Kuda Balage Leelawathie,
   No. 276 A, Arukwatte-North,
   Padukka.

DEFENDANTS

AND BETWEEN

Wijesinghage Nimalawathie,
Rambukkanagama, Ingiriya.

PLAINTIFF-APPELLANT

Vs.

1. Wewalpanawa Gamage
   Sugathansingho,
   No.200, Bope,
   Padukka **(Deceased)**

1A. Wewalpanawa Gamage
Lalitha Ramani,
No. 277, Bope, Padukka.

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No. 523, Colombo Road,
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3. Gamalajjage Jayathilake,
No. 278, Ingiriya Road,
Bope, Padukka.

4. Kuda Balage Rani
Chandralatha,
No. 523, Colombo Road,
Padukka.

5. Kuda Balage Leelawathie,
No. 276 A, Arukwatte-North,
Padukka.

DEFENDANT-RESPONDENTS

AND NOW BETWEEN

Gamalajjage Jayathilake,
No. 278, Ingiriya Road,
Bope, Padukka.

3rd DEFENDANT-RESPONDENT-APPELLANT

Vs.

Wijesinghage Nimalawathie,

Rambukkanagama,

Ingiriya. **(Deceased)**

PLAINTIFF-APPELLANT-

RESPONDENT

1A. Wewalpanawa Gamage

Jothipala

1B. Wewalpanawa Gamage

Buddhika Lankara

1C. Wewalpanawa Gamage

Nishadi Dilrukshika

1D. Wewalpanawa Gamage

Vidusha Wathsala Lankani

All of Rambukkanagama, Ingiriya.

SUBSTITUTED PLAINTIFF-

APPELLANT-RESPONDENTS

1. Wewalpanawa Gamage
   Sugathasingho, No.200,
   Bope, Padukka **(Deceased)**

1A. Wewalpanawa Gamage
Lalitha Ramani, No. 277,
Bope, Padukka.

2. Kudabalage Lalitha Ranjani,
No. 523, Colombo Road,
Padukka.

4. Kuda Balage Rani
Chandralatha,
No. 523, Colombo Road,
Padukka.

5. Kuda Balage Leelawathie,
No. 276, Uthuru
Arukwatte, Padukka.

DEFENDANT-RESPONDENT-RESPONDENTS

Before : P. Padman Surasena, J.

: Mahinda Samayawardhena, J.

: Sampath B. Abayakoon, J.

Counsel : Rohan Sahabandu, P.C. with Chathurika Elvitigala and Pubudu Weerasuriya instructed by Sachini Senanayake for the 3rd Defendant-Respondent-Appellant

: Pradeep Perera with Sureka Wijendra instructed by Anushka Jayaweera for the Plaintiff-Appellant-Respondent

: Pubudu Alwis with Gavesha Amarasinghe instructed by Nandana Perera for the 1A Defendant-Respondent-Respondent

: Nihal Somasiri instructed by Hashini Rathnayaka for the 2nd Defendant-Respondent-Respondent

Argued on : 24-02-2025

Written Submissions : 12-09-2024 (By the 2nd Defendant-Respondent-Respondent)

: 14-02-2020 (By the Plaintiff-Appellant-Respondent)

: 14-03-2019 (By the 3rd Defendant-Respondent-Appellant)

Decided on : 03-06-2025

Sampath B. Abayakoon, J.

This is an appeal by the 3rd defendant-respondent-appellant (hereinafter sometimes referred to as the 3rd defendant-appellant or 3rd defendant) on the basis of being aggrieved by the judgment pronounced on 30-10-2017, by the Provincial High Court of the Western Province holden in Awissawella while exercising its civil appellate jurisdiction.

From the impugned judgment, the learned Judges of the High Court set aside the judgment pronounced by the learned Additional District Judge of Awissawella on 27-10-2016, where the partition action instituted by the plaintiff in District Court of Awissawella Case No. P/22233 was dismissed on

the basis that the said plaintiff failed to establish the original owner of the land sought to be partitioned to the satisfaction of the Court.

From the impugned judgment, the learned High Court Judges determined that in fact, the plaintiff of the District Court action has sufficiently proved the original owner of the land sought to be partitioned, and has proceeded to pronounce a judgment after having considered the corpus sought to be partitioned and the title pleaded by the parties in relation to the points of contest raised.

It has been determined that the corpus should be divided as stated in the appellate judgment.

When the application for Leave to Appel preferred by the 3rd defendant of the partition action was supported before this Court, Leave to Appeal was allowed on 05-10-2018 based on sub-paragraphs 3 and 4 of paragraph 29 of the petition dated 05-12-2017.

The said questions of law read as follows,

1. Was there any admissible evidence before the trial Court to hold that Pussewelage Podisingho and Wewalpanawa Gamage Podisingho is one and the same person?
2. Did the learned High Court Judge err in law and fact in holding same?

At the hearing of this appeal, it was submitted by the learned President's Counsel on behalf of the 3rd defendant-appellant that he is not disputing the identity of the corpus as lot E of the Final Partition Plan No. 17 dated 09-08-1954 made by Licenced Surveyor C. Thamby in District Court of Awissawella Partition Case No. 3375, and the fact that the said land has been correctly depicted in the preliminary Survey Plan No. 707 dated 24-09-2003 by the Commissioner appointed for the action, namely, Licensed Surveyor M. Kaluthanthri.

He did not dispute the fact that according to the final partition decree, the said lot E was allocated to Pussewelage Podisingho, who was the 8th defendant of the mentioned Partition Action No. 3375.

However, he strongly contended that the plaintiff-appellant-respondent (hereinafter referred to as the plaintiff) of the action failed to establish her claim that the said original owner Pussewelage Podisingho was also known as Pussallage *alias* Wewalpanawa Gamage Podisingho as claimed by her in her plaint in order to establish the original owner of the land sought to be partitioned.

It was his view that the learned Additional District Judge of Awissawella was correct on facts as well as the law, when the partition action was dismissed on the basis that the plaintiff failed to establish the original owner of the land, and therefore, had failed to prove the title as claimed by her to the satisfaction of the Court.

It was submitted that the learned Additional District Judge was correct in determining that the plaintiff's failure to substantiate her claim by producing the relevant birth certificates, death certificates etc. was sound reasoning in that regard. It was submitted further that the deeds relied on by the parties to claim rights over the corpus to be partitioned, does not support the contention as to the original ownership of the corpus on a basis that the person who became entitled to the corpus in the final partition decree is one and the same person as claimed by the plaintiff. It was his position that although at the commencement of the trial, two admissions have been recorded as to the original ownership, that admission would not prevent the 3rd defendant who entered the case after the initial recording of the admissions and points of contest, from challenging the original ownership claimed by the plaintiff.

It was contended by the learned President's Counsel that the learned Judges of the Provincial High Court of the Western Province holden in Awissawella were misdirected as to the relevant law when it was decided to set aside the judgment of the learned Additional District Judge of Awissawella and

pronounce a judgment, where partitioning of the land sought to be partitioned was ordered.

The plaintiff has instituted this action in terms of the Partition Law by the plaint dated 23-05-2001, seeking to partition the land mentioned in the schedule of the plaint. Although she has named only one defendant, the 2nd defendant had been subsequently added as a party.

The 2nd and the 3rd paragraphs of the plaint reads as follows,

> 2. මෙහි පහත උපලෙඛනයේ වඩාත් විස්තර කරන ඉඩම අවිස්සාවේල්ල දිසා අධිකරණ අංක 3357 දරන බෙදුම් නඩුවේ අවසාන තීන්දු ප්‍රකාශය අනුව හිමිවුයේ වේවැල්පනාව ගමගේ නොහොත් පුස්සැල්ලගේ පොඩිසිංඤෝ නමැති අයට ය.
> 3. ඉහත ඡේදයේ සඳහන් පොඩිසිංඤෝ මියගියෙන් ඔහුගේ අයිතිවාසිකම් මේරිනෝනා, දාවිත්සිංඤෝ, සුගතන්සිංඤෝ (1වී) හා ඩේවිට් යන අයට හිමිවිය.

When the matter was taken up for trial on 19-09-2005, parties to the action had admitted the above-mentioned 2nd and 3rd paragraphs of the plaint, which were averments relating to the original owner of the land as well as the persons who inherited from the original owner.

The trial has commenced by recording 1st to 7th points of contest on behalf of the plaintiff, and 8th to 13th points of contest on behalf of the 1st defendant of the action, and 14th to 16th points of contest on behalf of the 2nd defendant of the action.

However, after the plaintiff has concluded her evidence, and the evidence of the 1st defendant of the action was to commence, the 3rd defendant has intervened to the case, claiming that he had no knowledge of the partition action and he is entitled to lot 1 and 2 of the preliminary plan based on prescriptive rights. The said application had been allowed by the learned trial Judge, while an application by the 4th and the 5th defendants of the action to intervene has also been allowed. The said intervening parties have filed their respective statements of claims accordingly.

The claim of the 3rd defendant had been that although the land sought to be partitioned was lot E of the previous Partition Action No. 3367 of the

Awissawella District Court, even after the entering of the final decree of the said action, his father, namely Edwin Singho, was in possession of lot 1 and 2 of the preliminary Plan No. 707 prepared for the purposes of the partition action under appeal. The 3rd defendant had claimed his father, therefore, secured prescriptive rights to the said two lots, and on his demise, he is entitled to the ownership of the said two lots. On that basis, he has claimed the exclusion of lot 1 and 2 from the corpus to be partitioned.

It is clear from the statement of claim by the 3rd defendant that he has not raised any dispute as to the original ownership of the land as previously admitted by the parties.

The 4th and 5th defendants of the action, who were also subsequently added as parties, had also relied on the pedigree as stated by the plaintiff to claim their rights to the corpus sought to be partitioned.

When the further trial was recommenced on 02-08-2012, the 4th and the 5th defendants of the partition action have recorded points of contest No. 17 to 21 claiming rights for undivided 20 perches of land from the corpus based on the title pleaded by the plaintiff, while the 3rd defendant has raised points of contest No. 24 to 27 on the basis that he has prescriptive rights to lot 1 and 2 of the land depicted in the preliminary plan, and the said lots should be excluded from the corpus to be partitioned.

It needs to be noted that the 3rd defendant has not raised any contest in his statement of claim as to the original ownership of the land as claimed by the plaintiff, and neither when he was allowed to raise his points of contest, other than claiming the exclusion as pleaded by him.

If it was his position that he is not in agreement with the admissions recorded before he was added as a party, it was up to him to bring it to the attention of the learned trial Judge and move them to be removed or altered, which has also not been done.

When the trial recommenced on 04-10-2012, it was the 1A substituted defendant of the action who has given evidence representing the then deceased 1st defendant.

He too has gone on the basis that lot E of the previous partition action was allocated to the original owner Wewalpanawa Gamage Podisingho who was his grandfather, and has pleaded title under him as pleaded by the 1st defendant, though he has pleaded for a dismissal of the action.

When cross-examined on behalf of the 3rd defendant as to the original owner of the land in terms of the previous partition action, the witness has stated as follows (at page 162 of the appeal brief).

ප්‍ර. තමා දන්නවා නඩු කියන ඉඩම් කොටස?

උ. ඊ්.

ප්‍ර. දැනට ඒ කැබැල්ලට කවුද අයිතිවාසිකම් කියන්නේ?

උ. පොඩිසිංඤෝ.

ප්‍ර. වාසගම මොකක්ද?

උ. වේවැල්පනාවගේ පොඩිසිංඤෝ.

ප්‍ර. ඒ අයිතය දුන්නේ බෙදුම් නඩුවකින්?

උ. එහෙමයි.

ප්‍ර. ඒ නඩුව තමයි අංක: 3357 දරණ නඩුව?

උ. එහෙමයි.

ප්‍ර. ඒ නඩුවේදී 8 වන විත්තිකාරයා වුනේ පුස්සැල්ලගේ පොඩිසිංඤෝ කියන අය?

උ. ඒ නම් දෙකම කියල තියෙන්නේ පියාට තමයි.

ප්‍ර. පුස්සැල්ලගේ පොඩිසිංඤෝ කියන අය වේවැල්පනාවේ පොඩිසිංඤෝ කියන අය පුද්ගලයන් දෙන්නෙක් කියල මම කියන්නේ.

උ. එකයි.

ප්‍ර. තමා දැකල තියෙනවද?

උ. නැහැ. තාත්තා කියල තියෙනවා.

ප්‍ර. තමාගේ පුද්ගලික දැනීම අනුව දන්නේ නැහැ?

උ. නැහැ.

When it was the turn of the 3rd defendant-appellant of the action to give evidence before the trial Court, other than claiming prescriptive title for lot 1 and 2 of the land sought to be partitioned, he has not specifically taken up the position that the admitted original owner in terms of the previous partition action, namely Pussewelage Podisingho, was not a person also known as Wewalpanawa Gamage Podisingho as claimed by the plaintiff, other than claiming that the plaintiffs and others who claimed title to the property does not derive rights from the person who became entitled to the lot E of the previous partition action.

However, it needs to be noted that when cross-examined on behalf of the other defendants of the partition action, it appears that he has maintained the position that Wewalpanawa Gamage Podisingho and Pussewelage Podisingho are not one and the same person.

As I have stated previously, it is clear from the judgment dated 27-10-2016 pronounced by the learned Additional District Judge of Awissawella, the partition action has been dismissed solely on the basis that the plaintiff has not established the fact that Pussawelage Podisingho *alias* Pussalla Gamage Podisingho or Wewalpanawa Gamage Podisingho *alias* Pussallage Podisingho was one and the same person.

For matters of clarity, I will now reproduce the relevant point of contest 01 and the answer to it, which reads as follows,

> 1. දෙක පිළිගැනීමේ සඳහන් දාවිත් සිංඤෝ අවිවාහකව හෝ පැවැත්මක් නැතිව මිය ගියෙන් ඔහුගේ අයිතිය මේරි නෝනා, සුගතන් හා ඩේවිඩ් සිංඤෝ ට හිමි වේද?
>
> **පිළිතුර:** ඔප්පු කර නැත (පෑ. 1 අනුව පුස්සේවෙලගෙ පොඩිසිංඤෝ 02501 අනුව පුස්වෙලගේ පොඩිසිංඤෝ නොහොත් පුස්සැල්ල ගමගේ පොඩිසිංඤෝ හෝ වේවැල්පනාව ගමගේ පොඩිසිංඤෝ නොහොත් පුස්සැල්ලගේ පොඩිසිංඤෝ යන අය එකම අයකු බව තහවුරු කර නොමැත).

In view of the answer to the above point of contest, the rest of the points of contest had been answered as 'not relevant', other than the points of contest relating to the identity of the corpus to be partitioned.

The learned Additional District Judge has determined that the identity of the land sought to be partitioned is correctly depicted in the preliminary plan prepared by the Commissioner appointed for the purposes of the action.

The points of contest raised on behalf of the 3rd defendant who claimed prescriptive rights to lot 1 and 2 of the land sought to be partitioned has also answered stating that the 3rd defendant has failed to prove prescription.

When the dismissal of the partition action was challenged by the plaintiff before the Provincial High Court of the Western Province holden in Awissawella, the learned Judges of the High Court exercising its civil appellate jurisdiction, has determined that the learned Additional District Judge was wrong to have expected the relevant parties to produce birth certificate, marriage certificate or death certificate to establish the original owner of the land as one and the same person mentioned in the plaint.

Accordingly, the learned High Court Judges have proceeded to consider the admissions recorded as well as the deeds produced by the parties to claim their rights, and the evidence adduced before the trial Court to conclude that there was sufficient evidence before the trial Court as to the original owner claimed by the plaintiff and the other parties who claimed rights from the original owner.

It has also been determined that there was sufficient evidence to conclude that the original owner named in the action, namely Pussewelage Podisingho, who became the owner of the corpus to be partitioned, was one and the same person claimed by the plaintiff and others as Wewalpanawa Gamage *alias* Pussallage Podisingho, and hence, the learned Additional District Judge could have pronounced a positive judgment ordering the partitioning of the land sought to be partitioned.

Accordingly, the learned Judges of the High Court have proceeded to pronounce the impugned judgment, where the partitioning of the land sought to be partitioned has been ordered allocating 20 perches in common to 2nd, 4th and 5th defendants, while allocating an undivided 5/12 share to the plaintiff, undivided 5/12 share to the 1st defendant and keeping an undivided 2/12 share unallocated from the balance portion of the land sought to be partitioned. It has been determined that the 3rd defendant has failed to prove prescriptive rights to lot 1 and 2 of the lands shown in the preliminary plan, and the said lots should be part of the corpus, contrary to the contention of the 3rd defendant that the said lots should be excluded.

It is trite law that in a partition action, it is the duty of the trial Judge to examine the identity of the land sought to be partitioned and come to a firm finding in relation to that, and also to examine the title pleaded by the parties to come to a finding as to the title as well, before deciding to order a partitioning of the land in terms of the Partition Law.

In the case of **Piyaseeli Vs. Mendis (2003) 3 SLR 273**, it was held,

> *"1. The main function of a trial Judge in a partition action is to investigate title, it is a necessary prerequisite for every partition action.*
>
> *2. Partition decrees cannot be the subject of a private agreement between the parties on matters of title which the Court is bound by law to examine. There is a greater need for the exercise of judicial caution before a decree is entered."*

It was held in the case of **Sopinona Vs. Cornelis (2010) BLR 109 SC**,

1. *It is necessary to conduct a thorough investigation in a partition action as it is instituted to determine the question of title and such investigation devolves on the Court.*
2. *In a partition suit which is considered to be a proceeding taken for the prevention or redress of a wrong it would be the prime duty of the trial Judge to carefully examine and investigate the actual rights and title to the land sough to be partitioned.*

3. *In that process it would be essential for the trial Judge to consider the evidence led on the points of contest and answer all the points of contest raised as issues stating as to why those are accepted or rejected.*

However, it is well settled law that the original ownership of a land is not always placed on a very high degree of proof.

In the case of, **Gunasinghe Vs. Podi Amma and Others (2009) 1 SLR 174**, per **Abdul Salam, J.**;

> *"It is trite law that proof of original ownership of a land is not always placed at a very high degree and as such the plaintiff should have been shown some leniency relating to the proof of original ownership."*

In the case of **Magilin Perera Vs. Abraham Perera (1986) 2 SLR 208**, it was observed by **Goonewardene, J.** that,

> *"When a partition action is instituted, the plaintiff must perforce indicate an original owner or owners of the land. A plaintiff having to commence at some point, such owner or owners need not necessarily be the very first owner or owners and even if it be so claimed such claim need not necessarily and in every instance be correct because when such an original owner is shown it could theoretically and actually be possible to go back to still an earlier owner. Such questions being rooted in antiquity it would be correct to say as a general statement that it could be well nigh impossible to trace back the very first owner of the land. The fact that there was or may have been an original owner or owners in the same chain of title, prior to the one shown by the plaintiff if it be so established need, not necessarily result in the case of the plaintiff failing. In like manner if it be seen that the original owner is in point of fact someone lower down in the chain of title that the one shown by the plaintiff that again by itself need not ordinarily defeat the plaintiff's action. Therefore, in actual practice it is the usual, and in my view sensible, attitude of the Courts that it would not be reasonable to expect proof within very high degrees of probability on questions such as those relating to the original ownership of land. Courts by and large countenance infirmities in this*

regard, if infirmities they be, in an approach which is realistic rather than legalistic, as to do otherwise would be to put the relief given by partition decrees outside of the reach of very many persons seeking to end their co-ownership.

It is in this perspective and again such a background I think that this matter must be viewed."

Section 32 of the Evidence Ordinance relates to statements by persons who cannot be called as witnesses. I find that section 32(5) as relevant in the context of this case, where the 1st defendant has spoken about the way he came to know the fact that the original owner was known as Wewalpanawa Gamage *alias* Pussallage Podisingho.

The relevant 32(5) of the Evidence Ordinance reads as follows,

32(5). When the statement relates to the existence of any relationship by blood, marriage, or adoption between persons as to whose relationship by blood, marriage, or adoption the person making the statement had special means of knowledge and when the statement was made before the question in dispute was raised.

The case of **P.M. Cooray Vs. M.A.P. Wijesuriya 62 NLR 158** was a case where the relevancy of the evidence otherwise known as 'hearsay evidence' in a partition action was considered.

Per Sinnetamby, J.

"The relevant provisions of the Evidence Ordinance in regard to a proof of a pedigree are to be found in section 32(5), section 32(6) and section 50(2). I am omitting for the moment proof by the production of birth, death and marriage certificates. It almost always happens that birth and death certificates of persons who have died long ago are not available: in such cases the only way of establishing relationship is by hearsay evidence. Section 32(5) of the Evidence Ordinance renders a statement made by a deceased person admissible.

"When the statement relates to the existence of any relation by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge and when the statement was made before the question in dispute was raised."

It is under this provision of law that oral evidence of pedigree is sought to be led. What practitioners and the court sometimes lose sight of is the fact that before such evidence can be led there must be proof that hearsay evidence sought to be given is in respect of a statement made by a person having special means of knowledge: furthermore, it must have been made ante litem motam. Where the statement is made by a member of the family such knowledge may be inferred or even presumed, but where it is a statement made by an outsider, proof of special means of knowledge must first be established."

In his evidence, the 1st defendant has clearly stated that the admitted original owner Podisingho was his grandfather, and has claimed rights under his father SugathanSingho from whom he has come to know that his grandfather was known as Pussewelage Podisingho, and was also known as Wewalpanawa Gamage Podisingho. Therefore, I am of the view that such knowledge that came through a member of the family can be inferred and presumed.

When it comes to the facts relating to the case under appeal, there had been no dispute that the land sought to be partitioned had been allocated to one Pussewelage Podisingho, who was the 8th defendant in District Court of Awissawella Partition Action No. 3357. The plaintiff, the 1st, 2nd, 4th and 5th defendants in the partition action have claimed rights based on the person who became entitled to lot E in the said partition action.

It is my view that the only question that needs determination would be whether the said Pussewelage Podisingho was also known as Wewalpanawa Gamage Podisingho and/or Pussallage Podisingho as claimed by the parties who has claimed rights to the corpus or whether Pussewelage Podisingho was

not one and the same person known as above as claimed by the 3rd defendant-appellant.

In order to reach a finding in that regard, a trial Judge will have to look at the evidence placed before the Court in its totality, and not in its isolation. In that process, it becomes necessary to consider documentary, oral, as well as other attendant circumstances in that regard. It is also necessary to draw the attention to the admissions recorded and the points of contest raised by the parties as well, in investigating title in a partition action.

As I have stated before, at the very outset of the trial, parties have admitted the 2nd and the 3rd averment of the plaint, which relates to the identity of the original owner of the land and those who became entitled to the land upon his death.

Although the 3rd defendant-appellant has entered the case after the recording of the above admissions and the conclusion of the plaintiff's evidence, when it was his turn to raise his points of contest, he has never decided to challenge the admissions which were previously recorded by the parties.

It is clear from the case record that, when the 3rd defendant raised his points of contest, it was well within his knowledge that the admissions have been recorded as to the original owner and his identity.

It needs to be noted that, the 4th and the 5th defendants of the partition action had recorded their points of contest on the same day as the 3rd defendant, but before the 3rd defendant recorded his points of contest (page 154 of the appeal brief). This goes on to show that even they have relied on the assertion of the plaintiff as to the original ownership and devolution of title.

I find that since it is on the points of contest raised by the parties, a partition action would be determined, there was no impediment for the 3rd defendant-appellant to raise such a point of contest as he is now relying on to argue this appeal, at the appropriate stage of the case, which he has not chosen to do so.

It is clear from the evidence placed before the trial Court that neither the plaintiff nor the 3rd defendant has actually seen the person who became entitled to the lot E in the previous Partition Action No. 3357, and all of them had relied on what they were told by their fathers in that regard.

I am of the view that since a person, although he may have one name, can use another name in his day-to-day affairs for various reasons, and that in itself would not mean that he was not one and the same person.

I find that in the deed marked 2V1, namely Deed No. 465, attested on 07-06-1956, the person who became entitled to the lot E in Partition Action No. 3357 has transferred his rights identifying him as Pussawelage Podisingho *alias* Pussalla Gamage Podisingho, which shows that the original owner has not used the same name even soon after the final partition decree, which has been entered on 1st June 1955. Therefore, it can be safely assumed that the children of the original owner have used their name as Wewalpanawa Gamage, which may have been the reason why the deeds written after the death of the original owner refers to their names as Wewalpanawa Gamage rather than Pussewelage.

It is my considered view that if the learned Additional District Judge carefully examined the title pleaded by the parties who are entitled to shares from the corpus to be partitioned, there was no impediment for the learned Judge to determine as to the title of the parties and to pronounce a decree ordering the partitioning of the land sought to be partitioned.

For the reasons as set out above, I find that the learned Judges of the Provincial High Court of the Western Province holden in Awissawella were correct in deciding to set aside the judgment of the learned Additional District Judge and proceed to pronounce a proper partition judgment having considered the claim for prescription made by the 3rd defendant in that regard as well.

Hence, I find no reasons to interfere with the appellate judgment pronounced by the learned judges of the Provincial High Court.

Accordingly, I answer the 1st question of law in the affirmative, and the 2nd question of law in the negative.

The appellate judgment dated 30-10-2017 pronounced by the learned Judges of the Provincial High Court of the Western Province holden in Awissawella, while exercising civil appellate jurisdiction, is hereby affirmed.

The appeal is dismissed. There will be no costs of the appeal.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court