

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

Kuruppu Mudiyansele Dayaratne,  
Godagama, Mawanella.

Plaintiff-Respondent-Appellant

**SC/APPEAL/103/2019**

**SP/HCCA/KAG/975/2012(F)**

**DC KEGALLE 26155/P**

Vs.

1. D.M. Sumanaratna Banda,  
Aranayaka Road, Mawanella.

1<sup>st</sup> Defendant-Appellant-Respondent

1A. Dissanayaka Mudiyansele Sandya  
Kodithuwakku,

1B. Dissanayaka Mudiyansele Chandima,

1C. Dissanayaka Mudiyansele Indra  
Dissanayaka,

1D. Kamalawathie Dissanayaka,

1E. Manoratna Acharilage Dingiri Amma,  
All of Aranayaka Road, Mawanella.

Substituted 1A, 1B, 1C, 1D and 1E

Defendant-Appellant-Respondents

2. Dissanayaka Mudiyansele Kapilaratne,  
No. 12, Tennekubura, Maha Nuwara.

2<sup>nd</sup> Defendant-Appellant-Respondent

Wickremasinghe Mudiyansele Ananda  
Kotadeniya, No.71, Mawana Road, Mawanella.

Substituted 2A Defendant-Respondent-  
Respondent

Before: Mahinda Samayawardhena, J.  
K. Priyantha Fernando, J.  
K.M.G.H. Kulatunga, J.

Counsel: Manohara De Silva, P.C., with Hirosha Munasinghe for the  
Plaintiff-Respondent-Appellant.

Rohan Sahabandu, P.C., with Chathurika Elvitigala,  
Sachini Senanayake and Pubudu Weerasuriya for the  
Substituted 1A-1E Defendant-Appellant-Respondents.

W. Dayaratne, P.C., with Ranjika Jayawardene for the  
Substituted 2A Defendant-Respondent-Respondent.

Argued on: 24.03.2026

Decided on: 31.03.2026

**Samayawardhena, J.**

The Plaintiff instituted this action in the District Court of Kegalle in 1994, naming one Defendant, seeking to partition the land described in the schedule to the plaint. The 2<sup>nd</sup> Defendant was subsequently added as a party. After trial, the learned District Judge delivered Judgment on 27.06.2012. According to that Judgment, the 1<sup>st</sup> Defendant was held not to be entitled to any soil rights in the land. Being dissatisfied with that Judgment, the 1<sup>st</sup> Defendant preferred an appeal to the High Court of Civil Appeal of Kegalle. The High Court set aside the Judgment of the District Court and ordered a retrial. Hence this appeal by the Plaintiff.

This Court granted leave to appeal against the Judgment of the High Court on the question whether the High Court erred in law and in fact in ordering a retrial on the basis that the Plaintiff had failed to establish the original owners set out in the pedigree.

In this case, there is no dispute as to the corpus. The dispute relates solely to the pedigree.

According to the original plaint, the original owner was Sara Manike, whose rights devolved on three persons, namely Ukku Manike, Dingiri Amma, and Punchi Manike. The 2<sup>nd</sup> Defendant accepted this position.

The 1<sup>st</sup> Defendant did not accept this position. In his statement of claim, he pleaded that there were two original owners, namely Jothi Hamy and Ran Manike.

The Plaintiff did not wholly reject the contention of the 1<sup>st</sup> Defendant. Then he amended the plaint and pleaded that, in addition to Jothi Hamy and Ran Manike, there was a third original owner, namely Mutu Manike. Thus, the dispute narrowed down to whether there were three original owners, namely Mutu Manike, Jothi Hamy, and Ran Manike, as contended by the Plaintiff, or only two original owners, namely Jothi Hamy and Ran Manike, as contended by the 1<sup>st</sup> Defendant.

At the trial, only the parties gave evidence, and on behalf of the 2<sup>nd</sup> Defendant, an additional witness was called. The learned District Judge analysed the evidence led at the trial and delivered the aforementioned Judgment.

On appeal, the High Court did not undertake an analysis of the evidence. Instead, it set aside the Judgment of the District Court and ordered a retrial on the basis that the learned District Judge ought to have considered who the predecessors of those three persons were, particularly in view of the fact that, in the original plaint, the Plaintiff had stated that the original owner was Sara Manike.

It is true that, in the original plaint, the Plaintiff stated that the original owner was Sara Manike. However, after the 1<sup>st</sup> Defendant filed his statement of claim, the Plaintiff departed from that position and set out a pedigree aligned with that of the 1<sup>st</sup> Defendant.

I accept that, in a partition action, the Plaintiff is required to set out a complete pedigree to the best of his knowledge and ability, and not an

incomplete pedigree. However, this does not mean that the Plaintiff must trace the pedigree from the very first owner. Once a first owner is identified, it is always possible to have a predecessor to that owner. It is neither practical nor necessary to trace the pedigree to the ultimate origin. The Plaintiff is required to commence the pedigree from a reasonable point and unfold it thereafter. What constitutes a reasonable starting point depends on the facts and circumstances of each case.

In any event, the approach adopted by the High Court is not correct. The High Court has adopted a convenient course of ordering a retrial without any justifiable basis. If the High Court was of the view that the analysis of the learned District Judge was erroneous, it ought to have undertaken its own evaluation of the evidence and either affirmed, varied, or set aside the Judgment. As stated earlier, in this case, only the parties gave evidence, apart from one additional witness called by the 2<sup>nd</sup> Defendant. At the time of trial, they were of advanced age. By now, both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have passed away, and their heirs have been substituted in their place. Those heirs cannot be expected to have better knowledge of the pedigree than their predecessors.

This is not a case where the 1<sup>st</sup> Defendant maintained that Sara Manike was the original owner and the learned District Judge failed to consider that position while commencing the pedigree from a lower point. On the contrary, the 1<sup>st</sup> Defendant's position was that there were only two original owners, namely Jothi Hamy and Ran Manike, whereas the Plaintiff's position was that there were three original owners, namely Mutu Manike, Jothi Hamy, and Ran Manike. The learned District Judge, having considered the evidence, accepted the Plaintiff's version for reasons stated in the Judgment. The High Court did not hold that this finding was erroneous, but instead proceeded on a different footing, namely that the learned District Judge had failed to consider predecessors above Mutu Manike, Jothi Hamy, and Ran Manike. On the facts and circumstances of this case, this is not a correct approach.

An order for retrial causes undue hardship to the parties and should not be made lightly.

For these reasons, I set aside the Judgment of the High Court dated 14.07.2014 and restore the Judgment of the District Court dated 27.06.2012. The appeal is allowed without costs.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court

K.M.G.H. Kulatunga, J.

I agree.

Judge of the Supreme Court