

**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) Act No: 19 of 1990 as amended by Act No: 54 of 2006.

N.M.K. Edman Nanayakkara,
No.30,
Bogahakotuwa Road,
Matale.
(Deceased)

SC Appeal No: 104/2014

SC/HCCA/LA No: 183/2013

CP/HCCA/LA/ Kandy No: 07/12/

D.C. Kandy Case No: P/11707/86

Plaintiff

N.M.K. David Nanayakkara,
No.30,
Bogahakotuwa Road,
Matale.

Substituted Plaintiff

Vs.

1. A.P.W. Wijetunge
Manikhinna,
Harikaduwa.
2. Leelawathie Wijetunge
Harikaduwa,
Manikhinna.
3. S.P. Gunawathie
Harikaduwa, Manikhinna

Defendants

AND BETWEEN

N.M.K. David Nanayakkara,
No.30,
Bogahakotuwa Road,
Matale.

**Substituted
Plaintiff-Petitioner**

Vs.

1. A.P.W. Wijetunge
Manikhinna,
Harikaduwa.

1st Defendant- Respondent

2. Chandrasiri Perera,
Harikaduwa,
Manikhinna.

Respondents

AND BETWEEN

N.M.K. David Nanayakkara,
No.30,
Bogahakotuwa Road,
Matale.

**Substituted
Plaintiff-Petitioner-Appellant**

Vs.

1. A.P.W. Wijetunge

Manikhinna,
Harikaduwa.

**1st Defendant-
Respondent-Respondent**

2. Chandrasiri Perera,
Harikaduwa,
Manikhinna.

**2nd Respondent-
Respondent**

AND NOW BETWEEN

Chandrasiri Perera,
Harikaduwa,
Manikhinna.

**2nd-Respondent-Respondent
-Appellant**

Vs.

A.P.W. Wijetunga
Manikhinna, Harikaduwa.

**1st Defendant-Respondent-Resp
ondent**

1A. Galle Kalasuriyage
Ariyawathi Mallika

1B. Nilanthi Rupika
Nanayakkara

1C. Nanayakkara Koralalage
Kingsely Emil Nanayakkara

1D. Nirosha Dilhani
Nanayakkara

All are in 40, Gogaha Town
Road,
Matale.

Substituted Plaintiffs
Respondents-
Appellants-Respondents

BEFORE:

HON. A.H.M.D. NAWAZ, J
HON. K. KUMUDINI WICKREMASINGHE, J
HON. A.L. SHIRAN GOONERATNE, J

COUNSEL:

S.N. Vijith Singh instructed by
Chithrananda G. Liyanage for the 2nd
Respondent-Respondent-Appellant.

Ranil Prematilake for the Party sought to
be substituted as the Substituted
Plaintiff-Respondent-Appellant-Responden
ts.

WRITTEN SUBMISSIONS:

By the 2nd
Respondent-Respondent-Appellant on
08.08.2014 and 09.07.2025

By the Substituted
Plaintiff-Respondents-Respondents-Respo
ndents on 23.10.2023

ARGUED ON:

06.06.2025

DECIDED ON:

23.03.2026

K. KUMUDINI WICKREMASINGHE, J.

The original plaintiff commenced proceedings seeking the partition of the land described in the schedule to the plaint in the District Court of Kandy. During the pendency of the proceedings, the original plaintiff died leaving as his heirs his wife, Punchi Nona Perera, and his children, including the present 2nd-Respondent-Respondent-Appellant (**hereinafter referred to as “Appellant”**). Thereafter, one of the heirs was substituted as the substituted plaintiff in the action bearing Case No. P/11707.

A final decree was entered on 12.10.2001 whereby the rights to Lot No. 2 depicted in Final Plan No. 2583 dated 29.08.2009 prepared by Bernard P. Rupasinghe, Licensed Surveyor, devolved upon Punchi Nona Perera together with Dharmasena Nanayakkara and Nandasena Nanayakkara. The Appellant had constructed a house on Lot No. 2 pursuant to an arrangement with Punchi Nona Perera and, following the entry of the interlocutory decree, purchased her share by Deed No. 1 dated 05.07.2003. Thereafter the Appellant continued to reside in the said house.

On 14.03.2003, upon returning from work, the Appellant discovered that the goods in the said house had been removed and placed outside. The Appellant then re-entered the house together with his belongings. Subsequently, upon inspection of the record in the partition action, it came to light that steps had been taken to obtain a writ of possession without making the Appellant a party to the proceedings and without reference to the said house in the relevant schedule.

Thereafter, the Substituted Plaintiff instituted proceedings under Section 52A of the Partition Law citing the Appellant as a party. The Appellant filed objections and an affidavit in opposition to the application. The matter was thereafter fixed for inquiry before the District Court of Kandy, at which evidence was led by the parties.

By order dated 27.01.2012, the learned District Judge dismissed the Substituted Plaintiff's application under Section 52A of the Partition Law. Being aggrieved by that order, the Substituted Plaintiff sought leave to appeal to the High Court of Civil Appeal of the Central Province holden at Kandy. By judgment dated 27.03.2013, the High

Court of Civil Appeal allowed the application. Being dissatisfied with that judgment, the Appellant preferred an appeal seeking leave to appeal, praying that the judgment of the High Court of Civil Appeal be set aside and that the order of the learned District Judge dated 27.01.2012 be affirmed.

During the Pendency of this appeal the Substituted Plaintiff passed away and his heirs were substituted in his appeal as the Substituted Plaintiff Respondent Appellant Respondents (**hereinafter referred to as the “Respondents”**).

This court by order dated 25.06.2014 granted leave to appeal on the questions of law set out in paragraph 13 (a),(c),(d),(f) and (g) of the petition dated 07.05.2013, namely:

- 1. Whether the High Court of Civil Appeal erred in law by not deciding the question that without executing writ in terms of Section 52 of the Partition Law, the application for writ of possession in terms of Section 52A could not have been maintained in the circumstances in this case?**
- 2. Whether the High Court of Civil appeal erred in law by pronouncing a judgment on due execution of the Deed No. 1 dated 5.7.2003, when the due execution could not have been decided in terms of Section 52 of the Partition Law, but in a separate case?**
- 3. Whether Section 52A of the Partition Law envisages the due execution?**
- 4. Did the High Court of Civil Appeal err in law by not accepting the Deed No. 1 dated 5.7.2003 to establish the petitioner's rights derived from the final decree of partition in the light of the evidence of the Notary?**
- 5. Your Lordships hold that Section 52A application could be maintained whether the petitioner has placed sufficient evidence before the learned District Judge at the inquiry that he purchased from Punchi Nona Perera in the circumstances of this case and**

whether the High Court of Civil Appeal erred in law in this regard?

My analysis hereafter will be confined to examining the aforesaid questions of law based on which leave was granted. As each of the questions of law arises in relation to the application of **Section 52A** of the Partition Law in the light of the evidence on record, it is both appropriate and convenient to consider them together. Accordingly, the said questions of law are addressed collectively in order to avoid unnecessary repetition and to ensure clarity in the determination of the issues arising for consideration.

The Appellant's central contention was that the requirements of Section 52 of the Partition Law had not been satisfied and that, in the absence of a proper execution of the writ of possession in terms of that section, the Respondent could not invoke the provisions of Section 52A. Evidence led before the District Court, including the testimony of the Registrar and a court clerk recorded in the proceedings dated 20.07.2005, indicated that no writ had been executed against the Appellant. Consequently, the Appellant maintained that the Respondent could not rely on Section 52A on the basis of dispossession when the writ had not been executed against the Appellant who remained in possession of the premises.

The Appellant further contended that the procedure prescribed by Section 52(2)(a) of the Partition Law had not been complied with. Where a person in occupation of a land or a house standing on such land is sought to be evicted, the statute requires that such person be named as a respondent in the petition seeking delivery of possession. In the present instance, the Appellant, who was in occupation of the house standing on Lot No. 2, had not been made a party to the relevant application for the execution of the writ.

The omission to name the Appellant as a party to the application was argued to vitiate the proceedings and render the order made in respect of the writ a nullity. Reliance was placed on authorities including ***Labella Perera Hamine v. Emcha Perera Hamine* [1990] 1 SLR page 8**, where non-compliance with Section 52(2)(a) had been held to invalidate the order for delivery of possession.

Another principal argument advanced by the Appellant related to the scope of the inquiry contemplated by Section 52A and its proviso. The Appellant maintained that the section envisaged only a limited inquiry to determine whether the person in possession derived title from a party who had obtained rights under the final decree of partition. The proviso to Section 52A precluded an order for delivery of possession where the respondent derived title directly or indirectly from a person who had obtained title under the final decree. The Appellant asserted that possession of the premises was derived from Punchi Nona Perera, a person entitled under the final decree, by virtue of Deed No. 1 dated 06.07.2003. Accordingly, the Appellant fell within the protection afforded by the proviso and could not be summarily ejected under Section 52A.

The Appellant also contended that the inquiry under **Section 52A** was not intended to constitute a full trial into questions of title or the due execution of a deed. The function of the District Court was limited to determining whether the person in possession claimed a right referable to a title derived from the final decree. The validity or due execution of the deed, including disputes regarding the authenticity of attesting witnesses' signatures, was argued to be a matter that could only properly be adjudicated in a separate action after the formulation of issues and the conduct of a full trial.

Reference was made to **Section 71 of the Evidence Ordinance**, which permits proof of execution by other evidence where an attesting witness denies or fails to recollect execution, a process which, according to the Appellant, could not properly be undertaken within the limited scope of an inquiry under **Section 52A**.

The Appellant further maintained that the High Court of Civil Appeal had erred in embarking upon an examination of the due execution of the deed and in concluding that the deed had not been duly executed. Such a determination, it was argued, exceeded the jurisdiction conferred by Section 52A and effectively amounted to adjudicating upon the validity of title in proceedings designed only to determine possession. The Appellant relied on authorities including ***Gunerwardene v. Dr. De Soyza* [1995] 2 SLR** and ***Pathirana v. Ahangama* [1982] 1 SLR 398**, which recognised that inquiries concerning resistance to delivery of possession were summary in

nature and did not finally determine questions of title, leaving the parties free to institute a regular action to establish their rights.

In addition, the Appellant contended that possession of the premises had been longstanding and derived from arrangements made with Punchi Nona Perera, followed by the purchase of her share after the interlocutory decree. The construction of the house on the land during the pendency of the partition proceedings did not, in itself, disentitle the Appellant from maintaining possession, particularly in the absence of any steps taken by the Respondent to restrain such construction. Authorities relating to co-ownership and the use of common property were invoked to support the proposition that the construction of a building on commonly owned land may, in appropriate circumstances, constitute a natural and ordinary use of the property.

The Respondent's case proceeded on the basis that the original partition action bearing No. 11707/P had been instituted in the District Court of Kandy by the father of the Substituted Plaintiff against three defendants. During the pendency of that action the original plaintiff died, whereupon his estate devolved upon his widow, Uduwarage Punchi Nona Perera, who became entitled to one-half share, and upon his children, including the Substituted Plaintiff and his two brothers, each of whom became entitled to a one-sixth share. The Substituted Plaintiff was thereafter substituted in place of the deceased plaintiff. By the final decree entered on 12.10.2001, Lot No. 2 depicted in Final Plan No. 2583 dated 29.08.2009 prepared by Bernard P. Rupasinghe, Licensed Surveyor, devolved upon Punchi Nona Perera together with the Respondent and his brothers Dharmasena and Nandasena Nanayakkara. No right or entitlement to the said lot devolved upon the Appellant, who was the son of the second defendant in the partition action.

Following the entry of the final decree, steps were taken to execute the writ and the Substituted Plaintiff was placed in possession of the said lot. It was alleged that the Appellant thereafter dispossessed the Substituted Plaintiff from the property. In consequence, the Substituted Plaintiff invoked the procedure provided under Section 52A of the Partition Law by filing an application in the same action seeking restoration of possession. The Appellant resisted the application and relied upon Deed of Transfer No. 01 dated 06.07.2003,

purportedly executed by Punchi Nona Perera and attested by Notary Public Nilanthi Senevirathne, as the basis upon which he claimed title to Lot No. 2.

The Respondent maintained that, within the scheme of Section 52A, a party who had been declared entitled to a land by a final decree of partition and who had subsequently been dispossessed was entitled to seek restoration of possession in the same action. In such proceedings the entitlement of the applicant flowed directly from the final decree itself and did not require further proof. Where the respondent to such an application sought to resist restoration of possession by invoking the proviso to **Section 52A**, the burden rested upon that respondent to demonstrate that he derived title either directly from the final decree or from a person who had obtained title thereunder.

It was contended that the Appellant failed to discharge that burden. The Appellant relied solely upon the purported deed of transfer dated 06.07.2003 to establish a derivative title from Punchi Nona Perera. In order for such a document to be admitted as evidence, compliance with the requirements of **Section 68 of the Evidence Ordinance** was necessary, which required proof of execution through the testimony of at least one attesting witness where such witness was available and capable of giving evidence. At the inquiry the Appellant called the second attesting witness to the deed. That witness denied having signed the deed and further indicated that he was unfamiliar with the parties and the notary who purportedly attested the instrument. The Appellant failed to call the other attesting witness to establish execution of the document.

The Respondents further relied on the requirements of **Section 2 of the Prevention of Frauds Ordinance No. 07 of 1840**, which required that a valid transfer of immovable property be executed in writing, signed by the transferor in the presence of a notary and two witnesses present at the same time, and duly attested by them. In light of the evidence led at the inquiry, including the denial of execution by the attesting witness and the inconsistencies in the testimony of the Appellant regarding the execution of the deed, it was contended that the statutory requirements governing execution had not been satisfied. Consequently, the deed relied upon by the Appellant could not be treated as a valid instrument capable of establishing title.

Against this background, the Respondents maintained that the learned District Judge had erred in dismissing the application under **Section 52A of Partition Law No.21 of 1977** without properly evaluating whether the Appellant fell within the class of persons protected by the proviso to that section. The High Court of Civil Appeal, upon granting leave, examined whether the District Court had correctly appreciated the scope of an inquiry under Section 52A and concluded that the inquiry necessarily required the court to determine whether the respondent to the application had established a derivative title from the final decree. The High Court held that the Appellant had failed to prove the due execution of the deed relied upon and therefore failed to demonstrate that he derived title from Punchi Nona Perera, who herself obtained title under the final decree.

The relevant statutory provisions are contained in Sections 52 and 52A of the Partition Law.

Section 52 of the **Partition Law No.21 of 1977** provides a mechanism for delivery of possession following the entry of a final decree. It recognises the right of a party who has been declared entitled to land under the final decree to obtain an order for delivery of possession within the same action.

Section 52A Partition Law No.21 of 1977, introduced by amendment to the Partition Law, provides an additional restorative mechanism where a party entitled under the final decree has been dispossessed. It provides in material part:

“Any person who has been declared entitled to any land by any final decree entered under this Law... and whose possession has been interfered with or who has been dispossessed... shall be entitled to make application, in the same action, by way of petition for restoration of possession.”

The section further requires the court, **after due inquiry**, to make such order for delivery of possession as the justice of the case may require.

However, the proviso to the section restricts the power of the court to grant restoration where the respondent to the application establishes

that he derives title directly or indirectly from a person who obtained title under the final decree.

Thus the statutory structure establishes three central propositions:

1. A party declared entitled under the final decree may seek restoration of possession in the same action.
2. The court must conduct a **due inquiry** before making an order.
3. Restoration must be refused if the respondent demonstrates that he derives title through a person who obtained rights under the final decree.

The operation of the proviso therefore necessarily requires the court to determine whether the respondent in possession in fact derives title from such a person.

The jurisprudence of this Court has repeatedly emphasised the special nature of remedies provided under the Partition Law.

In ***Peris v. Perera* [1896] 1 NLR 362**, Bonser C.J. emphasised the special responsibility of the Court in partition proceedings and observed that the Court “*should not regard a partition suit as one to be decided merely on issues raised by and between the parties*” and ought not to enter a decree unless it is “*perfectly satisfied that the persons in whose favour it makes the decree are entitled to the property*”.

This Court has further emphasised the importance of respecting the legal consequences of a final decree of partition. In ***Mohammed Faiys Mufeez Arfath v. Selladore Pathmanathan* SC/APPEAL/148/2023, decided on 05.03.2025**, this Court emphasised the finality attached to partition decrees and held that “*a final decree entered in a partition action cannot be challenged collaterally,*” noting that **Section 48 of the Partition Law** renders such decrees final and conclusive subject only to the limited statutory exceptions recognised in ***Fernando v. Marsal Appu* [1922] 23 NLR 370, *Mohamedaly Adamjee v. Hadad Sadeen* [1956] 58 NLR 217, and *Madurapperuma v. Wijesundara* [2019] 1 Sri LR 512**.

Equally relevant is the jurisprudence concerning the evidentiary requirements governing the proof of title through a deed.

Under **Section 68 of the Evidence Ordinance No. 14 of 1895** a document required by law to be attested cannot be admitted in evidence unless at least one attesting witness is called to prove its execution where such witness is available.

Similarly, **Section 2 of the Prevention of Frauds Ordinance No. 07 of 1840** requires that a valid transfer of immovable property must be executed before a notary public in the presence of two witnesses and duly attested by them.

This Court has repeatedly held that these requirements are not mere technicalities but fundamental safeguards governing the validity of conveyances of immovable property.

In ***Bentara Vidanalage Gunasena v. Bentara Vidanalage Nandasena alias Nandapema, C.A. 303/2000(F)***, decided on **26.09.2016**, His Lordship, Justice Nawaz observed “*a mere assertion of execution of a deed would not suffice,*” and that before a document may be relied upon to establish title “*it must be proved to have been duly executed,*” meaning that the statutory formalities governing execution have been complied with and the signatures of the executant and attesting witnesses are duly proved. The Court further observed that proof of execution within the meaning of section 2 of the **Prevention of Frauds Ordinance** requires proof that the document was signed in the presence of a notary and two witnesses present at the same time who attested the execution.

The jurisprudence of comparative jurisdictions reinforces the same principle. The requirement of proving the execution of a document required by law to be attested is mandatory. As explained by the Supreme Court of India in ***Janki Narayan Bhoir v. Narayan Namdeo Kadam [2003] AIR SC 761***,

“a document required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution... if there be an attesting witness alive and subject to the process of the Court.”

This principle is of direct relevance where a party resisting restoration of possession relies upon a deed as the source of his alleged title.

The central controversy in the present appeal concerns the scope of the inquiry contemplated by **Section 52A**. It was argued on behalf of the Appellant that the inquiry contemplated by the section is purely summary in nature and that the court is precluded from examining questions relating to the validity or execution of a deed relied upon by the respondent. Such an interpretation cannot be sustained when the structure of the section is examined.

The proviso to **Section 52A** expressly prohibits the court from granting restoration where the respondent derives title from a person who obtained rights under the final decree. The application of that proviso necessarily requires the court to determine whether such derivative title exists.

If the court were precluded from examining whether the deed relied upon by the respondent was validly executed, the proviso would be rendered meaningless. A respondent could defeat the remedy by merely producing any document purporting to convey title irrespective of its validity.

The statutory requirement of a “**due inquiry**” must therefore be interpreted as empowering the court to determine whether the respondent has established a legally cognizable title derived from the decree holder.

Such an inquiry does not transform the proceedings into a full trial of title. Rather, it enables the court to determine whether the respondent has established a legally sustainable claim sufficient to bring himself within the protection of the proviso.

This interpretation is also consistent with the broader procedural framework governing the execution of orders for possession under the **Civil Procedure Code Ordinance No. 02 of 1889**. Sections **325 to 328** of the Civil Procedure Code provide a comprehensive framework regulating situations in which a decree holder seeking possession encounters resistance, obstruction, hindrance, or ouster in the course of execution.

Section **325** recognises that such resistance may arise either from the judgment-debtor himself or from a third party claiming possession of the property. In such circumstances the judgment-creditor is entitled

to complain to court by way of petition, whereupon the court is required to initiate a process of inquiry. The section further empowers the court to direct the Fiscal to publish notice calling upon all persons claiming possession by virtue of any right or interest to notify their claims to court.

This procedural mechanism reflects an important principle. Where possession ordered by court is resisted, the law does not permit the matter to be resolved merely on the basis of competing assertions. Instead, the court must identify all persons claiming possession and provide them an opportunity to place before court the legal basis of their claim.

The inquiry contemplated by **section 326** is central to this process. Upon hearing the petition and any claim made pursuant to the notice, the court must determine the nature of the resistance. If the court is satisfied that the resistance was occasioned by the judgment-debtor or by a person acting at his instigation, or that the claim made by the resisting party is frivolous or vexatious, or that the claim has not been established, the court is mandated to place the judgment-creditor in possession or restore him to possession of the property. The section therefore requires the court to evaluate the legal validity of the claim relied upon by the resisting party.

Conversely, **section 327** provides that where the resistance is occasioned by a person other than the judgment-debtor who claims in good faith to be in possession by virtue of an independent right or interest, the court must dismiss the petition. The statutory distinction drawn between frivolous claims and bona fide claims demonstrates that the court must necessarily examine the nature and legal foundation of the title asserted by the person resisting delivery of possession.

Section 328 further strengthens this procedural framework by conferring a remedy upon a person other than the judgment-debtor who has been dispossessed in the course of execution. Such person may apply to court within fifteen days complaining of the dispossession, whereupon the court is required to hold an inquiry and, if satisfied that the petitioner was in possession on his own account or on account of another person other than the judgment-debtor, direct that he be restored to possession.

When these provisions are read together, it becomes evident that the Civil Procedure Code consistently recognises the necessity for a judicial inquiry whenever disputes arise regarding possession during the execution of a decree. The court is required to determine whether the person resisting possession acts merely to obstruct the decree holder or whether such resistance is founded upon a legally sustainable right or interest.

The inquiry contemplated by **section 52A of the Partition Law** operates on a similar conceptual foundation. Where a party seeks restoration of possession after dispossession following a partition decree, the court must necessarily determine whether the person in possession derives a legitimate right traceable to the final decree or whether the possession is unsupported by law. To make such a determination, the court must examine the legal validity of the title relied upon by the respondent.

Accordingly, the statutory framework embodied in **sections 325–328** of the **Civil Procedure Code** reinforces the conclusion that the inquiry contemplated under **section 52A** cannot be confined to a purely mechanical or superficial examination. Rather, it requires the court to assess whether the respondent has established a bona fide legal basis for his possession sufficient to defeat the claim for restoration.

The facts of the present case disclose that the Respondent derived title to Lot No. 2 under the final decree entered in the partition action. The Respondent was thereafter placed in possession of the said lot following the execution of the decree.

The Appellant, who was not a party to the decree and upon whom no rights devolved under the partition action, resisted restoration of possession by relying upon a deed purportedly executed in his favour by Punchi Nona Perera, a person entitled under the decree. The validity of that deed therefore formed the sole foundation of the Appellant's claim to derivative title.

At the inquiry before the District Court the Appellant called one of the attesting witnesses to the deed. The evidence of that witness revealed that he denied signing the document as a witness and further indicated that he did not know the parties to the deed or the notary who purportedly attested it. The Appellant failed to call the other

attesting witness who was available to give evidence. In addition, the testimony of the Appellant himself revealed significant inconsistencies regarding the execution and attestation of the deed.

In light of these facts the evidentiary requirements of **Section 68** of the Evidence Ordinance were plainly not satisfied. Moreover, the evidence placed before the court raised serious doubts as to whether the execution requirements mandated by Section 2 of the Prevention of Frauds Ordinance had been complied with.

In these circumstances the Appellant failed to establish that the purported deed constituted a valid instrument capable of transferring title. Consequently, the Appellant failed to demonstrate that he derived title from a person who obtained rights under the final decree. Once that conclusion is reached the protection afforded by the proviso to **Section 52A** cannot operate.

The statutory remedy created by **Section 52A** reflects a deliberate legislative policy. Partition actions often involve family property and prolonged disputes. The legislature therefore created a mechanism enabling the party declared entitled under the decree to obtain prompt restoration of possession where such possession has been disturbed. Permitting a respondent to defeat that remedy merely by producing a document whose execution has not been proved would undermine the entire statutory scheme.

The requirement that the respondent demonstrate a legally valid derivative title ensures that the protection afforded by the proviso operates only where the respondent has a genuine claim derived from the decree holder. Where such a claim is unsupported by legally admissible evidence, the court is not only entitled but obliged to reject it.

In the present case the evidence adduced at the inquiry did not merely fail to establish the execution of the deed. It positively undermined the authenticity of the document relied upon by the Appellant.

In these circumstances the High Court of Civil Appeal correctly concluded that the learned District Judge had erred in dismissing the application without properly evaluating whether the Appellant had

established a derivative title within the meaning of the proviso to **Section 52A**.

For the foregoing reasons, the Appellant has failed to establish that he derives title to Lot No. 2 from a person who obtained rights under the final decree of partition. The deed relied upon by the Appellant has not been proved in accordance with the requirements of the **Evidence Ordinance** and **the Prevention of Frauds Ordinance**, and cannot therefore constitute a valid basis for resisting restoration of possession.

The Respondents, whose entitlement to the land arises directly from the final decree of the partition action, was therefore entitled to invoke the remedy provided by **Section 52A** of the **Partition Law**.

Accordingly, the questions of law on which leave has been granted are answered in the negative, the judgment of the High Court of Civil Appeal directing restoration of possession to the Respondents is affirmed.

Appeal Dismissed.

JUDGE OF THE SUPREME COURT

A.H.M.D. Nawaz, J.

I agree.

JUDGE OF THE SUPREME COURT

A.L. Shiran Gooneratne, J.

I agree.

JUDGE OF THE SUPREME COURT