

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

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

SC Appeal No:
104/2018

Hapuarachchige Premadasa
No. 524/A, Hapuarachchi Pedesa,
Lunugama.

SC/HCCA/LA No:
188/2012

PLAINTIFF

Vs.

WP/HCCA/AV/1669/16(F)

Pugoda D.C. Case No. 883/P

1. Hapuarachchige Weerarathna
No. 524/1/A, Hapuarachchi Pedesa,
Lunugama.
- 2A. Hewawasam Puwakpitiyage
Kusumawathie Hewawasam
Elamalawala, Thummodara.

DEFENDANTS

AND BETWEEN

Hapuarachchige Premadasa
No. 524/A, Hapuarachchi Pedesa,
Lunugama.

PLAINTIFF-APPELLANT

Vs.

1. Hapuarachchige Weerarathna
No. 524/1/A, Hapuarachchi Pedesa,
Lunugama.

2A. Hewawasam Puwakpitiyage
Kusumawathie Hewawasam
Elamalawala, Thummodara.

DEFENDANT-RESPONDENTS

AND NOW BETWEEN

Hapuarachchige Weerarathna
No. 524/1/A, Hapuarachchi Pedesa,
Lunugama.

**1st DEFENDANT-RESPONDENT-
APPELLANT**

Vs.

Hapuarachchige Premadasa
No. 524/A, Hapuarachchi Pedesa,
Lunugama.

**PLAINTIFF-APPELLANT-
RESPONDENT**

2A. Hewawasam Puwakpitiyage
Kusumawathie Hewawasam
Elamalawala, Thummodara.

**2nd DEFENDANT-RESPONDENT-
RESPONDENT**

Before : Mahinda Samayawardhena, J.
: Menaka Wijesundera, J.
: Sampath B. Abayakoon, J.

Counsel : Kamal Suneth Perera for the 1st Defendant-
Respondent-Appellant.
: Thishya Weragoda with Kalani Dassanayake
instructed by Thamila Perera for the Plaintiff-
Appellant-Respondent.

Argued on : 12-03-2026

Written Submissions : 17-10-2018 and 27-04-2026 (By the 1st Defendant-
Respondent-Appellant)
: 08-01-2019 and 24-04-2026 (By the Plaintiff-
Appellant-Respondent)

Decided on : 22-07-2026

Sampath B. Abayakoon, J.

The 1st defendant-respondent-appellant (hereinafter referred to as the 1st defendant) preferred this appeal being aggrieved of the judgment pronounced on 27-02-2017 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 of the learned District Judge of Pugoda dated 26-08-2016, where the partition action filed by the plaintiff-appellant-respondent (hereinafter referred to as the plaintiff) was dismissed.

The High Court, after having considered the relevant facts and the law in relation to a partition action, set aside the said District Court judgment while giving specific directions to the learned District Judge of Pugoda in that regard.

When this appeal was considered before this Court on 14-06-2018 for the purposes of granting leave to appeal from the said High Court judgment, leave was granted on the questions of law set out in paragraph 12 (a), (c), and (f) of the petition dated 07-04-2017.

However, when this matter was taken up for argument before this Court, the learned Counsel who represented the 1st defendant agreed that the matter can be argued on the following question of law rather than having several questions as formulated earlier.

The said question of law reads as follows -

1. On the facts and circumstances of this case, did the High Court err in law and in fact when it was decided that the subject matter of the action has been properly identified as a distinct and a separate land that can be partitioned under the provisions of the Partition Law?

Accordingly, this Court heard the submissions of the learned Counsel who represented the 1st defendant and the submissions of the learned Counsel who represented the plaintiff. This Court also had the benefit of considering the pre-argument as well as post-argument written submissions filed by the parties to substantiate their respective stances.

The Facts

The plaintiff filed this partition action by his plaint dated 14-09-2009 in order to partition the land morefully described in the 1st schedule of the plaint between himself and the 1st defendant named. The 2nd defendant in the action has been subsequently added as a party based on an application to add him as a party to the action.

It is clear from the plaint that the plaintiff has identified the original owners of the land to be partitioned in the 3rd paragraph of his plaint.

The 1st and the 2nd defendants filing their statement of claim together have disputed the corpus sought to be partitioned claiming that it was only a portion of a much larger land that had been surveyed, and therefore, only a portion of a larger land cannot be partitioned. They have also disputed the title as pleaded by the plaintiff while moving for a dismissal of the action.

At the trial, the parties have only admitted the jurisdiction of the Court while the plaintiff has settled his points of contest on the identity of the land sought to be partitioned as the land morefully described in the preliminary plan No. 232 dated 19-04-2010 by Licensed Surveyor A. K. Chandrasekara, the Commissioner appointed for the purpose.

He has also settled other points of contest based on his title as pleaded, while seeking the partitioning of the land accordingly.

The defendants have settled their points of contest challenging the claimed title of the plaintiff and also on the basis that the land sought to be partitioned was only a portion of a much larger land called Kahatagahawatte.

The learned District Judge in his judgment has concluded that the land sought to be partitioned was in fact only a portion of a much larger land, and has determined that such a land cannot be separately partitioned as sought by the plaintiff. However, having determined that the plaintiff is not entitled to a partition decree on that basis alone, the learned District Judge has proceeded to consider briefly the title pleaded by the plaintiff.

It has been determined that although the plaintiff has claimed that the land sought to be partitioned had seven original owners, he has failed to adduce sufficient evidence to establish in what manner they became entitled to the land. He has also drawn his attention to the fact that at one stage, the plaintiff has stated in his evidence that the original owner of the land was a person called Kuwinis Appu, which was a contrary position to the claim that the land was owned by the seven original owners.

Hence, it has been determined that even on the question of title, the action should fail since the plaintiff has failed to establish the original owners of the land to the satisfaction of the Court.

After hearing the appeal preferred by the plaintiff challenging the judgment of the learned District Judge, the learned Judges of the High Court have determined that the land sought to be partitioned, which was a land called Kahatagahawatte, though may have been a part of much larger land identified by the same name, the said land can be partitioned as the evidence has established a separate distinct and defined identity over a period of at least 50 years for the land sought to be partitioned for the reasons stated in the judgment.

Having considered the question of original ownership of the said land, the learned Judges of the High Court have determined that the plaintiff has sufficiently established the original owners of the land as pleaded in paragraph 3 of the plaint.

Accordingly, while setting aside the District Court judgment, the High Court has determined that the land sought to be partitioned should be considered as properly depicted in Lots 1 and 2 of the preliminary plan marked X. It has also been determined that the original owners of the said land have been sufficiently established before the District Court as set out in paragraph 3 of the plaint.

Further, the learned District Judge has been directed to investigate the other claimed rights of the parties based on the said finding, meaning the devolution of title from the above determined original owners, and to write a judgment afresh in terms of the evidence already adduced. It has been directed that the parties are not entitled to adduce any fresh evidence and the judgment should be pronounced based on the evidence already available on record.

For better clarity, the High Court has proceeded to answer the relevant points of contest settled before the District Court in relation to the corpus and the original ownership in the following manner -

1. Yes

6(1). The original owners are rightly set out in paragraph 3 of the plaint

7(1). No

Consideration of The Question of Law and Conclusion

At the hearing of this appeal, the learned Counsel for the 1st defendant strenuously contended that it was the learned District Judge who had made the right determination as to the corpus since there was clear evidence before the District Court to show that the land sought to be partitioned was only a portion of a much larger land. It was also argued that the High Court erred in determining the original ownership of the land because of the conflicting nature of evidence in that regard.

It was the position of the learned Counsel for the plaintiff that although the land may have been a portion of a much larger land, the evidence has clearly established that the land sought to be partitioned was a land that had been separately possessed for over a generation by the persons who are entitled to the said land with clear and defined undisturbed boundaries, and hence, a separate identity has been established which makes it a land that can be partitioned as a separate land from the much larger land.

It was also his position that the plaintiff had sufficiently established the original ownership of the land and the devolution of title therefrom, and the learned Judges of the High Court were correct in their findings and the judgment in that regard.

Since the question of law under which this appeal was considered is a question based on whether the subject matter of the action has been properly identified as a distinct and separate land that can be partitioned in terms of the Partition Law, I will now focus my attention to determine whether the learned Judges of the High Court had erred in their determinations in that regard.

When considering the evidence placed before the trial Court and the relevant title deeds as well as the preliminary plan relied on by the plaintiff, it is abundantly clear that the land sought to be partitioned was originally a part of a much larger land by the same name. It is clear that the plaintiff had never attempted to conceal that fact, and in the 1st schedule of the plaint, he has

identified the land giving its boundaries to the North and the South as separate portions of the same land called Kahatagahawatte.

It appears from the judgment of the learned District Judge that the evidence has been considered as to the identity primarily based on the determination in the reported case of **Peris Vs. Peris 6 NLR 321** where it has been stated -

“An undivided portion of a larger extent of a land cannot be the subject of a partition suit unless the co-owners of the whole corpus be made parties to it.”

It is clear to me that the learned District Judge has considered evidence on the misguided notion that merely because the land sought to be partitioned was a part of a larger land, it cannot be partitioned, whereas he has failed to consider that even such a land can be partitioned provided that it has gained a separate and distinct identity as a land separated from a much larger land for a considerable period of time where separate titles to the said land can also be separately identified.

The learned District Judge has extensively considered the evidence of the plaintiff where the plaintiff has conceded that parts of the same land are bound to the North and South of the land sought to be partitioned, while failing to consider whether the land can be considered as a land with a separate identity from the said larger land. He has doubted the plaintiff's evidence as to what he heard from his forefathers: that the larger land was amicably separated into five portions of land and held and possessed thereafter as separate lands, determining that the plaintiff has failed to substantiate such evidence.

He has also determined that other than the oral evidence in that regard, the plaintiff has failed to adduce any documentary evidence or to establish prescriptive rights to a separate land as claimed by the plaintiff, justifying his determination that the plaintiff is not entitled to get the land described in the 1st schedule of the plaint partitioned.

It is my considered view that the learned District Judge was misdirected when it was determined that since the land sought to be partitioned was a part of a

much larger land, such land cannot be partitioned. What he should have considered was whether the said land has established a separate identity as a distinct and separate land, although it may have been a part of a much larger land in the past and a separate pedigree can be identified in relation to the land. In determining so, a trial Judge is duty bound to consider both oral as well as documentary evidence placed before the trial Court in this regard by considering the facts and the circumstances unique to each case.

When it comes to the instant action, the deeds produced by the parties as well as the preliminary plan and the Report of the Commissioner are relevant material that should have been considered along with the oral evidence placed before the Court. It needs to be emphasized that in partition actions where it is clear that the title pleaded by the parties goes back to a considerable period of time, the identity of the land sought to be partitioned needs to be determined having in mind that over a period of time the boundaries given to the land in olden day deeds may differ from the actual boundaries and the present owners of the adjacent lands. In my view, in identifying a corpus, a trial Judge will have to consider the manner in which the title of the parties has been set out as well, while considering the evidence in its totality.

The plaintiff when giving evidence has stated that the original much larger land was amicably partitioned between five owners probably a generation ago. He has stated that he came to know of that fact from his father. In the said process, he has also stated that what he had heard was that the land was originally owned by one Kuwinis Appu. It is the said piece of evidence that the learned District Judge has considered to determine that the plaintiff has cited the original owners of the land as stated in paragraph 3 of the plaint wrongfully.

It must be stated that when identifying a corpus or determining title in relation to a partition case where identity and title may go back several generations, some of the things the witnesses have heard as to the land sought to be partitioned can be considered relevant depending on the facts and circumstances, though such evidence may also be considered as hearsay evidence under normal circumstances. What is relevant here is whether such

evidence can be accepted in the overall context of the case without causing prejudice to the parties of the action with a view to ending common ownership of a land, and thereby, giving clear title to separate portions of land to the parties of the action.

I find that the learned District Judge has compartmentalized the evidence considering the evidence of the plaintiff, the documentary evidence, the stand taken up by the defendants, and the plan and the Report of the Surveyor, to find that the corpus is a part of a larger land.

However, it is my view that it should not have been the approach, given the facts and the circumstances of the action before the Court.

It has been clearly established before the trial Court that though the corpus sought to be partitioned was a portion of a larger land a generation or more before, there was sufficient evidence before the trial Court that it has established itself as a distinct and separate land. The boundaries of the land right around it consists of a stone fence that clearly separates the other lands from the land sought to be partitioned. When the land was surveyed for the preparation of the preliminary plan, none of the adjacent present-day land owners have come forward claiming that it is part of their land, especially the owners of the lands to the Northern and Southern boundaries of the land. The title deeds pleaded by the plaintiff marked P1 to P9 have identified the land almost in a similar manner as stated in the deed marked P1, namely deed No. 8056 dated 30-04-1949. This is the oldest deed produced at the trial which has mentioned similar boundaries to the boundaries mentioned in the 1st schedule of the plaint. It is clear that the extent mentioned is an approximate extent and not an extent based on a properly prepared plan. The extent when the Commissioner surveyed the land though may be a little less than 1 ½ acres mentioned in the 1st schedule of the plaint, that would in any way provide a basis to consider it as a major discrepancy in the identification of the land sought to be partitioned.

As correctly contended by the learned Counsel for the plaintiff in his written submissions, the 2nd defendant's title deed to the land sought to be partitioned

is the deed No. 8632 dated 18-07-1987 marked V5 at the trial. From the said deed, one Hapuarachchige Abraham has transferred his acquired rights to the 2nd defendant from the land sought to be partitioned. Similarly, the same Abraham has transferred a portion of the same land to the plaintiff. Both deeds refer to the same land which is the land sought to be partitioned, which goes on to show that even the defendant's title is based on the premise that the land sought to be partitioned is a land with separate and distinct identity.

I find that the judgments cited by the learned Counsel for the 1st defendant to substantiate his argument that a part of a larger land cannot be partitioned have been cited out of context.

The facts of **SC Appeal No. 172/2015 decided on 21-05-2021** is in total contrast to the facts of the matter under appeal. That was a case where the plaintiff prepared a preliminary plan through the Commissioner appointed for that purpose showing the land that he wanted to be partitioned. Having done so, he prepared another plan through a Commissioner leaving out half of the land he originally sought to be partitioned, claiming that it is a land separately owned by him. It has been established that there was no identifiable boundary between the land the plaintiff wanted to be excluded from the original land shown in the preliminary plan. It was quite obvious that the plaintiff in the said case was making an attempt to partition only a portion of a larger land upon which he earlier based his title.

In **SC Appeal No. 44/2020 decided on 30-05-2025**, the two plaintiffs came before the Court seeking a partitioning of only the portion that they are entitled from the land commonly owned by others giving undivided rights only to them from the portion of the commonly owned land they occupied while allowing no shares to other co-owners from the actual land. They sought only a right of way through the other portions of the commonly owned land. It was under those circumstances it was held that the plaintiffs cannot sought to partition only a portion of a larger land.

As correctly determined by the learned Judges of the High Court that under the provisions of sections 16(2) and 19(2)(b) of the Partition Law, if it was the

real contention of the defendants that a larger land should have been included as the corpus of the land, rather than taking up a position merely because the boundaries of the land sought to be partitioned indicate that it was a part of a larger land, it is they who should have taken the necessary steps to establish that fact. They have failed to take any steps under the provisions of Partition Law to survey the purported larger land.

For the aforementioned reasons, I hold that the learned Judges of the High Court were not in error when it was determined that the land sought to be partitioned which has clearly acquired a distinct and defined identity separated from a larger land can be partitioned.

Although it is not directly related to the questions of law under which this appeal was argued, I find it relevant to comment about the manner the learned District Judge has decided that the plaintiff has failed to establish the original owners of the land. As stated before, in paragraph 3 of the plaint, the plaintiff has clearly named the seven persons on whom he relied on to establish the rights of the parties, and thereby indicating them as the original owners. The deeds marked by the plaintiff to establish those original owners' rights emanate from 1949 onwards, which gives credence to the plaintiff's evidence that his predecessors in title held and possessed the land sought to be partitioned for over a century. While under cross-examination, replying as to the manner the larger land was divided amicably between the then owners of the much larger land, he has remarked that according to what he has heard, the land sought to be partitioned was earlier owned by Kuwinis Appu, indicating a much earlier original owner of the land.

It is well settled law that a plaintiff in a partition action having to commence his title at some point, the original owner relied on by him need not be the very first original owner. In the case of **Magilin Perera Vs. Abraham Perera (1986) 2 SLR 208** at page 210 and 211, **Goonewardene, J.**, having considered the proof of original ownership held;

“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 would 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 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 than 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 the reach of very many persons seeking to end their co-ownership.”

Mahinda Samayawardhena, J. expressed a similar view in **SC Appeal No. 125/2016 decided on 21-05-2021** in the following manner -

“It is true that in a partition action the plaintiff shall unfold the full pedigree. However, this does not mean that he shall unfold a perfect pedigree starting from the very first deed ever executed on the land. It is not possible to trace the very first deed or the very first original owner of the land. We must stop tracking back at a convenient point. What constitutes this convenient point shall be decided on a case-by-case basis and not by way of a rigid formula.”

I am in full agreement with the determination of the learned Judges of the High Court that the original ownership pleaded at paragraph 3 of the plaint should be considered as the starting point of the plaintiff's pedigree.

For the reasons as considered above, I answer the question of law in the negative.

Accordingly, the appeal is dismissed while affirming the appellate judgement dated 27-02-2017 pronounced by the learned Judges of the Provincial High Court of the Western Province holden at Avissawella.

Since the learned District Judge who pronounced the original judgment may not be serving any longer at the same District Court, the incumbent District Judge of Pugoda is directed to follow the orders given in the appellate judgment of the High Court and proceed to pronounce a judgment as expeditiously as possible based on the said directions and determinations.

Having considered the facts and the circumstances, I order that the 1st defendant-appellant shall pay a cost of Rs. 25,000/- to the plaintiff as the cost of this appeal.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court