

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

Abdul Majeed Mohamed Rizvi,
No. 47/3A, Richmond Hill Road, Galle.
Petitioner-Appellant

**SC/APPEAL/121/2015
SP/HCCA/GA/RA/14/2009
DC GALLE P/14370**

Vs.

1. Mohamed Shiraz Anas
2. Mohamed Rilal Siththi Adahi,
No. 26, A. R. Mohamed Mawatha,
Darga Town.
1st and 2nd Plaintiff-Respondent-
Respondents
3. Abdul Lahir Siskviniya Faheer,
No. 51, Richmond Hill Road, Galle.
4. Kamburugamuwa Banduwathie,
No. 47/48, Richmond Hill Road, Galle.
5. Muththusamiwelu,
No. 47/82,
Richmond Hill Road, Galle.
6. Arunan Kanchana,
No. 47/82/1,
Richmond Hill Road, Galle.
1st-4th Defendant-
3rd-6th Respondent-Respondents

7. Sellamma Adi,
No. 51/1A, Richmond Hill Road, Galle.
5A Defendant-7th Respondent-Respondent

8. Abdulla Kyrun Nisa,
No. 87/85, Richmond Hill Road, Galle.

9. Mohamed Rilal Mohamed Faheer,
No. 53, Richmond Hill Road, Galle.
6th-7th Defendant-
8th-9th Respondent-Respondents

Before: Hon. Justice Mahinda Samayawardhena

Hon. Justice K. Priyantha Fernando

Hon. Justice Menaka Wijesundera

Counsel: Ashan Stanislaus for the Petitioner-Appellant.

Thisath Wijegunawardena, P.C. with Gihan Liyanage for the
1st to 3rd and 7th to 9th Defendant-Respondent-Respondents.

Argued on: 27.08.2025

Decided on: 13.01.2026

Samayawardhena, J.

This partition action was instituted in the year 2000. After trial, judgment was delivered in 2006. The final partition plan was thereafter prepared in accordance with the interlocutory decree and was affirmed by court in 2007. This was followed by entering the final decree of partition in 2008.

It is significant that both the preliminary plan and the final partition plan were prepared by the same surveyor, and that the boundaries and extent reflected in both plans are identical. Upon the application of the 1st and 7th

defendants, delivery of possession of the respective lots was effected in 2009 by the Fiscal, with the assistance of the same surveyor.

The appellant was not a party to the partition action. Admittedly, he has no rights to the land that was partitioned. He purchased a portion of land lying outside the corpus after the institution of the partition action and after the preliminary survey had already been carried out. In 2009, he filed an application for *restitutio in integrum* before the High Court, seeking to set aside the interlocutory decree and the final decree of partition, or, in the alternative, a direction that the final partition plan be prepared in accordance with the preliminary plan. His complaint was that a portion of his access road, which lay along the southern boundary of the corpus, had been erroneously included within the corpus. The High Court dismissed the application, and this appeal is against that judgment.

On the facts and circumstances of this case, it is abundantly clear that the appellant cannot seek to set aside either the interlocutory decree or the final decree of partition. His alternative relief is equally untenable, as both the preliminary plan and the final plan were prepared by the same surveyor and there are no discrepancies in terms of boundaries or extent. In his report accompanying the final plan, the surveyor states that he visited the land and identified the boundary marks fixed at the time of the preliminary survey (කේත්තුයට ගොස් මායිම පාදා ගත්තෙම) before sub-division in terms of the interlocutory decree. Moreover, when executing the writ on the application of the 1st and 7th defendants, the Fiscal proceeded to the land together with the same surveyor for the purpose of demarcating the boundaries and handing over possession. There is no mistake in identifying the southern boundary of the corpus in terms of the preliminary plan.

The appellant has tendered a plan in support of his application before the High Court to demonstrate that a strip of land forming part of the access road has been included within the corpus. That document is not a plan in

the proper sense, but merely a tracing prepared by a private surveyor using certified copies of the preliminary plan and the final partition plan. It is unnecessary to emphasise the unreliability of such a superimposition for the purpose of identifying an alleged encroachment. Significantly, the private surveyor has not even tendered an affidavit explaining the basis of his opinion. In any event, such a document cannot prevail over the preliminary plan and the final partition plan prepared by the court commissioner.

I find no justifiable reason to interfere with the judgment of the High Court. The appeal is dismissed. No costs.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court