

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

In the matter of an application for Leave to Appeal under and in terms of Section 5 (c) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, as amended. by Act No. 54 of 2006.

SC/APPEAL No. 123/2018

SC/LA/Application No.

SC/HCCA/LA/421/2013

Civil Appellate High Court of
Kurunegala Case No.

NWP/HCCA/KURU/34/2008/(F)

DC Kurunegala Case No. **5100/P**

Rathnayake Mudiyanseelage Mulasen Banda
(Deceased)

PLAINTIFF (Deceased)

Rathnayake Mudiyanseelage Abeygunawardene
Wedapola, Pothuhera.

SUBSTITUTED PLAINTIFF

vs

1. S. A. Fathima Rizana
Wedapola, Pothuhera.
2. S. A. Kabeer
Ahugoda, Pothuhera.
3. S. A. Sara Umma
Wadapola, Pothuhera.
4. S. A. Hassen
Colombo Road, Pothuhera.
5. S. A. Rafeek
Wadakada Road, Pothuhera.
6. S. A. Aliyar
Ambanpola, Melsiripura.

7. S. A. Aliyar Umma
Wadakadaa Road, Pothuhera.
8. S. A. Nabeeza Umma
Ambanpola, Melsiripura.

DEFENDANTS

And Between

2. S. A. Kabeer
Ahugoda, Pothuhera.
And Now
5. S. A. Rafeek
Wadakada Road, Pothuhera.

2nd and 5th DEFENDANT - APPELLANTS

vs

Rathnayake Mudiyansele
Abeygunawardane Wedapola, Pothuhera.

**SUBSTITUTED- PLAINTIFF –
RESPONDENT**

1. S. A. Fathima Rizana
Wedapola, Pothuhera.
3. S. A. Sara Umma
Wedapola, Pothuhera.
4. S. A. Hassen
Colombo Road, Pothuhera.
6. S. A. Aliyar
Ambanpola, Melsiripura.
7. S. A. Aliyar Umma
Wadakadaa Road, Pothuhera.

8. S. A. Nabeeza Umma
Ambanpola, Melsiripura.

DEFENDANT – RESPONDENTS

And Now Between

Rathnayake Mudiyanseelage
Abeygunawardane Wedapola, Pothuhera.

SUBSTITUED PLAINTIFF –
RESPONDENT – PETITIONER –
[APPELLANT]

vs

2. S. A. Kabeer
Ahugoda, Pothuhera.
And Now

5. S. A. Rafeek
Wadakada Road, Pothuhera.

2nd and 5th DEFENDANTS –
APPELLANTS – RESPONDENTS –
[RESPONDENTS]

1. S. A. Fathima Rizana
Wedapola, Pothuhera.
3. S. A. Sara Umma
Wadapola, Pothuhera.
4. S. A. Hassen
Colombo Road, Pothuhera.
6. S. A. Aliyar
Ambanpola, Melsiripura.

7. S. A. Aliyar Umma
Wadakadaa Road, Pothuhera.
8. S. A. Nabeeza Umma
Ambanpola, Melsiripura.

**DEFENDANTS – RESPONDENTS –
RESPONDENTS – [RESPONDENTS]**

BEFORE

: Mahinda Samayawardhena J.
Dr. Sobhitha Rajakaruna, J.
M. Sampath K. B. Wijeratne, J.

COUNSEL

: K.G. Jinasena with Ms. Imalika Dissanayake
instructed by Buddika Serasinghe for the
Substituted Plaintiff-Respondent-Petitioner-
[Appellant].

Palitha Yaggahawita with Yukthi Napagoda
instructed by Mrs. Nimesha Nicholos for the
4th Defendant – Appellant – Respondent-
Respondent.

S.A.D.S. Suraweera for the Defendant –
Respondent – Respondents –[Respondents].

ARGUED ON

: 03.12.2025

DECIDED ON

: 03.09.2026

M. Sampath K. B. Wijeratne J.

Introduction

The original Plaintiff instituted this action in the District Court of Kurunegala against the 1st to 8th Defendants, seeking the partition of the land comprising 3 roods and 13 8/12 perches, depicted as Lot No. 01 in Plan No. 2930 prepared by

Mr. S. T. Gunasekara, Licensed Surveyor. The said lot is a divided portion of a land known as "*Batuhena*". The Plaintiff sought partition in accordance with the share distribution set out in the plaint.

By its judgment dated March 19, 2008, the District Court ordered the partition of the land in accordance with the pedigree pleaded by the Plaintiff.

Being aggrieved by the judgment of the learned District Judge, the 2nd and 5th Defendants preferred an appeal to the Provincial High Court of the North Western Province (exercising its Civil Appellate Jurisdiction) holden at Kurunegala (hereinafter referred to as the "High Court of Civil Appeal"). By their judgment, the learned Judges of the High Court of Civil Appeal varied the judgment of the learned District Judge by modifying the shares allotted to the parties in accordance with the rights declared therein.

Accordingly, the present appeal has been preferred by the Plaintiff against the judgment of the High Court of Civil Appeal.

Having heard the submissions of learned counsel for both parties, this Court granted leave to proceed on the following questions of law set out in subparagraphs (b) and (e) of the Petition, which read as follows ¹:

“(b) Did the learned High Court Judges of the Civil Appellate High Court of Kurunegala, err in law by failing to consider the substantive law relating to the effect of final decrees that are entered in partition actions?”

(e) Did the learned High Court Judges of the Civil Appellate High Court err in law by misdirecting themselves in arriving at their findings, by applying the provisions of the Trust Ordinance and holding that the Plaintiff held the property in trust for the Defendants (save the 1st Defendant)”

¹ Journal entry dated 03.08.2018.

Submission of Plaintiff-Respondent-Appellant

According to the final decree entered on September 19, 1968, in Case No. 2451/P ('P2'), the original owners of the land, S. A. Sahul Hameed and R. A. Hamidu, became entitled to Lot No. 1 in Plan No. 2930, which is the subject matter of the present action, in equal shares. Thereafter, S. A. Sahul Hameed conveyed his undivided half share to J. M. Imtiaz by Deed No. 9265 dated November 10, 1998 ('P4'). Subsequently, by Deed No. 9268 dated November 12, 1998 ('P5'), J. M. Imtiaz conveyed his right, title, and interest in the said share to the original Plaintiff, Ratnayake Mudiyanseelage Mulansen Banda.

Admittedly, upon the death of R. A. Hamidu, who died unmarried and intestate, his undivided half share in the subject property devolved upon S. A. Sahul Hameed and the 2nd to 8th Defendants in equal shares. It is common ground that the share inherited by S. A. Sahul Hameed subsequently devolved upon one P. Punchi Manika and was thereafter devolved upon the 1st Defendant.

On the basis of the aforesaid pedigree, the Plaintiff claims to be entitled to an undivided one-half ($\frac{1}{2}$) share of the land sought to be partitioned and, accordingly, that the 1st to 8th Defendants each entitled to an undivided one-sixteenth ($\frac{1}{16}$) share of the *corpus*.

Submission of 2nd and 5th Defendants-Appellant-Respondents and 3rd, 6th to 8th Defendants-Respondents-Respondents

The position of the 2nd, 3rd, 5th to 8th Defendants is that S. A. Sahul Hameed and the 2nd to 8th Defendants were children of Ana Sena Seiyadu Ahamadu, who was also the brother of R. A. Hamidu. According to the said Defendants, R. A. Hamidu was the Petitioner in Testamentary Case No. 5336/T, and following his death, S. A. Sahul Hameed was substituted as the Petitioner, with the 2nd to 8th Defendants also being parties to the said testamentary proceedings.

The 2nd, 3rd, 5th to 8th Defendants contended that, although S. A. Sahul Hameed was allotted an undivided one-half ($\frac{1}{2}$) share by the final decree entered in the previous partition action, such allotment was made in lieu of their deceased

father, Ana Sena Seiyadu Ahamadu. Accordingly, they contended that S. A. Sahul Hameed, who acted as the administrator in Testamentary Case No. 5336/T, held the said undivided one-half (½) share in trust for his siblings, who were Respondents and minors at the time of the aforesaid testamentary proceedings.

A similar position has been taken by the 4th Defendant-Respondent-Respondent.

Analysis

As previously observed, the contention advanced by the 2nd to 8th Defendants is that the *corpus* in dispute was held by S. A. Sahul Hameed in trust for them, as it constituted their property. Their position is that the *corpus* in the present action was included in the inventory of Testamentary Case No. 5336/T, filed for the administration of the estate of their deceased father, Ana Sena Seiyadu Ahamadu, and therefore formed part of the property belonging to their late father.

In the schedule to the petition filed in the aforesaid Testamentary proceedings, three parcels of land are described under the same name, "*Batuhena*". However, as no boundaries or extents of those parcels are provided therein, it is not possible to ascertain with certainty whether the *corpus* referred to in the Testamentary proceedings is identical to the *corpus* in the present action. Further, the mere inclusion of a property in the schedule of a Testamentary action does not confer title to such property.

Section 48(1) of the Partition Law No. 21 of 1977 confers finality upon partition decrees, free from all encumbrances except those expressly specified in the decree itself.

Section 48(1) of the Partition Law reads as follows:

Section 48(1)- "*Save as provided in subsection (5) of this section, the interlocutory decree entered under section 26 and the final decree of partition entered under section 36 shall, subject to the decision on any appeal which may be preferred therefrom, and in the case of an interlocutory decree, subject also to the provisions of subsection (4) of*

this section, be good and sufficient evidence of the title of any person as to any right, share or interest awarded therein to him and be final and conclusive for all purposes against all persons whomsoever, whatever right, title or interest they have, or claim to have, to or in the land to which such decree relates and notwithstanding any omission or defect of procedure or in the proof of title adduced before the court or the fact that all persons concerned are not parties to the partition action; and the right, share or interest awarded by any such decree shall be free from all encumbrances whatsoever other than those specified in that decree. [...]

*In this subsection and in the next subsection " encumbrance" means any mortgage, lease, usufruct, servitude, life interest, trust, or any interest whatsoever **howsoever arising except a constructive or charitable trust, a lease at will or for a period not exceeding one month.**"* [emphasis mine]

It must also be noted that the partition decree marked 'P2' does not reserve or recognize any such trust. According to the said partition decree, the property was absolutely allotted to S. A. Sahul Hameed. Accordingly, the presumption under Section 114(d) of the Evidence Ordinance, that judicial and official acts have been regularly performed, operates in favour of the original Plaintiff in the present case.

Be that as it may, according to the aforesaid provision, the existence of a constructive trust is not extinguished by the entry of a partition decree, notwithstanding the final and conclusive nature of such decree. Nevertheless, the burden of proving the existence of such constructive trust rests exclusively upon the 2nd to 8th Defendants, who assert its existence. They are required to establish that S. A. Sahul Hameed did not acquire an independent title, notwithstanding the allotment of an undivided one-half (½) share to him in the partition action. In the absence of such proof, this Court is bound to give effect to the partition decree.

The learned Judges of the High Court arrived at the finding that, "*Hence it is very clear that not only R.A. Hamidu's ½ share but the remaining ½ share of*

Seiyadu Ahamadu too should be inherited by Sahul Hameed and 02nd to 08th defendants and the ½ share Sahul Hameed receives by virtue of the final decree in the partition suite is held in trust for these defendants as far as their intestate rights (1/16th of a share each) is concerned. This is a constructive trust". This is a prima facie erroneous observation in the absence of sufficient proof.

According to the final decree entered in the partition action, an undivided one-half (½) share of the property was vested in R. A. Hamidu. Upon his demise, his intestate estate devolved equally upon S. A. Sahul Hameed and the 2nd to 8th Defendants. However, the present *corpus* stands on a different footing, as it was specifically vested in S. A. Sahul Hameed by virtue of the Partition Decree marked 'P2'. In my considered view, the Respondents have failed to adduce cogent evidence to establish that the undivided one-half (½) share allotted to S. A. Sahul Hameed by the final decree entered in the partition action marked 'P2' formed part of the intestate estate of Ana Sena Seiyadu Ahamadu.

Further, the affidavit marked '2V1', by itself, does not establish that Letters of Administration were in fact issued to S. A. Sahul Hameed. Accordingly, the learned District Judge correctly observed that the Defendants had failed to establish that, in the testamentary proceedings, S. A. Sahul Hameed was appointed as the administrator of the estate of Ana Sena Seiyadu Ahamadu or that he held the property in trust for his siblings.

Therefore, it cannot be said that the *corpus*, which is the subject matter of the present action, should devolve in the same manner as the intestate estate of R. A. Hamidu devolved upon his heirs.

It is a settled principle of law that a party who invokes the jurisdiction of the Court by asserting the existence of a particular fact, or a set of facts, bears the burden of establishing such fact or facts by adducing evidence. This principle is embodied in Sections 102 and 103 of the Evidence Ordinance. In the present case, as the Respondents have failed to adduce evidence sufficient to establish the existence of a constructive trust in their favour, the Court must give effect to the proof of title relating to the rights, shares, and interests allotted by the partition decree.

Conclusion

Accordingly, I answer the questions of law raised as follows:

“(b) Did the learned High Court Judges of the Civil Appellate High Court of Kurunegala, err in law by failing to consider the substantive law relating to the effect of final decrees that are entered in partition actions?” **Yes.**

“(e) Did the learned High Court Judges of the Civil Appellate High Court err in their law by misdirecting themselves in arriving at their findings, by applying the provisions of the Trust Ordinance and holding that the Plaintiff held the property in trust for the Defendant (save the 1st Defendant)” - **Yes.**

Accordingly, I set aside the judgment of the learned Judges of the High Court of Civil Appeal dated September 5, 2013, and affirm the judgment of the District Court dated March 19, 2018.

The appeal is allowed. The Appellant is entitled to costs in all three Courts.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE SUPREME COURT