

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

In the matter of an application for Appeal in terms of Section 5(c)(1) of the High Court of the Provinces (Special Provisions) Amendment Act No.54 of 2006.

Beneragama Vidanelage  
Kumarasiri Premalal,  
No. 9, Santha Maria Church Road,  
Maggona.

**Plaintiff**

**SC Appeal No. 14/2014  
SC/HCCA/LA/ No.376/2011  
WP/HCCA/KAL/ 10/2003(F)  
D.C. Kalutara Case No.6661/P**

**v.**

1. Sattambiralalage Don  
Spiridian Arsakularatne,  
No.386, Galle Road, Kalutara  
North.

2. Sattambiralalage Don  
Bernadine Reginald  
Arsakularatne,  
St. Anthony Furniture Shop, Galle  
Road, Kuda Payagala

3. Sattambiralalage Don Anthony  
Marian Arsakularatne,  
No. 386, Galle Road, Kalutara  
North.

4. Sattambiralalage Dona Cecilia Francisca Arsakularatne,  
No.7, Santha Maria Church Road,  
Maggona.  
(Deceased)

4A. Kurukulasuriya  
Merengiralalage Justus Ranjan Fernando,  
No.7, Santha Maria Church Road,  
Maggona.

5. Sattambiralalage Don Joseph Alexander Arsakularatne,  
No. 8/14, Botany Street, Ranwick,  
New South Wales 2031, Australia,  
appearing by his Attorney, the 1<sup>st</sup> Defendant.

**Defendants**

**AND BETWEEN**

4A. Kurukulasuriya  
Merengiralalage Justus Ranjan Fernando,  
No.7, Santha Maria Church Road,  
Maggona.

**4A Defendant-Appellant**

**V.**

Beneragama Vidanelage  
Kumarasiri Premalal,  
No. 9, Santha Maria Church Road,  
Maggona.

**Plaintiff-Respondent**

1. Sattambiralalage Don Spiridian  
Arsakularatne,  
No.386, Galle Road, Kalutara  
North.

2. Sattambiralalage Don  
Bernadine Reginald  
Arsakularatne,  
St. Anthony Furniture Shop, Galle  
Road, Kuda Payagala.

3. Sattambiralalage Don Anthony  
Marian Arsakularatne,  
No. 386, Galle Road, Kalutara  
North.

5. Sattambiralalage Don Joseph  
Alexander Arsakularatne,  
No. 8/14, Botany Street, Ranwick,  
New South Wales 2031, Australia,  
appearing by his Attorney, the 1<sup>st</sup>  
Defendant.

**Defendants - Respondents**

**AND NOW BETWEEN**

4A. Kurukulasuriya  
Merengiralalage Justus Ranjan  
Fernando,  
No.7, Santha Maria Church Road,  
Maggona.

**Defendant - Appellant - Appellant**

**V.**

Beneragama Vidanelage  
Kumarasiri Premalal,  
No. 9, Santha Maria Church Road,  
Maggona.

**Plaintiff - Respondent -**  
**Respondent**

1. Sattambiralalage Don  
Spiridian Arsakularatne,  
No.386, Galle Road, Kalutara  
North.

2. Sattambiralalage Don  
Bernadine Reginald  
Arsakularatne,  
St. Anthony Furniture Shop, Galle  
Road, Kuda Payagala.

3. Sattambiralalage Don Anthony  
Marian Arsakularatne,  
No. 386, Galle Road, Kalutara  
North.

5. Sattambiralalage Don Joseph  
Alexander Arsakularatne,  
No. 8/14, Botany Street, Ranwick,  
New South Wales 2031, Australia,  
appearing by his Attorney, the 1<sup>st</sup>  
Defendant.

**Defendants - Respondents - Respondents**

**Before :** **MAHINDA SAMAYAWARDHENA, J.**  
**K. PRIYANTHA FERNANDO, J.**  
**MENAKA WIJESUNDERA, J.**

**Counsel :** Dr. Sunil F. A. Coorey with Sudarshani Coorey and

Neminda Kariyawasam instructed by Buddhika Gamage for the 4A Defendant – Appellant – Appellant.

S. N. Vijithsingh for the Plaintiff – Respondent – Respondent.

Sunil Wanigathunga with R.L. Dharmawickrama for the 1st, 2nd, 3rd and 5th Defendants – Respondents – Respondents.

**Argued on :** 28.08.2025

**Decided on :** 19.12.2025

**K. PRIYANTHA FERNANDO, J**

1. The Plaintiff-Respondent-Respondent (hereinafter referred to as the Plaintiff) instituted an action in the District Court of Kalutara against the 1st, 2nd, 3rd and 5th Defendants as well as the 4th Defendant- Appellant - Appellant (hereinafter referred to as the 4A Defendant) seeking to partition a land called 'Gedarawatta' morefully described in the schedule to the plaint.
2. According to the Plaintiff, only the Plaintiff and the 1st and 2nd Defendants were the co-owners of the corpus for partition, being entitled to shares. As per the plaint, the shares to be allocated are as follows: Plaintiff to 6/12 shares, the 1st Defendant to 1/12 shares, and the 2nd Defendant to 5/12 shares. The 3rd to 5th Defendants were subsequently added as parties to this action.
3. After the trial in the District Court of Kalutara and after entertaining written submissions from the parties, the judgment

in this partition action was delivered on 04.04.2003 [page 463-478 of the brief]. By the said judgment the issues have been answered in favour of the Plaintiff and the partition of the corpus has been ordered as prayed for in the plaint, except that, it was held that the 4th Defendant is entitled to the house bearing assessment number 7 and the land covered by it, on the basis of prescriptive possession.

4. Being aggrieved by the said judgment of the District Court, the 4A defendant appealed against the same to the Court of Appeal and later the appeal was heard by the Civil Appellate High Court of the Western Province sitting in Kalutara. The learned Judges of the Civil Appellate High Court dismissed the appeal subject to the variation that the 4A Defendant was held entitled to the road frontage of the said house. (Aside from the house bearing No. 7 and the land covered by it).
5. Aggrieved by the judgment of the Civil Appellate High Court, the instant application was filed to this Court by the 4A Defendant, and leave was granted to all questions of law set out in paragraph 17 of the petition dated 29.09.2011.
6. At the time of argument, the learned Counsel for all parties stated to the Court that there is no dispute that One Mariyanu Arsekularatne owned one  $\frac{1}{2}$  half of the land in dispute by Deed No. 6367 dated 05.04.1889 and that it devolved on to the 2nd, 3rd and 5th Defendants respectively. The instant dispute is in relation to the balance  $\frac{1}{2}$  share. Counsel for all parties informed the Court that the question of law can be narrowed down as to whether it was Mariyanu Arsekularatne or Joronis Arsekularatne

who owned the balance half share of the land. Accordingly the questions of law has been formulated as follows:

*i ) Did the learned Judges of the Civil Appellate High Court err by affirming the finding of the learned trial Judge that Mariyanu Arsekularathne was the owner of the entirety of the land to be partitioned and that Joronis Arsekularathne did not own a half share of the land to be partitioned ?*

7. There was no dispute that the corpus for partition was correctly depicted in the preliminary plan No.267 dated 01.04.1997, which was marked as X [page 139 of the brief]. The commissioners report [page 140-142 of the brief] was produced and marked X1. As regards to the devolution of title, there was no dispute as to the devolution of an undivided  $\frac{1}{2}$  share of the corpus, namely, the one Mariyanu Arsakularatne was entitled to is an undivided  $\frac{1}{2}$  share of the corpus on deed No.6367 dated 05/04/1889. That undivided  $\frac{1}{2}$  share later devolved, through a fiscal's conveyance of 1923, on one Peduru Silva, from whom one Joseph Lazarus Arsakularatne became owner by right of purchase on deed No.93 dated 23/06/1942 [page 604-608 of the brief], and who on deed No.2562 dated 14/08/1979 [page 641-644 of the brief] marked 1D15, transferred the said undivided  $\frac{1}{2}$  share to the 2nd, 3rd and 5th Defendants, who accordingly own  $\frac{1}{6}$  share each, in the corpus.
8. The dispute in this action relates to the devolution of title to the balance undivided  $\frac{1}{2}$  share of the corpus. This balance undivided  $\frac{1}{2}$  share was claimed both by the Plaintiff and by the 4A Defendant.

9. In the course of submissions, learned Counsel for the 4A Defendant set out the manner in which, according to the 4A Defendant's case, the balance one-half (½) share of the title devolved upon the 4A Defendant. It was submitted that, the house bearing assessment No. 9 along with the the balance undivided ½ share of the land was owned, not by Mariyanu Arsakularatne, but by Joronis Arsakularatne, on whose death it devolved on his six children, Marver, John, Patrick, Alphonso, Maria and Peter and that Peter died unmarried and issueless and his four brothers and one sister inherited his 1/6 share, each of them thus becoming owner of an undivided 1/5 share out of the balance ½ share. Thereafter, John mortgaged his undivided 1/5 share to Patrick by mortgage bond No.3993 dated 14/01/1921 and that Patrick later put the bond in suit in D.C.Kalutara Case No.16732 [page 534-537 of the brief] and obtained an order for the sale of the mortgaged share. In the meantime, Alphonso and Maria also had died unmarried and issueless, so that John, Marver and Patrick became owners of undivided 1/3 share each out of the said balance ½ share; that thereafter at the fiscal's sale Patrick purchased the said 1/3 share of John on Fiscal's Conveyance No.11439 in 1936 [ page 538-541 of the brief]] and also on Fiscal' Conveyance No.11691 in 1937 [page 542-545 of the brief]. On that basis Patrick has thus become entitled to an undivided 2/3 share of the said ½ share. Patrick thereafter transferred his said 2/3 share to Dona Maria Justina (who is the wife of his brother Marver and mother of 4th Defendant) on deed No.391 dated 22/06/1942 [page 545-548 of the brief], that thereafter Dona Maria Justina and husband Marver died leaving their four children as their heirs, namely, Julian Boniface, Jerome Damasus, Francis Eusebius, and the 4th Defendant. Julian Boniface, Jerome Damasus and Francis Eusebius died unmarried and issueless

and that accordingly, their interests having devolved on their sister the 4th Defendant, the 4th Defendant became the owner of the balance  $\frac{1}{2}$  undivided share. It was also proved by document 4D19 [page 558-569 of the brief] that on the death of Marver on 09/04/1941, his wife Dona Maria Justina filed his testamentary action namely D.C.Kalutara Case No.2990, in which the said four children were named as their children and an undivided  $\frac{1}{3}$  share of Gederawatte which is the corpus for partition, was disclosed as being part of the intestate estate of the said deceased Marver.

10. The learned Counsel for the 4A defendant contended that the trial Judge has erroneously come to the conclusion as to the title of the corpus and the devolution. The Counsel submitted that the learned trial Judge at the commencement of her reasoning begins with the incorrect proposition that, "as testified by Maria Arsakularatne, (the first witness who testified on behalf of the Plaintiff, and 1st, 2nd , 3rd and 5th ,and 4th Defendant), the original owner of this property was Dona Mariyanu Arsakularatne". The Counsel argued that the learned trial Judge failed to appreciate that it was only the Plaintiff who asserted that Mariyanu Arsakularatne originally owned the entire corpus. The Counsel submitted that, the Defendants, particularly the 4th Defendant, denied that position, and asserted that Mariyanu Arsakularatne owned only an undivided  $\frac{1}{2}$  share, and that the balance  $\frac{1}{2}$  share was owned by Joronis Arsakularatne which  $\frac{1}{2}$  share has devolved on the 4th Defendant.
11. The learned Counsel for the 4A defendant further contended that, the sole reason advanced by the learned trial Judge for holding that it had not been proved that Joronis Arsakularatne owned an

undivided ½ share of the corpus, is that the 4th Defendant was unable to produce a deed by which Joronis Arsakularatne became the owner of such ½ undivided share. The Counsel took the position that, in coming to that finding the learned trial Judge had firstly, completely lost sight of a large number of other deeds and documents, namely, 4D10, 4D11, 4D12, 4D13 and 4D14, which go to prove the pedigree of the 4th Defendant, and has entirely failed to mention any documentary evidence which go to prove that Mariyanu Arsakularatne owned the said balance undivided ½ share also. He further added that, the learned trial Judge had failed to consider that the 4th Defendant and her predecessors in title have on deeds been in possession of the western half of the corpus while living in the house therein bearing assessment No.7, as proved by documentary evidence 4D20 [page 570-586], which has been occupied by the 4th Defendant and her family for several decades now.

12. The learned Counsel for the plaintiff submitted that, One Mariyanu Arsekularathne was the original owner of the entirety of land in dispute and that he had bought half share of that land by Deed No. 6367 dated 05.04.1889 and prescribed to the other half of the land which according to the Counsel, later devolved unto the plaintiff. In support of this contention, Counsel referred to *Deed No. 252*, identified as document marked *P6*, asserting it to be the principal instrument relied upon to establish the prescriptive title of the plaintiff.
13. In addition, the learned Counsel for the Plaintiff contended that the 4th Defendant is merely a licensee and possesses no greater right in respect of the land. Counsel maintained that no evidence had been led to demonstrate that Joronis had prescribed against

Mariyanu Arsekularatne. It was argued that there is no material to show that Joronis had entered upon the land prior to Mariyanu purchasing the same in 1889 under Deed No. 6367.

14. The learned Counsel further submitted that, although the 1st Defendant had testified that Joronis constructed a house on the land, such an act in the absence of any specific overt act, would not suffice to give proprietary rights beyond that of a licensee. Citing the case of ***De Silva v. Commissioner General of Inland Revenue 80 NLR 282***, the Counsel argued that a positive act is necessary to establish a change of character in possession. The Counsel for the plaintiff contended that, in the present case, there was no cogent evidence to establish that they changed their character as Licensee to prescribe against Mariyanu Arsekulrathne.
15. The learned Counsel for the Plaintiff in his submissions further adduced evidence in support of the prescriptive possession exercised by Mariyanu Arsakularatne and, in particular, by Peduru Arsakularatne and his children. Reference was made to Deed No. 742 (marked IV2), which records that the half share obtained from Deed No. 6367 corresponded to the eastern portion of the land that was in the possession of the said Mariyanu Arsakularatne. Deed No. 252 (marked P6 / 4V6), dated 1953, describes the said half share to the eastern portion as being held and possessed by right of paternal inheritance (pages 694–695). The learned Counsel for the plaintiff stated that, subsequently, in 1954, following the execution of Deed of Gift No. 252, Peduru Arsakularatne's children mortgaged the said land to Eusunia Fernando under Deed No. 42 (page 700), describing the property as the eastern half share of the corpus. This mortgage was

redeemed in 1961 (marked P9A, page 700) by payment of the amount set out in document P10 (pages 703–722). Thereafter, Dona Justina Arsakularatne, a daughter of Peduru, by Deed No. 4039 (page 730) dated 1968, transferred her one-sixth share derived from Deed No. 252 to her sister, Dona Maria Arsakularatne.

16. Furthermore, the learned Counsel for the Plaintiff asserted that, by Deed No.6 (page 734) dated 1985, Gabriel Arsakularatne, another child of Peduru, transferred his share in the said eastern portion to one Hillary Dowson Cooray. In 1987, Dona Maria Arsakularatne, by Deed No. 96 (page 738), transferred an additional two-sixths share of the eastern portion to the same Cooray. Thereafter, by Deed No. 528, the said Cooray transferred the remaining three-sixths share of the eastern portion to the Plaintiff. It was submitted that this constituted precisely one-half share of the corpus, corresponding to the portion not affected by Deed No. 6367.
17. The learned Counsel for the plaintiff submitted that the said Eastern portion of the corpus, upon which House No. 9 is situated, was transferred by the heirs of Peduru Arsakularatne in recognition of the half share originally prescribed by Mariyanu Arsakularatne under Deed No. 6367. The series of conveyances and transactions executed after 1953, therefore, were acts consistent with continuous prescriptive possession by Peduru Arsakularatne and his heirs. The Counsel contended that the so-called artificial mortgage and fiscal sale effected in 1937 by the children of Joranis Arsakularatne, purporting to convey a one-fifth share, were rendered null and ineffectual by virtue of the

prescriptive rights lawfully acquired and exercised by Peduru Arsakularatne and his descendants.

18. Moreover, the learned Counsel for the 2nd, 3rd and 5th Defendants also making submissions, contended that the schedule to deed No. 252 [Pg 693-696] relied upon by Plaintiff to claim his title contains a description of the  $\frac{1}{2}$  share which is identical to the description contained in the schedules of deeds relating to the  $\frac{1}{2}$  share which was mortgaged and later passed on to the 2nd, 3rd & 5th Defendants. The learned Counsel for the 2nd, 3rd and 5th Defendants argued that the search at the land registry of the above deed has been dispensed with, with the intention of preventing any disclosure of the fact that Mariyanu Arsacularatne was entitled only to  $\frac{1}{2}$  share of the land. Thereby, the learned Counsel for the 2nd, 3rd and 5th Defendants asserted that Mariyanu owned only  $\frac{1}{2}$  share of the land on the Eastern Portion of Gederawatte and mortgaged it and that District Court of Kalutara sold it at a Fiscal sale and therefore no title was left to pass on to his children one of whom is Peduru and through him to the Plaintiff and argued that on that basis the Plaintiff's claim would necessarily fail.
19. In light of that, the principal issue for consideration in the instant matter is whether one Joronis Arsekularathne owned a one-half ( $\frac{1}{2}$ ) share in the land that is the subject of the dispute. This claim was considered and subsequently dismissed by both the District Court and the Civil Appellate High Court. The dismissal was primarily on the ground that there was no documentary evidence adduced by the 4A defendant to establish legal title to the alleged one-half share of the land. In particular, both Courts noted the

absence of any deed or instrument of conveyance giving title to one Joronis.

20. The learned Judges of the Civil Appellate High Court were of the view that, in the absence of documentary proof, 4A Defendant's assertion amounted to a mere statement, unsupported by any material evidence. As such, it was held that the 4A defendant had failed to discharge the burden of proof required to establish title to the said portion of land and decided that the 4A defendant was only entitled to the house bearing assessment no. 7 and the front way road access.
21. Upon a careful examination of the evidence presented, it is apparent that there is no direct deed or documentary proof of title in favour of the 4A defendant reflecting how Joronis was bestowed the half share. However, it is important to note that this absence does not, in itself, preclude consideration of the other deeds and documents tendered by the 4A Defendant, which may be relevant in establishing a claim to title.
22. It is observed that the 4A Defendant has gained title to half (½) share that was owned by Joronis Arsekularathne as submitted by the learned Counsel for the 4A defendant and produced in paragraph 9 and 10 of this Judgement. Thereby the 4A defendant has now become the owner of the undivided half share of the land to be partitioned.
23. The sole issue arising in this context is the absence of any deed or instrument of conveyance evidencing the transfer of title to Joronis. No document has been produced to establish that legal title to the subject property was ever formally vested in him.

24. ***In the case of Magilin Perera v. Abraham Perera [1986] 2 SLR 208*** it was held,

*“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 could 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 well nigh 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.”*

25. As outlined above, the mere absence of an original deed, particularly one of considerable antiquity, does not, in and of itself, preclude a valid claim to title. Courts must adopt a practical and reasonable approach when deciding on questions of ownership and title, taking into account the totality of the evidence before them. This includes subsequent deeds and other documentary material capable of establishing a continuous and credible chain of title.

26. In the present case, although no primary deed evidencing the original transfer of title to Joronis has been produced, a close examination of the subsequent deeds clearly support the existence of a consistent and traceable chain of title. Having regard to the cumulative documentary evidence and the legal submissions presented, I find that the 4A Defendant has established a valid claim to the one-half (½) undivided share of the land in dispute.
27. Moreover, the learned District Judge, in his judgment, has observed that both Maria and the 1st Defendant had stated that Mariyanu was the owner of the entire land. This finding is inconsistent with the evidence on record, as the testimony at page 286 clearly shows that the 1st Defendant acknowledged Mariyanu's ownership only to the extent of  $\frac{1}{2}$  of the land. The learned District Judge has therefore erred in concluding that the Plaintiff was entitled to the remaining 1/2 share without supporting any documentary evidence. Consequently, the finding that Mariyanu was the owner of the entire land is erroneous, and the learned Judges of the Civil Appellate High Court have also erred in affirming such a conclusion.
28. Furthermore, in relation to house bearing assessment No.7, upon consideration of the evidence contained in page 230 of the brief, it is vital to note that Maria, the predecessor in title to the plaintiff, testified that the 4th defendant had in fact been residing in the house situated on the western portion of the land from her early years, and even prior to the acquisition of the said land for railway purposes.

Q : 4 එකී එන්තිකාරය ඇගේ දැරුවන් සමඟ අංක 7 කියන නිවසේ ඉන්නවා?

උ : ඔව්

ප්‍ර : ඔය කට්ටිය ඔය නිවසේ තම පොඩි කාලයේ සිට ඉන්නවා?

උ : ඔව්

ප්‍ර : තමාට මතක ඇති කාලයේ සිට ඒ අය ඉන්නවා?

උ : ඔව්

ප්‍ර : ඔය ඉඩමෙන් කොටසක් රේල්‍යුවට අත්පත් කර ගන්නා නේද?

උ : ඔව්

ප්‍ර : ඒ අත්පත් කර ගන්න කළින් සිට ඒ අය ඉන්නවද?

උ : ඔව්. ජොරෝනිස් අර්සකුලරන්න. ඒ කියා

29. As evidenced in page 363 of the brief, the 1st defendant has given evidence to the effect that the survey for the railway track was conducted in the year 1889, and that Joronis had entered into possession of the land prior to that time and asserts that of the two brothers, it was Joronis, and not Mariyanu, who first occupied the land.

ප්‍ර - ඔය දුම්රිය මාර්ගය නමුන් අහල තිබෙනවද කොයි කාලයේද ආවේ කියා?

උ : දුම්රිය මාර්ගය මැයි 1889 වර්ෂයේද

ප්‍ර - නමුන් දන්නා හැටියට ඔය ජොරෝනිස් බෙදීමට යෝජිත ඉඩමට පැමිනියේ ඔය රේල් පාර දාන්න පෙරද, පසුවද?

උ : මගේ නාන්නා කියා තිබෙනවා ඊට පෙර බව

ප්‍ර - නාන්නා අයිතිකම් ගන්න විට ජොරෝනිස් සිටියේ කොහොද?

උ : ජොරෝනිස් ඊට බවතිර පැන්නේ ගෙයක් සාදාගෙන සිටියා.

ප්‍ර - ඒක නමුන් අහල තිබෙනවා?

C : ඔවුන්

ඇ - මධ්‍යානුව කළින් සිට ජෞරෝනිස් සිට තිබෙනවා?

C : ඔවුන්

30. In the above premise, it is clear that the learned Judges of the Civil appellate High Court have correctly evaluated the evidence and concluded that the 4A defendant is the rightful owner of the House Bearing assessment No. 7.
31. With regard to the house bearing Assessment No. 9, it is observed that the entitlement of the 2nd, 3rd, and 5th Defendants to an undivided half share of the land and the house thereon is not in dispute, either by the Plaintiff or by the 4A Defendant. In respect of the remaining  $\frac{1}{2}$  share of the said house, when perusing the evidence in pages 257, 263 and 277 of the brief and Deed No. 528 (P14) it is clear the plaintiff has purchased half a share of the house bearing assessment No. 9. In the Surveyor's Report of D. Ravi Kumarage Licensed surveyor dated 25th April 1997, (page 140 of the brief), it is stated that, “රතු අංක තුන ලෙස සන්දහන් ගොඩන්නැගිල්ලේ කොටසක පැමිනිලිකරු වන බෙනරගම විදානලගේ කුමාරසිංහ ජ්‍යෙෂ්ඨ පාදිච්චි වි සිටිය අතර අනෙක් කොටසේ බරනඩින් රෙජීනොල්ඩ් අර්සකුලරත්න විසින් භුක්ති වින්දිනු ලබයි.” Further, according to the Surveyor's Report of B.K.P.W Gunawardena Licensed surveyor dated 3rd April 1998, marked 1V10 (page 148 of the brief), it is recorded that rooms No. C, D, I, and J are presently in the occupation of the Plaintiff, while the remaining rooms A,B,E,F,G and H belonging to 2nd, 3rd, and 5th Defendants have been rented out. “*This entire House had been in use as ONE UNIT until the Plaintiff came into occupation. At present Room Nos.C, D, I & J are been used aná occupied by Plaintiff as a seperate unit. Doors*

*marked D3, D5 & D9 are presently closed. Entrance to the section occupied by Plaintiff is through D2.”*. In view of the foregoing, it appears that the learned District Judge has rightly concluded that ownership of the house bearing Assessment No. 9 stands divided equally, with 1/2 belonging to the Plaintiff and the other half to the 2nd, 3rd, and 5th Defendants.

32. Upon consideration of the entirety of the evidence adduced above, it is evident that Joronis had been in possession of, and had entered upon, the land in dispute prior to Mariyanu Arsekularatne. The evidence thus supports the claim that Joronis Arsekularatne has lawfully established his claim to the remaining  $\frac{1}{2}$  share of the said land in dispute.
33. Having duly considered the submissions advanced by the learned Counsel for the respective parties and upon careful examination of the materials placed on record, I arrive at the following findings: The 2nd, 3rd, and 5th Defendants are held entitled to an undivided one-half ( $\frac{1}{2}$ ) share in the corpus situated on the Eastern portion of the property. I hold that the 4A Defendant is entitled to the remaining one-half ( $\frac{1}{2}$ ) share of the corpus situated on the Western portion of the property, together with the house bearing Assessment No. 7. I further hold that the ownership of the house bearing Assessment No. 9, together with the plantation, shall be divided equally, with one-half ( $\frac{1}{2}$ ) share vesting in the Plaintiff and the remaining one-half ( $\frac{1}{2}$ ) share vesting jointly on the 2nd, 3rd, and 5th Defendants.
34. Consequently, the judgments of the learned Judges of the District Court and the Civil Appellate High Court, insofar as they relate to the one-half ( $\frac{1}{2}$ ) share previously allotted to the Plaintiff, are

hereby set aside. The question of law is answered in the affirmative.

35. The appeal is accordingly allowed, and the learned District Judge is directed to enter the interlocutory decree in conformity with this judgment.

*Appeal is allowed*

**JUDGE OF THE SUPREME COURT**

**JUSTICE MAHINDA SAMAYAWARDHENA**

I agree

**JUDGE OF THE SUPREME COURT**

**JUSTICE MENAKA WIJESUNDERA**

I agree

**JUDGE OF THE SUPREME COURT**