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

In the matter of an application in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC / APPEAL / 169 / 2013

SC (SPL) LA / 83 / 11

CA / 563 / 96 (F)

DC Horana: 2474 / P

Kumbukage Dona Somawathie,

Godigamuwa,

Gonapola Junction.

PLAINTIFF

-Vs-

1. **Ukawattage Engonana,**
   Godigamuwa,
   Gonapola Junction.

2. **Weerappulige Alia Fernando,**
   Godigamuwa,
   Gonapola Junction.

3. **Kumbukage Somalin,**
   Godigamuwa,

Gonapola Junction.

4. **Kumbukage Don Alwis Senevirathne,**
   Godigamuwa,
   Gonapola Junction.

5. **Kumbukage Dona Adlin,** Bunwalahena,
   Godigamuwa,
   Gonapola Junction.

6. **Kumbukage Dona Leelawathie,**
   Godigamuwa,
   Gonapola Junction.

7. **Kumbukage Dona Rathnawathie,**
   Godigamuwa,
   Gonapola Junction.

8. **Kumbukage Dona Chithrawathie,**
   Godigamuwa,
   Gonapola Junction.

9. **Agoris Fernando,**
   Kotigangoda,
   Padukka.

10. **Siyadoris Fernando,**
    Kotigangoda,
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11. **David Fernando,**
    Kotigangoda,
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12. **William Fernando,**
    Kotigangoda,
    Padukka.

13. **Fred Weerasinghe,**
    Alubomulla,
    Arukgoda.

14. **Hapuarachchige Martinaz Gunathilake,**
    Kanaththagoda,
    Weediyagoda,
    Bandaragama.

15. **Hapuarachchige Gunadasa Gunathilake,**
    Kanaththagoda,
    Weediyagoda,
    Bandaragama.

16. **Hapuarachchige Leon Gunathilake,**
    Kanaththagoda,
    Weediyagoda,
    Bandaragama.

17. **Hapuarachchige Yemis Gunathilake,**
    Kanaththagoda,
    Weediyagoda,

Bandaragama.

18. **Dissanayaka Mudiyanselage Tikirimenike,**
Weediyagoda,
Bandaragama.

19. **Hapuarachchige Chandrapala,**
Weediyagoda,
Bandaragama.

20. **Hapuarachchige Chandralatha,** Hengoda,
Bandaragama.

21. **Hapuarachchige Kingsly,** Weediyagoda,
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22. **Hapuarachchige Liliyan,** Weediyagoda,
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23. **Hapuarachchige Herbert,** Weediyagoda,
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32. Weerappuliradage Nela Fernando,
Godigamuwa,
Gonapola Junction.

33. **Weerappuliradage Chalina Fernando,**
Godigamuwa,
Gonapola Junction.

34. **Masakoralalage Karunadasa,** Godigamuwa,
Gonapola Junction.

35. **Pathirage Dharmasena,**
Godigamuwa,
Gonapola Junction.

36. **Hapuarachchige Dona Chandrakanthi,**
"Deepani",
Godigamuwa,
Gonapola Junction.

37. **Yasawathie Mallikarachchi,**
C/O Gunarathne Gunathilake, Godigamuwa,
Gonapola Junction.

DEFENDANTS

AND THEN

34. **Masakoralalage Karunadasa,** Godigamuwa,
Gonapola Junction.

36. **Hapuarachchige Dona Chandrakanthi,**
"Deepani",
Godigamuwa,

Gonapola Junction.

<u>34TH AND 36TH DEFENDANTS – APPELLANTS</u>

-Vs-

Kumbukage Dona Somawathie,

Godigamuwa,

Gonapola Junction.

<u>PLAINTIFF – RESPONDENT</u>

Pathirage Aruna Suranjith Perera,

Godigamuwa,

Gonapola Junction.

<u>SUBSTITUTED - PLAINTIFF – RESPONDENT</u>

1. **Ukawattage Engonana,**
   Godigamuwa,
   Gonapola Junction.

1a. Kumbukage Leelawathie,
Godigamuwa,
Gonapola Junction.

1b. Kumbukkage Chithrawathie,
Godigamuwa,
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2. Weerappulige Alia Fernando,
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35.Pathirage Dharmasena,

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37.Yasawathie Mallikarachchi,

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DEFENDANTS – RESPONDENTS

AND NOW BETWEEN

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PLAINTIFF – RESPONDENT

Pathirage Aruna Suranjith Perera,

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SUBSTITUTED - PLAINTIFF – RESPONDENT – PETITIONER

-Vs-

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Godigamuwa,

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36. Hapuarachchige Dona Chandrakanthi,

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37. Yasawathie Mallikarachchi,
C/O Gunarathne Gunathilake, Godigamuwa,
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DEFENDANTS – RESPONDENTS – RESPONDENTS

Before: S. Thurairaja, PC, J

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

Arjuna Obeyesekere, J

Counsel: Dr. Jayatissa De Costa with Chanuka Ekanayake for the 6th Defendant – Respondent – Appellant.

Ranjan Suwandaratne, PC with Anil Rajakaruna for the 34th and 36th Defendants – Appellants – Respondents

R.M.D. Bandara with Lilanthi De Silva for the 12 (a) Defendant – Respondent – Respondent

Argued on: 28.03.2024

Decided on: 19.03.2026

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

1. The Plaintiff – Respondent – Appellant *("the Plaintiff")* instituted this partition action in order to have the land depicted in the Schedule to the plaint partitioned, as it had become inconvenient to enjoy possession in common. Since it is a contest between the Plaintiff and the 34th and 36th Defendant – Appellant – Respondents (*the 34th and 36th Defendants*) that has given rise to this instant appeal, it is appropriate to set out that contest. It is to be noted though that the 34th and 36th Defendants find themselves

in the pedigree of the Plaintiff. But in the judgment dated 30 April 1996, the learned District of Horana while allotting shares on evidence assigned 324/50400 shares to the 34th Defendant but not any shares to the 36th Defendant.

2. What became the bone of contention is that both these two Defendants also claimed from the corpus an additional extent of 1 Acre, 1 Rood and 12 Perches. It is quite evident that this extent has not been clearly identified by these two Defendants in the trial. This was the decision of the learned District Judge and even though the Court of Appeal did not go into this aspect of the matter owing to a very cardinal objection that these two Defendants raised in their appeal to the Court of Appeal, I intend examining the additional claim of these two Defendants as arguments also took place before this Court on the additional claim.

3. As I said before, when the learned District Judge of Horana rejected the additional claims of the two Defendants, their appeal to the Court of Appeal was not made against the rejection. The whole appeal to the Court of Appeal was on the basis that the learned District Judge did not specifically answer the points of contest but rather included his reasons in the judgment dated 30 April 1996. In other words, there were only four points of contest raised by the Plaintiff. The contesting 34th and 36th Defendants did not raise any points of contest at all, though they had filed a joint statement of claim.

4. Having failed to raise points of contest, the 34th Defendant sought to prove that he had an additional share of 1 Acre, 1 Rood and 12 Perches over and above the 324/50400 shares that were finally allotted to him. This claim was bound to fail for several reasons. The two Defendants (the 34th and 36th Defendants) traced their entitlement to the additional extent to a deed one Baron Gunetilleke had effected. This supposed disposition from Baron Gunetilleke, as was correctly found by the learned District Judge, did not give these two Defendants any kind of entitlement to an additional extent of 1 Acre, 1 Rood and 12 Perches in this particular corpus. The

reasons are not far to seek. Whilst these two Defendants admitted the corpus at the commencement of the trial, that implicitly connoted an admission as to the boundaries of the corpus.

5. But the deed they produced as traceable to Baron Gunetilleke had different boundaries indicating that it was a different land. The boundaries of the additional extent as claimed by these two Defendants did not even tally with the boundaries of the preliminary plan.

6. When the surveyor repaired to the corpus for the survey, these two Defendants chose not to stake any claims or interests in the corpus. This is consistent with the reasoning of the learned District Judge that if at all, their entitlement if true lay elsewhere and not on this corpus. Thus, the two Defendants could not be aggrieved when the learned Judge of Horana dismissed their claims to an additional extent of land in the corpus.

7. There was a far more stark item of evidence which militated against the *bona fides* of the claims of these two Defendants. It came about this way. The 34th Defendant sought to prove that he had a permit to cultivate rubber in the corpus for which he had obtained financial aid. But the Plaintiff disproved this version of the 34th Defendant by showing that the said 34th Defendant was ordered to repay the financial aid as he had fraudulently obtained the permit by producing false material.

8. Fraud unravels all and this conduct was another factor that drove the learned District Judge to hold that the 34th Defendant did not have an additional extent of 1 Acre, 1 Rood and 12 Perches over and above their allotments that he had received in the judgment.

9. The learned District Judge quite clearly reasons out his conclusion and I find no reason to fault this decision-making.

10. The judgment of the learned District Judge as regards the devolution of shares on the other co-owners does not suffer from any kind of errors on the part of the learned District Judge and nobody challenges that judgment except these two Defendants who raised what I called a cardinal objection to the judgment of the District Court when they preferred their appeal to the Court of Appeal.

Non-compliance with Section 187 of the Civil Procedure Code.

11. Having failed in their claim to the additional extent in the District Court, the appeal to the Court of Appeal was not based on the merits of the decision making of the learned District Judge**.** No complaint was ever made that the learned District Judge had not investigated title which is imperative in terms of Section 25 of Partition Law (No.21 of 1977).

12. The non-merit-based challenge to the judgment of the learned District Judge was that in the course of his judgment he had not provided answers specifically to the four points of contest. In other words, the answers were not given in response to the enumerated points of contest. The following precedents were relied upon and the Court of Appeal leaned towards accepting that argument.

13. The perennial dicta in ***Dona Lucihamy vs. Cicilinahamy***[1] were drawn to the attention of Court. In that case L.W. de Silva A.J. observed at page 216;

> *"Bare answers to issues or points of contest whatever name may be given to them, are insufficient unless all matters which arise for decision under each head are examined."*

14. That proposition is unexceptionable. Yet the question that arises in the present appeal is of a slightly different character. Can it be said that a judgment becomes

[1] 59 N.L.R 214

defective merely because the learned trial Judge has not set out answers to the points of contest in a numerical sequence, even though the reasoning of the judgment demonstrates that each of those matters has in substance been examined and resolved? In my view, the answer must be in the negative.

15. Section 187 of the Civil Procedure Code requires the Judge to state the reasons for the judgment. Where the judgment contains a considered discussion of the evidence and the law, and the conclusions reached therein effectively dispose of the matters raised for adjudication, the omission to record answers to the points of contest *seriatim* cannot by itself render the judgment defective. What the law insists upon is the disclosure of the judicial reasoning that led to the conclusion, not a rigid adherence to the mechanical form of answering each point of contest by number.

16. In the present case, although the learned District Judge has not answered the points of contest in numerical order, the reasoning set out in the judgment unmistakably addresses the matters which those points were intended to raise. The substance of the adjudication is therefore clearly discernible, and the requirement of Section 187 cannot be said to have been violated.

17. In this regard, the principle laid down in the Supreme Court decision of ***Udugamkorale v. Mary Nona & Another***[2] is apt to be recalled. reported in states the follow;

> *"Although the issues raised in the case were not very clear, and the answers to the issues appeared to be contradictory, on the basis of the pleadings the matters in issue are very clear and the judgment gave adequate reasons in conformity with Section 187 of the Civil Procedure Code. In the circumstances the judgment should be upheld."*

[2] (2003) 2 Sri.L.R. at p7

18. It is my view that where the trial Judge has properly analyzed the evidence and answers to the issues could be found in the body of the judgement, Section 187 does not mandate the setting aside of the judgement.

19. The Court of Appeal fell into an error when they set aside the judgement of the trial court dated 30 April 1996 and remitted the case for a trial *de novo*. In the circumstances, the judgment of the Court of Appeal has to be set aside and the judgment of the learned District Judge of Horana must be affirmed.

20. Accordingly, this Court proceeds to set aside the judgement of the Court of Appeal dated 21 March 2011 and affirms the judgement of the learned District Judge dated 30 April 1996 as that Court has properly evaluated the evidence led in the case and this Court is of the view that no substantial prejudice has been caused to the 34th and the 36th Defendants who neither raised issues nor proved their entitlement.

21. The Court answers in the negative the question of law namely;

> *"Whether it is imperative in a trial in a partition action to answer the issues number wise (sic) even when the Judge has had considered all the rights of the parties"*

22. The Court directs the learned District Judge of Horana to give utmost priority to this case and conclude the matter expeditiously by taking the necessary steps in accordance with the provisions of the partition law.

Judge of the Supreme Court

S. Thurairaja, PC, J. **Judge of the Supreme Court**

I agree

Arjuna Obeyesekere, J. **Judge of the Supreme Court**

I agree