

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

Dona Chandra Malkanthi Weththasinghe,
No. 215, Mahawila, Alubomulla.

Presently of No. 78/2,

Avariyaawatta, Alubomulla.

Substituted Plaintiff-Appellant-Appellant

SC/APPEAL/178/2025

WP/HCCA/KAL/85/2016 (F)

DC PANADURA 336/P

Vs.

1. Sooriyarachchige Dhanadasa, No. 381,
S. Mahinda Mawatha, Alubomulla.
2. Sooriyarachchige Padmasiri, (deceased)
S. Mahinda Mawatha,
Alubomulla, Panadura.
- 2A. Palpolage Dona Shriyani Asoka,
Lunumadalagahawatte,
Galthude, Bandaragama.
3. Sooriyarachchige Jayasiri,
No. 381, S. Mahinda Mawatha,
Alubomulla, Panadura.
4. Sooriyarachchige Kanthi,
No. 381, S. Mahinda Mawatha,
Alubomulla, Panadura.
5. M. Justin Wimalasiri,
No. 381, S. Mahinda Mawatha,
Alubomulla, Panadura.

6. Mahapathirage Peter Perera, (deceased)
Kurusa Junction, Alubomulla,
Panadura.
- 6A. Maddumage Kusumaawathie,
No. 122/3, Kurusa Junction,
Alubomulla, Panadura.
7. Ileperumage Rathnasena,
No. 378/1, S. Mahinda Mawatha,
Alubomulla, Panadura.
8. Govinda Waduge Piyasena, (deceased)
No. 247, Mahawatta, Alubomulla.
- 8A. Kulegoda Acharige Alan Nona,
No. 244, Mahawatte, Alubomulla.
9. Walakulyarachchige Padmalatha,
S. Mahinda Mawatha,
Alubomulla, Panadura.
10. Thelge Artin Peiris, (deceased)
No. 381, S. Mahinda Mawatha,
Alubomulla, Panadura.
- 10A. Hewafonsekage Evlin Fonseka,
No. 381, S. Mahinda Mawatha,
Alubomulla, Panadura.
11. Sumith Jayakody,
No. 194, Main Street, Panadura.
12. Kahandawelaarachchige Piyadasa
Perera, No. 381/2,
S. Mahinda Mawatha,
Belikele, Panadura.
13. W. Sunil De Mel,
No. 227, 7th Cross Street,
Panadura.

14. Matara Badalge Jinapala, No. 378/3,
S. Mahinda Mawatha, Alubomulla.
(Appearing by Power of Attorney Holder,
Manuwelge Lalitha)
15. Lokupathirage Alice Nona, (deceased)
Kurusa Junction, Alubomulla.
- 15A. Mahapathirage Peter, (deceased
and substituted by 6A Defendant-
Respondent-Respondent)
No. 275, Kurusa Junction, Alubomulla.
Defendants-Respondents-Respondents

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Arjuna Obeyesekere
Hon. Justice M. Sampath K.B. Wijeratne

Counsel: Dr. Sunil Coorey for the Plaintiff-Appellant-Appellant.
Vijith Singh for the 5th and 9th Defendants-Respondents-
Respondents.
Chathura Dilhan for the 10A Defendant-Respondent-
Respondent.

Argued on: 19.09.2025

Written submissions:

By the Substituted Plaintiff-Appellant-Appellant on
25.11.2025.

By the 5th and 9th Defendants-Respondents-Respondents on
03.11.2025.

By the 10A Defendant-Respondent-Respondent on
07.11.2025.

Decided on: 13.01.2026

Samayawardhena, J.

The plaintiff instituted this action as far back as 1991 in the District Court of Panadura seeking partition of a land in extent of 2 acres, 3 roods and 8 perches described in the schedule to the plaint. She named six defendants, stating that they were made parties solely on the basis that they were living on the land, and that she was unaware of the basis on which they were in occupation. She claimed entitlement to 26/42 shares of the land and prayed that the balance be left unallotted.

It must be observed that the plaintiff commenced this action in a highly unsatisfactory manner. She was neither in possession of the land nor residing on it. Her claim was founded solely on very old deeds. By instituting the action in this manner, she placed all parties in a position of considerable difficulty and uncertainty. Several additional parties were later added to the proceedings.

Preliminary Plan No. 732 was prepared by Mr. Sirisoma, Licensed Surveyor, depicting a land in extent of 2 acres, 3 roods and 12 perches. Numerous defendants thereafter filed statements of claim seeking dismissal of the action, exclusion of portions of the land, or other relief. The 1st to 5th defendants filed a joint statement of claim, as did the 7th, 8th and 14th defendants. The 6th, 10th, 12th and 13th defendants filed separate statements of claim.

The consistent position taken by most of these defendants, supported by old deeds and plans, was that no land, as described in the plaint, existed on the ground. They asserted that they were in possession of clearly defined and demarcated portions of land for a considerable period of time, and that there was no common possession. In support of this position, the defendants tendered their respective plans and had them superimposed on the preliminary plan through the same surveyor, Mr. Sirisoma.

One such plan is Plan No. 1287, prepared at the instance of the 7th, 8th and 14th defendants. That plan depicts lots marked 1A to 1G. According to the proceedings dated 04.05.2001, upon an agreement between the 7th, 8th and 14th defendants on the one hand and the other parties on the other, lots 1A, 1C, 1D, 1E and 1F depicted in Plan No. 1287 were agreed to be excluded from the land to be partitioned. The 7th, 8th and 14th defendants are living on those lots. However, there is no reference in those proceedings to lot 1G, which lies on the southern boundary of lot 1E.

On the same day's proceedings, while giving evidence, the plaintiff stated that lots 1A, 1C, 1D, 1E and 2A in Plan No. 1287 could be excluded from the corpus, and that lot 1B could be partitioned. However, the plan does not indicate the extent of lot 1B, nor did the plaintiff adduce any evidence regarding its extent. The plaintiff also did not address the exclusion of lot 1G. Further, although the plaintiff referred to lot 2A, no such lot as 2A appears in Plan No. 1287.

Thereafter, according to the proceedings dated 15.06.2004, in answer to questions posed during the cross-examination by learned counsel for the 1st to 5th defendants, the plaintiff stated that she wished the entire land depicted in the preliminary plan to be partitioned.

The 1st to 5th defendants had their old plans superimposed on the preliminary plan through Mr. Sirisoma, Licensed Surveyor. That plan is Plan No. 2014. In preparing this plan, old Plans Nos. 472 and 1285 were superimposed on the preliminary plan, clearly identifying the portions of land which the 1st to 5th defendants have been in possession. These portions are shown as lots numbered 1285/1 to 1285/6. The evidence establishes that the said defendants have been residing on these lots for a long time, having constructed houses thereon.

In cross-examination, the plaintiff admitted that the 1st to 5th defendants had been living on those portions for a long period. A careful reading of the evidence also indicates that the plaintiff did not seriously object to the exclusion of those portions from the land to be partitioned. Significantly, those lots fall within lot 1B as depicted in Plan No. 1287. These admissions and shifting positions, taken together, clearly demonstrate that the plaintiff herself was uncertain as to the precise extent and identity of the land she sought to have partitioned.

After trial, the learned District Judge dismissed the plaintiff's action on the ground that the land sought to be partitioned had not been properly identified. The High Court affirmed that judgment. This Court granted leave to appeal on the question whether the High Court erred in law by failing to consider that the plaintiff could have proceeded with the action by confining the partition to lot 1B as depicted in Plan No. 1287. On the facts and circumstances of this case, I answer that question in the negative.

The appeal is accordingly dismissed. The contesting defendants are entitled to costs in all three Courts, recoverable from the plaintiff.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court

M. Sampath K.B. Wijeratne, J.

I agree.

Judge of the Supreme Court