

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

Jayalathge Amarsinghe,
No. 10, Church Road,
Gampaha. (Deceased)
Plaintiff-Respondent

Priyadarshani Geethika Amarasinghe,
No. 8, Gajaba Mawatha,
Negombo Road, Kurunegala.
Substituted Plaintiff-Respondent-Appellant

SC/APPEAL/213/2017

NWP/HCCA/KUR/32/2008 (F)

DC KURUNEGALA 4919/P

Vs.

1. M.D. Ivon Wickremasinghe,
2. M.D. Karunawathie,
3. M.D. Anulawathie,
- 5A. M. Hemachandra,
6. M. Hemachandra,
All of Pahalagama Nailiya, Boyagane.
1st to 3rd, 5A and 6th Defendant-Appellant-
Respondents
4. M.D. Siyathu,
Pahalagama Nailiya,
Boyagane.
4th Defendant-Respondent-Respondent

M.D. Udaya Kumara,
Substituted 4th Defendant-Respondent-
Respondent

7. Muthunayakage Malani Muthunayake,
 Kunupotha, Bandara Koswatte.
8. Muthunayakage Nimal Shantha
 Muthunayake, Nailiya, Boyagane.
 (Deceased)
- 8A. Marasinghe Pedige Suneetha,
 No. 96, Heanpitamulla, Yakkala.
9. M.P. Irene Premalatha,
 271/1, Nailiya, Bogamuwa Road,
 Boyagane.
10. Muthugal Pedige Srima Subhashini
 Ariyarathne,
11. M.P. Niroshini Ariyarathne,
12. M.P. Lakshman Ariyarathne,
13. Chintha Priyadarshani Ariyarathne,
14. Chamila Sanjeeewani Ariyarathne,
 All of Pahala Nailiya, Boyagane.

Defendant-Respondent-Respondents

Before: Hon. Justice A.L. Shiran Gooneratne
 Hon. Justice Mahinda Samayawardhena
 Hon. Justice K. Priyantha Fernando

Counsel: Dr. Sunil Coorey for the Substituted Plaintiff-Respondent-Appellant.
 Lakshman Perera, P.C., with Tharika Jinadasa for the 5A and 6th Defendant-Appellant-Respondents and 7th, 8th and 9th Defendant-Respondent-Respondents.

Argued on: 26.08.2025

Written submissions:

By the Substituted Plaintiff-Respondent-Appellant on
13.10.2025.

By the 5A Defendant-Appellant-Respondent on 29.09.2025.

Decided on: 13.01.2026

Samayawardhena, J.

The plaintiff instituted this action in the District Court of Kurunegala, naming five defendants, seeking the partition of the land among them, with shares claimed as follows: the plaintiff 2/6, the 1st, 2nd, and 3rd defendants 1/6 in common, the 4th defendant 1/6, and the 5th defendant 2/6. The preliminary plan No. 2331 depicted four lots, namely lots 1 to 4, as forming part of the corpus.

The 4th defendant filed a statement of claim admitting the corpus, while making certain adjustments to the calculation of shares. The 4th defendant accepted the plaintiff's 1/3 share. The 1st, 2nd, 3rd and 5th defendants filed a joint statement of claim in which they asserted that lot 1 in the preliminary plan was a different land known as *Wanewatta*. They also proposed certain adjustments to the calculation of shares, but accepted the plaintiff's 1/3 share. The 6th, 7th, and 8th defendants filed a statement of claim seeking the exclusion of lot 1 from the corpus.

After trial, the learned District Judge held that lots 1 to 4 depicted in the preliminary plan formed part of the land to be partitioned, and proceeded to partition the land among the parties in accordance with the shares set out in the plaint, subject to the finding that Madamulle Durayalage Manika had gifted only 1/12, out of her 1/3 share, to her granddaughter, the 5th defendant, Babi *alias* Dayawathie, by deed marked 5V1, and the balance of

the 1/3 share shall remain unallotted. “[මැදමුල්ලේ දුරයලාගේ] මැණිකාගේ කොටසින් 1/12 ක් 5වි1 මගින් 5 වන විත්තිකාරියට දී ඇති අතර ඉතිරි කොටස් නොබේදු කොටස් ලෙස තැව්මට තීරණය කරමි.”¹

Being dissatisfied with the judgment of the District Court, the 1st, 2nd, 3rd and 5th defendants preferred an appeal to the High Court of Civil Appeal of Kurunegala. The sole ground urged in the petition of appeal was that lot 1 ought to have been excluded from the corpus, and no pedigree dispute was raised for determination.

The learned High Court Judge has given reasons for concluding that lot 1 cannot, on a balance of probabilities, form part of the corpus, having regard *inter alia* to its boundaries and extent. I see no reason to interfere with that finding.

However, the learned High Court Judge, in the absence of any submission made on behalf of the 1st, 2nd, 3rd and 5th defendants, and without affording the plaintiff any opportunity to be heard, raised a pedigree dispute *ex mero motu* in the judgment and unilaterally concluded that the plaintiff was not entitled to any share. Having so decided, the learned High Court Judge proceeded to determine the shares as follows: the 1st to 3rd defendants 3/24, the 4th defendant 5/24, and the 5th defendant 2/24, with the balance shares to remain unallotted.

I shall now consider the basis on which the learned High Court Judge, *ex mero motu*, concluded that the plaintiff was not entitled to any share. It is common ground among the parties that, at one point in time, there were three original owners, each entitled to a 1/3 share. One such owner was Bandiya, who held a 1/3 share, and another was Madamulle Durayalage Manika, who also held a 1/3 share. According to the plaintiff, the remaining

¹ The District Judge has also stated in the judgment that the 5th defendant is entitled to 2/12 share (as stated in the plaint) but it should be disregarded.

1/3 share belonged jointly to Kira and Siyathu. According to the defendants, however, the remaining 1/3 share belonged to Sasira.

The plaintiff derives title from Bandiya. Bandiya transferred his 1/3 share to Karunapedi Durayalage Manikee by deed P1, and Manikee in turn transferred that share to Samadaree by deed P2. The learned District Judge held that, upon the death of Samadaree, her 1/3 share devolved on her mother, the said Manikee, who thereafter transferred that share to the plaintiff by deed P3.

Another original owner, namely Madamulle Durayalage Manika, gifted 1/12, out of her 1/3 share, to her granddaughter, Babi *alias* Dayawathie, the 5th defendant, by deed marked 5V1, stating in the deed that the source of title was maternal inheritance from Samadaree.

On the basis that Samadaree figured in two deeds emanating from different sources, namely deeds P2 and 5V1, the learned High Court Judge concluded that *“Karunapedi Durayalage Manikee [the plaintiff’s predecessor] cannot have a title inherited from her daughter Samadaree to feed deed P3 and the recipient of it, the plaintiff cannot have any rights on that deed.”*

Although the learned High Court Judge proceeded on the basis that there was only one person named Samadaree, no defendant at any stage of the proceedings asserted that there was only one Samadaree, or that such Samadaree was the daughter of Madamulle Durayalage Manika and not of Karunapedi Durayalage Manikee. This was an assumption made by the learned High Court Judge without any issue having been raised by the parties at the trial, and without affording any opportunity to the parties to address or contradict that position. Such an approach cannot be sustained. Had an opportunity been afforded, the plaintiff and the other defendants would have been in a position to demonstrate that there were in fact two

persons named Samadaree, as well as two distinct persons named Manika, namely Karunapedi Durayalage Manikee and Madamulle Durayalage Manika.

Leave to appeal was granted principally on two questions of law. The first was whether the High Court of Civil Appeal erred in excluding lot 1 from the corpus. The second was whether the said Court erred in denying the plaintiff a 1/3 share on a basis never contemplated by the parties. I answer the former in the negative and the latter in the affirmative.

For the foregoing reasons, the judgment of the High Court of Civil Appeal is set aside, except in so far as it holds that lot 1 should be excluded from the corpus, and the judgment of the District Court is restored, subject to the exclusion of lot 1 from the land to be partitioned as depicted in the preliminary plan marked X.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court