

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

1. Rajapaksha Pedige Sajeewa  
Dhammika Rajapakshe,  
'Rajapaksha Nivasa', Kobbewela,  
Galigamuwa Town.  
Presently in Japan and appearing by  
Rajapaksha Pedige Priyantha Luxman  
Rajapaksha, his power of attorney  
holder
2. Rankoth Pedige Sunil Premachandra,  
'Sunil Sevana', Kobbewela,  
Galigamuwa Town.  
Plaintiff-Respondent-Appellants

**SC/APPEAL/29/2024**

**SP/HCCA/KEG/26/2019(F)**

**DC KEGALLE 28146/P**

Vs.

3. Ranasinghe Pedige Jayathileke  
Ranasinghe.
10. R. P. Wimalarathne.
11. R. P. Upananda Ranasinghe.  
All of Kobbewela,  
Galigamuwa Town.  
3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendant-  
Appellant-Respondents

1. Rajapaksha Pedige Rajasiri  
Seneviratne, Paranawatte,  
Kobbewela, Galigamuwa Town.

2. Rajapaksha Pedige Rajarathne,  
Paranawatte, Kobbewela,  
Galigamuwa Town.
4. Marasinghe Pedige Sunil,  
Kobbewela, Galigamuwa Town.
5. Rajapaksha Pedige Nandawathie,  
Paranawatte, Kobbewela,  
Galigamuwa Town.
6. Wijayalatha Pedige Bandula  
Gunasinghe, Kobbewela,  
Galigamuwa Town.
7. Wijayalatha Pedige Samaraweera  
Kularathne, Kobbewela,  
Galigamuwa Town.
8. Hapan Pedige Susilawathie,  
Kobbewela, Galigamuwa Town.
9. Wijayalata Pedige Kusumalatha,  
Kobbewela, Galigamuwa Town.  
1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>  
Defendant-Respondents.

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

Counsel: Dr. Sunil Coorey with Ms. Sudarshani Coorey for the  
Plaintiff-Respondent-Appellant.  
Pubudu Alwis with Supun Jayathilake for the 3<sup>rd</sup>, 10<sup>th</sup> &  
11<sup>th</sup> Defendant-Appellant-Respondents.  
M.S.M. Kanil for the 1<sup>st</sup> & 2<sup>nd</sup> Defendant-Respondent-  
Respondents.

Argued on: 09.03.2026

Decided on: 20.03.2026

**Samayawardhena, J.**

The plaintiffs instituted this action in the District Court of Kegalle naming two defendants seeking to partition the land known as *Hitinawatta*, described in the schedule to the plaint, according to the pedigree set out in the plaint. The land is morefully depicted in Preliminary Plan No. 2100.

At the preliminary survey, the 3<sup>rd</sup> to 9<sup>th</sup> defendants intervened, and the 3<sup>rd</sup> defendant later disclosed the 10<sup>th</sup> and 11<sup>th</sup> defendants as necessary parties. The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> defendants filed a joint statement of claim, whereas the 3<sup>rd</sup> defendant filed a separate statement of claim. The other defendants did not file statements of claim.

The contest at the trial was between the 3<sup>rd</sup> defendant together with the 10<sup>th</sup> and 11<sup>th</sup> defendants on the one hand and the plaintiffs together with other defendants on the other. After trial, by judgment dated 11.12.2018, the District Court accepted the pedigree of the plaintiffs and decided to partition the land among the plaintiffs and the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> defendants.

Being dissatisfied with the said judgment, the 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants jointly appealed to the High Court of Civil Appeal in Kegalle. The High Court, by judgment dated 05.11.2020, set aside the judgment of the District Court and dismissed the plaintiffs' action on the basis that the plaintiffs had failed to identify the corpus. Hence this appeal by the plaintiffs.

This Court granted leave to appeal against the judgment of the High Court on several questions of law which, in essence, raise the question whether the High Court erred in law and in fact in dismissing the plaintiffs' action *in toto* on the ground of non-identification of the corpus when the 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants, or any other party, had not raised a specific issue on identification of the corpus in the District Court.

I have, *inter alia*, examined the statement of claim filed by the 3<sup>rd</sup> defendant, the issues raised on behalf of the 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants, the evidence led on their behalf, and the oral and written submissions filed in support of their claims.

The plaintiffs instituted this action seeking to partition *Hitinawatta* on the pedigree set out in the plaint. Their position is that the land depicted in the Preliminary Plan is *Hitinawatta*. They unfolded their pedigree and produced deeds in support of their claim to *Hitinawatta*. The 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants, on the other hand, claimed title to *Rajapakshage Watta* on a different pedigree. They produced deeds in support of their claim to *Rajapakshage Watta*.

Although the 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants caused Surveyor General's Plan No. 2009/67 to be prepared, both the Preliminary Plan and the Surveyor General's Plan depict the same land. There was therefore no dispute regarding the identification of the corpus. The real dispute related to the title to the corpus. This position was placed beyond doubt by the 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants themselves, *inter alia*, in paragraph 25 of their Petition of Appeal tendered to the High Court dated 18.01.2019 where they stated: “X පිඹුරේ සතර මායිම් හා 3වන දරණ රජයේ මිනින්දෝරුවරයාගේ පිඹුර [No.2009/67] සලකා බැලීමේදී පැමිණිල්ල කියන ඉඩම හා 3, 10, 11 වින්තිය කියන එකම ඉඩමක් බව සනාථ වන බව ගෞරවයෙන් සැලකර සිටී.” This is further fortified by the first issue raised by the 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants (issue No. 11) at the trial, which is whether the land depicted in the Preliminary Plan is also known as *Rajapakshage Watta*. (“මෙම නඩුව සඳහා ඒ.සී.පී ගුණසේන බලයලත් මානකතැන විසින් මැන සකස්කර ඇති 2100/පී පිඹුරේ සඳහන් ඉඩම රාජපක්ෂගේ වත්ත නමින්ද හඳුන්වනු ලබන්නේද?”)

The relief sought by the 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants from the District Court was either the exclusion of Lots 3 and 4 of the Preliminary Plan (which correspond to Lots (ඇ), (ඈ), (ඉ), (එ), (ඒ) in Surveyor General's Plan No. 2009/67) on the basis of prescriptive title or, in the alternative, an

undivided  $\frac{1}{4}$  share of the land. They did not seek the dismissal of the plaintiffs' action on the ground of non-identification of the corpus.

As stated earlier, the District Judge came to the conclusion that the land depicted in the Preliminary Plan is *Hitinawatta* and that the 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants had no rights over that land either by deeds or by prescriptive possession. The District Judge did not accept the pedigree put forward by the 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants. The actual complaint of the 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants before the High Court was that their pedigree, deeds and prescriptive claim had not been properly considered by the District Judge in granting the relief prayed for by them.

However, the High Court, without examining the pedigree dispute, adopted a convenient method of dismissing the entire action on the ground of non-identification of the corpus, mainly by comparing the boundaries described in the schedule to the plaint with those described in the Preliminary Plan. Although failure to identify the corpus is a valid ground for the dismissal of a partition action without going into the merits, in the present case there was no dispute regarding the identification of the corpus. The dispute related to the title to, or the undivided rights in, the land depicted in the Preliminary Plan, which had to be determined on the basis of the pedigrees of the competing parties, the relevancy of the deeds relied upon by them, and their respective claims of prescription.

The High Court has stated in its judgment that in a partition action, even if the defendants have not disputed the corpus, the High Court can dismiss the plaintiff's action on the ground of non-identification of the corpus. I am unable to agree. Failure to identify the corpus is clearly a question of fact. A pure question of fact cannot be raised for the first time in appeal. This principle applies not only to the parties to the appeal but also to the Court itself. Had the identification of the corpus been raised as a specific issue in the District Court, either by a party or by the Court, the plaintiffs could have led specific evidence to remove any doubts. The

mere fact that a party seeks the exclusion of some Lots from the corpus on the basis of prescription as the contesting defendants have sought in this action does not warrant the dismissal of the action on non-identification of the corpus.

The 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants have not appealed against the judgment of the High Court which did not consider their claim on the merits.

For the aforesaid reasons, I answer the question of law on which leave to appeal was granted in the affirmative. The judgment of the High Court is set aside and the judgment of the District Court is restored. Accordingly, the appeal is allowed. Since the parties should not suffer for the error committed by the High Court, I make no order as to costs.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court

Sampath K. B. Wijeratne, J.

I agree.

Judge of the Supreme Court