

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

*In the matter of an Appeal from the
Judgment of the Civil Appellate High
Court of Colombo in terms of Sec. 5(c)(1)
of the Act No. 54 of 2006.*

SC Appeal No:

59/2020

1. Mohamed Rauf Ahamed Nuhuman,
No. 22, St. Hildon Place,
Colombo 04.

S.C. (H.C.) C.A.L.A. No:

438/2015

(Now Deceased)

2. Mohamed Rauf Hassan Bari,
No. 22, St. Hildon Place,

WP/HCCA/COL No:

342/2009(F)

Colombo 04.

3. Mohamed Rauf Furkan Ali,
No. 22, Hildon Place,

D.C. Colombo Case No:

18076/P

Colombo 04.

4. Mohamed Rauf Ismath Asmeer,
No. 22. Hildon Place,
Colombo 04.

5. Mohamed Rauf Samsul Samaan,
Colombo 04.
(Now Deceased)

PLAINTIFFS

Vs.

1. Kaliyur Rahaman Ahamed Siddeek,
No. 150, Peradeniya Road,
Kandy.

2. Polwattage Wijeratne,
No. 277/9, Negombo Road,
Peliyagoda.
(Now Deceased).
3. Sellathurai Thambiraja,
No. 31/1, Mayfield Road,
Colombo 13.
4. Malarmahal Thambiraja,
No. 31/1, Mayfield Road,
Colombo 13.
5. Kannuthurai Devadas,
No. 11/1A, Schofield Place,
Colombo 03.
6. Parameshwari Devadas,
No. 11/1A, Schofield Place,
Colombo 03.
7. Abdul Hussain Mumtaz Hussain,
No. 33/3, Akbar Mawatha,
Colombo 12.
8. Another Person,
9. Abdul Hussain Musheeda Begam,
No. 7/3, St. Sebastian Street,
Colombo 12.

DEFENDANTS

AND BETWEEN

Abdul Hussain Musheeda Begam,
No. 7/3, St. Sebastian Street,
Colombo 12.

9TH DEFENDANT-APPELLANT

Vs.

1. Mohamed Rauf Ahamed Nuhuman,
No. 22, Hildon Place,
Colombo 04. (Now Deceased)
- 1A. Mohamed Hadi Siththi Hirrziya,
- 1B. Mohamed Zakeer,
- 1C. Fathima Zeinab,
- 1D. Siththy Zahara,
All of them,
No. 22, Hildon Place,
Colombo 04.
2. Mohamed Rauf Hassan Bari,
No. 22, Hildon Place,
Colombo 04.
3. Mohamed Rauf Furkan Ali,
No. 22, Hildon Place,
Colombo 04.
4. Mohamed Rauf Ismath Asmeer,
No. 22. Hildon Place,
Colombo 04.
5. Mohamed Rauf Samsul Samaan,
Colombo 04. (Now Deceased)

- 5A. Sakeena Zaki,
No. 22, Hildon Place,
Colombo 04.

PLAINTIFF-RESPONDENTS

1. Kaliyur Rahaman Ahamed Siddeek,
No. 150, Peradeniya Road,
Kandy.

2. Polwattage Wijeratne,
No. 277/9, Negombo Road,
Peliyagoda.
(Now Deceased).

2A. A. A. A. Swarnalatha Wijeratne,
No. 33, Raddolugama, Lanka Land,
Seeduwa.

3. Sellathurai Thambiraja,
No. 31/1, Mayfield Road,
Colombo 13.
(Now Deceased)

3A. Malarmahal Thambiraja,
No. 31/1, Mayfield Road,
Colombo 13.

4. Malarmahal Thambiraja,
No. 31/1, Mayfield Road,
Colombo 13.

5. Kannuthurai Devadas,
No. 11/1A, Schofield Place,
Colombo 03.

6. Parameshwari Devadas,
No. 11/1A, Schofield Place,
Colombo 03.

7. Abdul Hussain Mumtaz Hussain,
No. 33/3, Akbar Mawatha,
Colombo 12.
(Deceased).

8. Another Person

DEFENDANT-RESPONDENTS

AND NOW BETWEEN

Abdul Hussain Musheeda Begam,
No. 7/3, St. Sebastian Street,
Colombo 12.

9TH DEFENDANT-APPELLANT-

APPELLANT

Vs.

1. Mohamed Rauf Ahamed Nuhuman,
No. 22, Hildon Place,
Colombo 04. (Now Deceased)
- 1A. Mohamed Hadi Siththi Hirrziya,
- 1B. Mohamed Zakeer,
- 1C. Fathima Zeinab,
- 1D. Siththy Zahara,
All of them,
No. 22, Hildon Place,
Colombo 04
2. Mohamed Rauf Hassan Bari,
No. 22, Hildon Place,
Colombo 04.
3. Mohamed Rauf Furkan Ali,
No. 22, Hildon Place, Colombo 04.
4. Mohamed Rauf Ismath Asmeer,
No. 22. Hildon Place,
Colombo 04.
5. Mohamed Rauf Samsul Samaan,
Colombo 04. (Now Deceased)

5A. Sakeena Zaki,
No. 22, Hildon Place,
Colombo 04.

PLAINTIFF-RESPONDENT-
RESPONDENTS

1. Kaliyur Rahaman Ahamed Siddeek,
No. 150, Peradeniya Road,
Kandy.
2. Polwattage Wijeratne,
No. 277/9, Negombo Road,
Peliyagoda. (Now Deceased).
- 2A. A. A. A. Swarnalatha Wijeratne,
No. 33, Raddolugama, Lanka Land,
Seeduwa.
3. Sellathurai Thambiraja,
No. 31/1, Mayfield Road,
Colombo 13. (Now Deceased)
- 3A. Malarmahal Thambiraja,
No. 31/1, Mayfield Road,
Colombo 13.
4. Malarmahal Thambiraja,
No. 31/1, Mayfield Road,
Colombo 13.
5. Kannuthurai Devadas,
No. 11/1A, Schofield Place,
Colombo 03.
6. Parameshwari Devadas,
No. 11/1A, Schofield Place,
Colombo 03.

7. Abdul Hussain Mumtaz Hussain,
No. 33/3, Akbar Mawatha,
Colombo 12.
(Deceased).

8. Another Person

DEFENDANT-RESPONDENT-

RESPONDENTS

Before : S. Thurairaja, P.C., J.

: Janak De Silva, J.

: Sampath B. Abayakoon, J.

Counsel : Manohara de Silva, P.C. with Hussain Ahmed,
Ayendri, Dilmini de Silva instructed by Jelil, for
the Substituted 9th Defendant-Appellant-Appellant.

: Kapila Liyanagamage instructed by Sajitha
Dikkumbura for the Plaintiff-Respondent-
Respondents.

: Nizam Kariapper, P.C. with M. I. M. Iyunullah,
Ilham N. Kariapper, Chathurika Perera and Danoja
Makenthiraja instructed by M.C.M. Nawas for the
1st and 8th Respondents.

: V. Puvitharan, P.C. with A. Narangoda, Ratnam
Ushanthanie and G. Arunraj instructed by Pancy

Joseph for 3A, 4th, 5th, and 6th, Defendant-
Respondent-Respondents.

Argued on : 09-10-2025

Written Submissions : 23-10-2025 (By the 1st and 8th Defendant-
Respondent-Respondents)
: 23-10-2025 (By the 3A, 4th, 5th, and 6th Defendant-
Respondent-Respondents)
: 21-10-2025 (By the Plaintiff-Respondent-
Respondents)

Decided on : 02-02-2026

Sampath B. Abayakoon, J.

This is an appeal preferred by the 9th defendant-appellant-appellant (hereinafter referred to as the 9th defendant) on being aggrieved of the judgment pronounced on 02-12-2015 by the Provincial High Court of Western Province holden in Colombo while exercising its civil appellate jurisdiction.

From the impugned judgment, the learned Judges of the High Court decided to dismiss the appeal preferred by the 9th defendant challenging the judgment dated 10-11-2009 pronounced by the learned Additional District Judge of Colombo in District Court of Colombo Partition Case No. 18076/P.

In the said judgment, it was held by the learned Additional District Judge that the 9th defendant's claim of prescription and the claim seeking compensation for the improvements done to the building standing on the corpus of the partition action have not been established

From the impugned judgment as well, the High Court held that the 9th defendant has failed to prove the prescriptive claim made to a part of the land sought to be partitioned, and has also failed to adduce sufficient evidence for the trial Court to consider her claim of compensation.

When this matter was considered by this Court on 14-07-2020 for the granting of leave to appeal from the impugned judgment, leave was granted on the questions of law as set out in sub-paragraphs i, ii, iii of paragraph 23 of the petition dated 22-12-2015.

It clearly appears that the Court has granted leave to appeal only on the questions of law relating to the compensation claim made by the 9th defendant and not on any other basis.

The said questions of law under which leave to appeal was allowed read as follows.

- i. Did the Civil Appellate High Court err in law with regard to the claim for compensation in respect of the room put up by Abdul Hussain consequent to the settlement in “9D2” with the 1st defendant.
- ii. Whether the said improvement being a *bona fide* improvement would entail payment of compensation to the improver.
- iii. Did the High Court err in law by denying compensation for the improvements done by Abdul Hussain, especially after the destruction caused in 1983 riots, without any legal basis.

At the hearing of this appeal, this Court heard the submissions of the learned President’s Counsel who represented the 9th defendant and the submissions of the learned Counsel who represented the plaintiff-respondent-respondents. This Court also heard the submissions of the learned President’s Counsel made on behalf of the 1st and 8th defendant-respondent-respondents and that of the learned President’s Counsel who represented 3A, 4th, 5th and 6th defendant-respondent-respondents. Parties were also permitted to file post-argument written submissions for consideration, if they so wish.

This is a matter where the plaintiff-respondent-respondents (hereinafter referred to as the plaintiffs) instituted action to partition the land more fully described in their plaint between the parties entitled to undivided shares of the land.

The 9th defendant, by her amended claim dated 05-10-2005, has claimed prescription to a portion of the land sought to be partitioned on the basis that her father Mohideen Peer Abdul Hussain acquired prescriptive rights to the said portion and the building standing thereon. At the same time, she has claimed compensation for the improvements done by her father. Her claim has been based on the premise that she is one of the 9 children of the said Abdul Hussain.

It appears that her claim for prescription has been based on the stand that her father paid money to buy the said portion of the land subsequent to him gaining possession of it, and also based on the agreement marked 9D2 where the father of the 1st defendant-respondent-respondent has entered into an agreement with the earlier mentioned Abdul Hussain to construct an upstairs unit in the land at his expense.

Although the learned President's Counsel made submissions as to the defects of the partition action in relation to the identity of the corpus and the title, I am of the view that since the questions of law under which leave to appeal have been granted by this Court relate only as to the question of compensation, considering other matters would not be necessary for the purpose of determining this appeal.

It was the submission of the learned President's Counsel who represented the 9th defendant that although the learned District Judge has answered the points of contest as to the improvements and compensation stating that it has not been proved, he has failed to give reasons as to why it was determined so. It was submitted that the 9th defendant has given uncontradicted evidence as to the value of the improvements made by her father, and the learned District Judge has neither rejected nor considered the said evidence.

It was also his submission that there was clear evidence to conclude that it was the father of the 9th defendant who made improvements to the building bearing No. 20, and the District Court, as well as the High Court in its appellate judgment, have failed to give due weight to the said evidence when the compensation claim was rejected.

It is clear that the 9th defendant is claiming compensation for the building with the assessment No. 20 as depicted in plan No. 199/2001 dated 20-07-2001 by Surveyor S. Rasappah, which is the preliminary plan prepared for the purposes of the partition action. The said assessment number has been depicted as Lot 1 of the preliminary plan. Although it was claimed that the 9th defendant adduced sufficient evidence to establish her claim for improvements, I find no basis to agree with such a contention.

In her statement of claim, she has sought Rs. 10 million as compensation for improvements. It is trite law that a person who is claiming compensation for improvements must prove the same with sufficient evidence as to the basis for such a claim.

In *Thambachchi Ramiah Mallikanu Letchchumi Vs. Bambarendage Jimoris Jinadasa SC/Appeal/151/2013*,

The Respondent has claimed compensation for the improvements made on the house which was in the land in dispute. It was an admitted fact that the said house was there when the title was passed on to the Respondent. According to the schedule of the said deed No. 804, the Respondent has got title to the land together with the trees, plantations and building thereon bearing assessment No. 255, Vihara Mawatha. Issue No. 14 has been raised on the claim for the improvements.”

Per Upali Abeyrathne, J.,

“The learned District Judge has concluded that the Respondent has failed to prove the improvements. Other than the Respondent’s mere statement that he spent about ten lakhs on the improvements to the house standing on the land in dispute, there was no iota of evidence in order to compute the quantum of the compensation... When I take into

consideration the said evidence of the Respondent's case, I cannot find fault with the findings of the learned District Judge."

Although it appears that the learned District Judge has not evaluated the evidence in much detail as to the claim of compensation, it is manifestly clear from the judgment of the learned Judges of the High Court that the 9th defendant's compensation claim has been well considered giving attention to the evidence led before the trial Court in that regard.

In her evidence, the 9th defendant has made a mere statement where she has claimed that her father may have spent about Rs. 10 lakhs for the improvements. Other than that, she has not been able to substantiate her claim in any manner. The 9th defendant's claim for compensation has been based on the alleged improvements done to the building by her father, whereas she has failed to adduce any evidence in that regard as well.

Although it was the stand of the learned President's Counsel that her evidence has not been controverted by the other parties, and therefore, it should have been accepted for the purposes of determining compensation, I am in full agreement with the learned Judge of the High Court that whether the evidence is controverted or not, there should be sufficient evidence before the trial Court for a trial Judge to determine the quantum of compensation that should be awarded where a claim for compensation can be justified.

Under no circumstances the mere oral statement by the 9th defendant can be accepted as a sufficient basis to order compensation. The 9th defendant has even failed to mention to the Court the details of the alleged improvements under which she claims compensation.

For the reasons as considered above, I find no reason to interfere with the judgment of the learned Judges of the High Court.

Accordingly, I answer the 3 questions of law under which leave to appeal was granted in the negative.

The appeal is dismissed. The parties shall bear their own costs.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court