

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

In the matter of an appeal under an in terms
of Article 127 of the Constitution read with
Section 5(c) of the High Court of the
Provinces (Special Provisions) (Amendment)
Act No. 54 of 2006.

SC/APPEAL No. 69/2014
SC/LA/Application No.
SC/HCCA/LA/47/2013
Civil Appellate High Court of
Kegalle Case No.
SP/HCCA/KAG/828/2011
DC Mawanella Case No. 776/P

Delankawalage Sunethra Rajapakshe *alias*,
Sunethra Wimal Jayasinghe. Peacock Hill,
Rukulagama,
Dewanagala.

PLAINTIFF

vs

1. Delankawalage Ishani Chandrika
Welagedara
2. Delankawalage Maduranga Welagedara
3. Delankawalage Sachini Sithara
Welagedara (minor) All from
Debathgama, Kegalle.
- 3a. Karunapedige Malani Kusumalatha
Kumbalagama, Devanagala.
4. Warushage Renuka Harischandra
Rathnayake, Kumbalgama, Dewanagala.

5. Warushage Wijenayake, Deewala-Pallegma, Hettimulla.
6. Rajapakse Vimukthi Sampath Kusalaka
Rajapakse, Rukulagama, Dewanagala.
7. Rajapakse Pedige Wimalatne, D66/1,
Rukulagama, Dewanagala.

DEFENDANTS

And Between

6. Rajapaksa Vimukthi Sampath Kusalaka
Rajapaksa, Rukulagama, Devanagala.

6th DEFENDANT – APPELLANT

vs

Delankawalage Sunethra Rajapakshe *alias*
Sunthra Wimal Jayasinghe, Peacock Hill,
Rukulagama, Dewanagala.

PLAINTIFF - RESPONDENT

1. Delankawalage Ishani Chandrika
Wlagedara
2. Delankawalage Maduranga Welagedara
3. Delankawalage Sachini Sithara
Welagedara
(minor) All from Debathgama, Kegalle.
- 3a. Karunapedige Malani Kusumalatha
(G.A.L.)
4. Warushage Renuka Harischandra
Rathnayake.

Kumbalgama, Dewanagala.

5. Warushage Wijenayake, Deewala-Pallegama Hettimulla.
7. Rajapakse Pedige Wimalarathne.
D 66/1, Rukulagama, Dewanagala.

DEFENDANT – RESPONDENT

Rajapakse Pedige Wimalarathne
D 66/1, Rukulagama, Dewanagala.

**07th DEFENDANT-RESPONDENT-
APPELLANT**

vs

06. Rajapakse Vimukthi Sampath Kusalaka
Rajapakse. Rukulagama, Dewanagala.

**06th DEFENDANT-APPELLANT-
RESPONDENT**

Delankawalage Sunethra Rajapakshe alias
Sunethra Wimal Jayasinghe. Peacock Hill,
Rukulagama , Dewanagala.

**PLAINTIFF-RESPONDENT-
RESPONDENT**

1. Delankawalage Ishani Chandrika Wlagedara
2. Delankawalage Maduranga Welagedara
3. Delankawalage Sachini Sithara
Welagedara (minor)
All from
Debathgama, Kegalle.
- 3a. Karunapedige Malani Kusumalatha

(G.A.L.),

4. Warushage Renuka Harischandra Rathnayake.
Kumbalgama, Dewanagala.
5. Warushage Wijenayake, Deewala-Pallegama Hettimulla.

**DEFENDANTS -RESPONDENTS -
RESPONDENTS**

BEFORE

: Janak De Silva, J.
Mahinda Samayawardhena, J.
M. Sampath K. B. Wijeratne, J.

COUNSEL

: Dr. Sunil Coorey with Diana Rodrigo
instructed by Neminda Kariyawasam for the
7th Defendant - Respondents - Petitioner.

Manohara De Silva, P.C. with Hirosha Munasinghe
and Dilmini De Silva instructed by Anusha
Perusinghe for the 6th Defendant – Appellant -
Respondents.

Dr. Sunil Abeyratne with Buddhika Alagiyawanna
instructed by Dishan Manamperi for the Plaintiff –
Respondent - Respondent.

ARGUED ON

: 18.09.2025

DECIDED ON

: 22.07.2026

Factual Background

The Plaintiff-Respondent-Respondent (hereinafter referred to as the “Plaintiff”) instituted this action in the District Court seeking the partition of the land known as ‘*Demaddewatta*’, described as being in an extent of 12 *Lahas* paddy sowing. Following the preliminary proceedings, and pursuant to a Commission issued by the District Court, Mr. W.M.L.R. Weerasinghe, Licensed Surveyor, prepared Plan No. 1433 (‘X’), depicting the *corpus* sought to be partitioned, and his report was marked as ‘X1’.

An extent of 12 *Lahas* paddy sowing is approximately equivalent to 120 perches¹. However, the survey revealed that the *corpus* is in an extent of 134.79 perches, thereby disclosing an excess extent of 14.79 perches.

At the trial, the parties admitted that the land sought to be partitioned is the land depicted in Plan ‘X’. The learned District Judge, having analysed the existing boundaries of the land sought to be partitioned, rightly concluded that the *corpus* consists of Lots Nos. 1 to 8 of Plan ‘X’.

As observed by Weerasuriya J. in *Rathnayaka and Others v. Kumarihamy and Others* (C.A.)², ‘*The amount of seed required could vary according to the varying degrees of the soil, the size and quality of the grain, and the peculiar qualities of the sower.*’

In the circumstances, the difference between the estimated sowing extent of 120 perches and the surveyed extent of 134.79 perches is neither unusual nor so substantial as to cast doubt on the conclusion that both measurements relate to the same *corpus*.

¹ *Rathnayaka and others vs Kumarihamy and others* (C.A.) [2002] 1 Sri L.R. 65

² [2002] 1 Sri L.R. 65 at p. 68.

The parties further admitted that Rajapaksha Pedige Sirimala and Rajapaksha Pedige Kiriukkuwa each owned an undivided half share of the *corpus*. It was also admitted that Sirimala's title devolved upon the Plaintiff and the 1st to 5th Defendants-Respondents-Respondents (hereinafter referred to as "1st to 5th Defendants") in the manner set out in the plaint. Accordingly, the dispute before Court was confined to the remaining undivided half share formerly owned by Rajapaksha Pedige Kiriukkuwa, to which the 6th Defendant-Appellant-Respondent (hereinafter referred to as the "6th Defendant") and 7th Defendant-Respondent-Appellant (hereinafter referred to as the "7th Defendant") laid competing claims.

The learned District Judge, by judgment dated January 20, 2011, held that the *corpus* should be partitioned among the Plaintiff, the 1st to 5th Defendants, and the 7th Defendant in accordance with their respective shares, and rejected the title claimed by the 6th Defendant.

On appeal by the 6th Defendant to the Civil Appellate High Court of Kegalle, the learned High Court Judges held that neither the 6th Defendant nor the 7th Defendant had established title to the undivided half share formerly owned by Kiriukkuwa. Consequently, the said undivided half share was left unallotted.

Aggrieved by the judgment of the learned High Court Judges, the 7th Defendant-Appellant sought leave to appeal from this Court. Leave to appeal was granted on the following four questions of law:

a) Did the High Court err by rejecting the pedigree relied on by the 7th Defendant-Respondent?

c) Has the 7th Defendant-Respondent proved the pedigree he put forward, according to which the 7th Defendant-Respondent has acquired an undivided ½ share of the corpus?

(d) Has the High Court failed to set out adequate acceptable reasons for differing from the findings of the learned trial Judge?

(f) Has the High Court erred by failing to appreciate the possession by the 7th Defendant-Respondent?

Analysis

As observed earlier in this judgment, the parties have admitted the devolution of title to the undivided half share owned by the original owner, Edirisingha Pedigedara Sirimala, in the manner set out in the plaint. The said Sirimala conveyed his undivided half share by Deed No. 14279 ('X') dated March 12, 1902, attested by Yapa Mudiyanseelage Kiri Banda Senevirathna, Notary Public.

According to the schedule to the said deed, the land known as '*Demaddewatta*', described as being in an extent of 12 *Lahas* paddy sowing, is bounded on the East by the high road, on the South by a paddy field and a ditch, on the West by a ditch, and on the North by the ditch of "*Thambilagewatta*".

In all the subsequent deeds forming part of the chain of title relied upon by the Plaintiff to establish the devolution of the undivided half share originally owned by Edirisingha Pedigedara Sirimala, namely deeds marked 'P2', '4V1', '4V2', and '5V1', the extent and boundaries substantially correspond with those contained in Deed No. 14279 ('P1') executed in the year 1902. These boundaries also substantially tally with those depicted in the preliminary plan marked 'X'.

The Eastern boundary, which is a significant identifying feature, remains the road, while the Southern boundary continues to be marked by the ditch. Although the Western boundary, described as a ditch in the deed, does not correspond precisely with the preliminary plan, a ditch is not a permanent feature and may reasonably be expected to change with the passage of time.

As regards the Northern boundary, "*Thambilagewatta*" is depicted in the preliminary plan as lying to the North-West of the *corpus* rather than directly to its North. This suggests that the boundary was angular in nature rather than one running strictly along the northern side of the land.

As I have already stated in this judgment, the dispute concerns the devolution of the undivided half share originally owned by the other co-owner, Kiriukkuwa. It is an admitted fact that Kiriukkuwa held an undivided half share of the *corpus*³. The present contest is therefore confined to the rival claims of the 6th and 7th Defendants regarding the devolution of Kiriukkuwa's title.

Pedigree of the 6th Defendant

The 6th Defendant did not give evidence at the trial. According to the Plaintiff's husband, who testified on behalf of the Plaintiff, the half share of Kiriukkuwa devolved upon his two children, namely Edirisinghe Pedige Sarana and Ukku *alias* Pinchiukku.

The Birth Certificate marked 'P3' confirms that Sarana is a son of Rajapaksha Pedigedara Kiriukkuwa. According to the said witness, Sarana died unmarried and without issue, and his rights thereafter devolved upon Ukku *alias* Pinchiukku, who thus became entitled to the undivided half share of the *corpus*. Pinchiukku subsequently died, and her rights were inherited by her child, Sirimala.

Sirimala thereafter transferred his undivided half share to Rajapakshage Wijesinghe Rajapaksha by Deed of Transfer No. 3520 dated January 8, 1987, attested by Premachandra Ranathunga, Notary Public ('6V1'). In the said deed, Sirimala's title is recited as having devolved by maternal inheritance from Rajapaksha Pedigedara Pinchiukku *alias* Ukku. Accordingly, deed '6V1' corroborates the Plaintiff's witnesses' evidence that Sirimala was the son of Ukku *alias* Pinchiukku.

Thereafter, Rajapakshage Wijesinghe Rajapaksha transferred his rights by Deed No. 4158 dated October 30, 1991, attested by Indrani M. S. Godakumbura, Notary Public ('6V2'), to Lekam Ralalage Senevirathna, who in turn transferred his rights to the 6th Defendant, Rajapaksha Wimukthi Sampath Kusalaka

³ *Vide* admission No. 3.

Rajapaksha, by Deed No. 7156 dated December 9, 1997, attested by Premachandra Ranathunga, Notary Public ('6V3').

In all the aforesaid deeds marked '6V1', '6V2', and '6V3', the extent of land conveyed is described as 12 *Lahas* paddy sowing, which is consistent with the extent appearing in the deeds forming the Plaintiff's chain of title relating to the devolution of the other half share owned by Rajapaksha Pedige Sirimala, as admitted by the parties. The boundaries also substantially correspond with those contained in the deeds in the Plaintiff's chain of title.

Pedigree of the 7th Defendant

I now proceed to consider the title pleaded by the 7th Defendant.

According to the 7th Defendant, the original owner, Kiriukkuwa Duraya, transferred his undivided half share to Kandangama Marasingh Pedigedara Singhu by Deed No. 4844 dated October 1, 1886, attested by W. M. Appuhamy, Notary Public.

However, only a part of the said deed was available and was marked '7V1 අ', and even that portion was largely illegible. The certificate issued by the Land Registry and marked '7V2' confirms that the duplicate copy of the deed maintained at the Registry has decayed. As a result, the deed is not available in its complete form.

According to the 7th Defendant, Singhu transferred his rights to Edirisinghe Pedige Pahala Polwattegedara Siyathuwa by Deed No. 26982 dated January 17, 1913, attested by Kiribanda Seneviratne, Notary Public ('7V3'). Siyathuwa died intestate, leaving as his heirs his children, namely Edirisinghe Pedige Sirimala, Dingira, Amali, William, and Ukkumali.

The aforesaid William transferred his 1/10 share to Emalina by Deed No. 9177 dated November 2, 1939, attested by G. C. H. Molligoda, Notary Public ('7V4').

Amali transferred her 1/10 share to Emalina by Deed No. 454 dated April 6, 1945, attested by W. Manamperi, Notary Public ('7V5').

Sirimala and Dingira transferred their 2/10 share to Sinhala Pedige Emalina by Deed No. 5547 dated June 14, 1943, attested by M. B. K. Senarathna, Notary Public ('7V6').

Ukkumali transferred her 1/10 share to Emalina by Deed No. 17906 dated January 4, 1947, attested by U. D. P. Dharmarathna, Notary Public ('7V7').

Accordingly, Emalina became the owner of an undivided half share (5/10) of the *corpus*. According to the 7th Defendant, Emalina thereafter transferred her rights to the 7th Defendant by Deed No. 713 dated April 9, 1985, attested by J. S. Balasuriya, Notary Public ('7V8').

It is important to note that in the aforesaid deeds forming part of the pedigree relied upon by the 7th Defendant, namely '7V3', '7V4', '7V5', '7V6', and '7V7', the extent of land is described as 6 *Nellies* of Kurakkan sowing. It is an accepted fact that one *Nelli* of Kurakkan sowing is equivalent to one acre of land⁴. Accordingly, the extent of land described in the said deeds would be 6 acres.

However, the extent of land surveyed is only 3 Roods and 14.79 Perches, which is substantially less than the extent referred to in the said deeds. In fact, it reflects a material discrepancy when compared with the extent stated in the accepted chain of title.

I am mindful that the extent of land described by reference to the quantity of grain required for sowing does not invariably provide a precise indication of its area. In such circumstances, the boundaries, the description of the property contained in the deeds constituting the chain of title, the distinctive features of the land, the identity of the present occupants and their predecessors in title, together with the evidence of persons possessing knowledge of the land, are all relevant considerations in identifying the *corpus*.

Even so, boundaries may change over time, and where such changes have occurred, the evidence relating to those factors must be carefully evaluated. In

⁴ *Rathnayaka and others vs Kumarihamy and others* (C.A.) [2002] 1 Sri L.R. 65.

my view, all these considerations must be assessed collectively. However, the extent stated by reference to sowing measurements cannot be entirely disregarded in determining the identity and extent of the land.

Nonetheless, as set out above, unlike the relatively insignificant difference in the extent of land described in the deeds within the Plaintiff's pedigree and that of the 6th Defendant, there is a substantial disparity in the extent of land described in the deeds forming the 7th Defendant's pedigree.

Be that as it may, the boundaries set out in deeds '7V3' to '7V7' differ materially from those of the land as surveyed. Of the four boundaries, only the western boundary corresponds with the surveyed *corpus*. Significantly, the road, which constitutes a prominent and identifiable feature of the land and is even depicted in the Plaintiff's deed 'P1' executed in 1902, does not appear as any of the four boundaries in deeds '7V3' to '7V7'.

The name of the land is also different. The land sought to be partitioned is '*Demaddewatta*', whereas the land described in the 7th Defendant's aforesaid deeds is '*Demedeheena*'.

In light of the foregoing analysis, I am of the view that the aforesaid deeds forming part of the 7th Defendant's pedigree do not relate to the land sought to be partitioned.

However, interestingly, in the last deed in the 7th Defendant's pedigree, by which Emalina transferred her rights to the 7th Defendant, the extent is altered to 12 *Lahas* paddy sowing. The boundaries have also been modified so as to correspond exactly with those of the land surveyed and depicted in Plan 'X'.

Notably, as already stated, in the deeds upon which Emalina derived title, namely '7V4', '7V5', '7V6', and '7V7', both the extent and the boundaries are materially different. In these circumstances, I am unable to accept the deed '7V8' as a valid conveyance of title to the *corpus* in favour of the 7th Defendant.

Before parting with this judgment, I wish to observe that the title set up by the 6th Defendant could have been appreciated differently by the learned High Court Judges in the appeal preferred by the 6th Defendant to the Civil Appellate High Court.

One of the reasons considered by the learned High Court Judge in rejecting the 6th Defendant's claim was the absence of the name of "Sarana" as an heir of Kiriukkuwa in the pedigree tendered with the plaint to the District Court. Instead, the said pedigree indicates that Kiriukkuwa's undivided half share devolved directly upon Ukku *alias* Pinchiukku upon the demise of Kiriukkuwa.

However, as correctly observed by the learned District Judge, the birth certificate marked 'P3' confirms that Sarana was a child of Kiriukkuwa⁵. Although Sarana's name is not included in the pedigree, the evidence of the Plaintiff's witness establishes that Sarana was the child of Kiriukkuwa and died unmarried and issueless. Given the fact that the Mawanella area is within Kandyan Province, the property of Sarana would be devolved either under the Kandyan Law or the General Law. Accordingly, if Sarana was governed under the former, as per Section 16 of the Kandyan Declaration and Amendment Ordinance, in the absence of the parents of the deceased, his property should have devolved upon his siblings or descendants of any deceased sibling by representation. In terms of the general law, in the absence of his descendants or ascendants, the properties will devolve upon Sarana's collateral relatives under the Matrimonial Rights and Inheritance Ordinance.⁶

Be that as it may, the remaining portion of the 6th Defendant's pedigree based on documentary evidence appears to be acceptable, as analysed above.

The underlying objective of partition proceedings is the termination of co-ownership wherever possible. Courts have consistently sought to bring an end to co-ownership, as it gives rise to numerous difficulties, including disputes relating

⁵ *Vide* page 32 of the Appeal brief.

⁶ Section 23 of the Matrimonial Rights and Inheritance Ordinance.

to common possession and restrictions on the effective use and enjoyment of property. Accordingly, in the exercise of partition jurisdiction, courts should endeavour to conclusively determine and settle all questions of title, thereby bringing co-ownership to an end and enabling the parties to enjoy and deal with their respective shares with certainty, free from future disputes and competing claims.

It is true that, although the 6th Defendant did not testify on his own behalf, he was represented by Counsel throughout the proceedings. Both the District Court and the High Court concluded that the 6th Defendant had failed to establish his title to the satisfaction of the Court. Nevertheless, as analysed above, the title pleaded by the 6th Defendant and the deeds forming part of his pedigree appear to be compatible with the *corpus* and, to that extent, his claim to title appears plausible. However, as correctly observed by the learned High Court Judges, the links in the 6th Defendant's chain of title have not been proved to the requisite standard. Accordingly, his title cannot be said to have been established to the satisfaction of the Court.

The first deed within the 6th Defendant's pedigree ('6V1') was executed in 1987, and, as analysed above, the extent and boundaries therein substantially correspond with those of the *corpus*. There are no earlier deeds within the 6th Defendant's chain of title.

However, the lands described in the deeds prior to '7V8' within the 7th Defendant's pedigree are materially different in extent and boundaries. The learned High Court Judges rejected the 6th Defendant's pedigree on the ground that the chain of title leading up to deed '6V1' had not been satisfactorily proved.

In the circumstances, if the 6th Defendant or his successors are able to establish that earlier link in the pedigree with satisfactory evidence, the 6th Defendant's title would warrant due reconsideration by the Court.

Accordingly, the 6th Defendant and/or any other claimant asserting title to the said portion, who was not a party to the instant action, is entitled to establish

such title in the District Court and to obtain appropriate relief upon proof, if so wishes.

However, since the 7th Defendant's claim has already been rejected by the High Court and affirmed by this Court, the 7th Defendant is not entitled to institute any further claim in respect of the *corpus* (see *David Dantanarayana vs L. A. Nonahamy*, 79(2) NLR 241; *Sapin Singho vs Luwis Singho and Others* (2002) 2 SLR 271).

Possession of the 7th Defendant

In addressing the issue of possession of the 7th Defendant, the learned High Court Judges have not specifically referred to his possession. Rather, the discussion is predominantly centred on the respective titles of the parties to the portion of land in dispute.

A consideration of the evidence shows that the 7th Defendant's position is that he has been in continuous possession of the land since the time his parents were residing thereon, and that such possession did not cease thereafter, but continued even subsequent to his mother, Emalina, transferring her title to him by Deed No. 713. He further asserts that he has constructed buildings on the said land.

The Surveyor's Report discloses the existence of a brick-built structure covered with corrugated roofing sheets, together with a dilapidated water tank and a toilet situated within Lot No. 5. The existence of these structures has also been acknowledged by the Plaintiff's witness⁷.

However, the Plaintiff maintains that the 7th Defendant is not residing in Lot No. 5. This position may well be correct, as although the existence of a building, water tank, and toilet suggests that such structures were erected with the intention of occupation, the dilapidated condition of the water tank indicates that the occupant may, at some stage, have ceased residing on the property.

⁷ *Vide* Page 109 and 110 of the Appeal brief.

Additionally, the Surveyor's Report records the existence of a plantation comprising several varieties of plants ranging in age from 2 to 40 years within Lots Nos. 5, 6, and 8, which are claimed by the 7th Defendant.

Be that as it may, the learned District Judge has not discussed in detail the question of possession of the 7th Defendant. Nevertheless, the learned Judge answered Issue No. 23 in the affirmative, holding that the 7th Defendant had made improvements to the land and erected new structures thereon.

The 7th Defendant has neither specifically pleaded nor sought to establish title by prescription. Consequently, the trial Court did not adjudicate upon any such claim. In those circumstances, a mere assertion of possession, unsupported by proof of either prescriptive title or paper title, carries no weight in support of the 7th Defendant's case.

Accordingly, although the learned High Court Judge did not specifically address the issue of possession in respect of the 7th Defendant, even a proper evaluation of the matter would not have resulted in a finding favourable to the 7th Defendant. However, since there had not been conflicting claims for the improvements in Lot No.5, and plantation in Lot Nos.5,7,8 the 7th Defendant is entitled to compensation.

Conclusion

In light of the analysis set out above, I am of the view that the learned High Court Judges were correct in setting aside the finding of the learned District Judge of Mawanella, which was held in favour of the 7th Defendant. Accordingly, I affirm the judgment of the High Court and dismiss the appeal of the 7th Defendant-Appellant.

However, as already observed, since there were no competing claims in respect of the improvements in Lot No. 5 and the plantation in Lots Nos. 5, 7, and 8, the 7th Defendant is entitled to compensation in respect thereof.

I answer all questions of law in the negative.

Appeal dismissed. Parties shall bear their own costs.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT