

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

1(a) (2) Dissanayakage Alosiyas Perera,  
"Noel Villa", Mudukatuwa,  
Marawila.

1(a)(2) Defendant-Petitioner

**CASE NO: CA/LA/4/2016**

**DC MARAWILA CASE NO: 525/P**

Vs.

Don David Weerakoon,  
Meda Palatha,  
Mudukatuwa, Marawila.  
(Deceased unsubstituted)

Plaintiff

2. Thammahetti Mudalige Don Edmand Peiris,  
Mudukatuwa, Marawila.
  - 3(a) Herath Mudiyanseelage Somawathie,
  - 3(b) Thammahetti Mudalige Dona Sunethra Sudharshini Peiris,
  - 3(c) Thammahetti Mudalige Don Chandrika Peiris,
  - 3(d) Thammahetti Mudalige Don Soma Priyadharshini Kusumalatha Peiris,
  - 3(e) Thammahetti Mudalige Don Pavithra Sriyananda Peiris,
- Defendant-Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Niranjan de Silva for the 1(a)(2) Defendant-Petitioner.  
Hilary Livera for the 3A-3E Defendant-Respondents.

Written Submissions filed:

By the Petitioner on 06.07.2018

By the Respondents on 02.07.2018

Decided on: 01.08.2018

Samayawardhena, J.

The plaintiff filed the action to partition the land described in the schedule to the plaint. After trial the District Judge by Judgment dated 21.05.1984 dismissed the action. The 1st defendant then filed a decree dated 21.05.2000 incorporating *inter alia* that the land was partitioned between the plaintiff and the 1st defendant. This he did solely by clinging onto the affirmative answer given in the Judgment to issue No. 2 of the plaintiff. Issue No. 2 was whether the land shall be partitioned between the plaintiff and the 1st defendant as pleaded in paragraph 11 of the plaint. The District Judge signed the said decree and the 3rd defendant was ejected by executing the writ.

The application of the 3rd defendant for restoration of possession on the basis that he was evicted upon an erroneous decree was refused by the District Judge by order dated 12.09.2002, which was later set aside by this Court by Judgment dated 16.10.2007 in Revision Application No. 1704/2002 wherein this Court came to the strong conclusion that the aforesaid decree signed by the District Judge is not in conformity with the Judgment and the injury caused to the 3rd defendant by execution of the erroneous decree shall be remedied by invoking the inherent powers of the

Court. Based on this Judgment an amended decree has been entered at the instance of the 3rd defendant and signed by the District Judge.

Thereafter the 1st defendant has again filed an application dated 08.03.2011 seeking to refuse the amended decree and execution of the writ to restore the 3rd defendant in possession. This application has been rejected by the District Judge by order dated 01.04.2011 and the same has been affirmed both by the Civil Appeal High Court of Kurunagala and the Supreme Court.

It is thereafter the 1st defendant has again filed an application dated 20.10.2015 (a) to leave the decree filed by the 1st defendant dated 21.05.2000 intact (b) to reject the amended decree filed by the 3rd defendant and (c) not to issue the writ against the 1st defendant.

This application has been rejected by the District Judge by order dated 29.04.2016 on the basis that these reliefs have already been refused by the earlier orders of the superior Courts. It is against this order the 1st defendant seeks leave to appeal.

From the above narration, it is abundantly clear that the impugned order of the District Judge is perfectly correct. There is no necessity for this Court to give any more reasons to justify the said order.

Leave to appeal against that order is refused with costs.

Judge of the Court of Appeal