

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

**Court of Appeal Case No. CA-1118/98(F)**

D.C.Walasmulia Case No.270/P

1. Piyasena Samarasinghe Gunawardena,  
Mahagedara, Puwakgas Ara,  
Kirama.

**-Plaintiff-Appellant-**

**VS**

1. Simon Samarasinghe Hunawardena,  
Mahagodahena, Katuwana.

2. Omalpege Samanthu,  
Obadagahadeniya, Katuwana.

3. Pratapage Gunadasa,

4. Pratapage Alpina,

5. Pratapage Dayawathie,

6. Pratapage Rosawathie,

7. Pratapage Siripala,

8. Pratapage Kusumawathie,

9. Pratapage Ariyawathie,

10. Pratapage Somalatha,

11. Pratapage Chandrakanthi,

12. Pratapage Janaka Kumara,

All of

Obadagahadeniya, Katuwana.

**-Defendant-Respondents -**

And

Loku Liyanage Sumanawathie of Katuwana.

**13th Respondent**

**C.A. 1118/98(F)**

**D.C. Walasmulla Case No: 270/P**

Before : K.T. Chitrasiri,J.

Counsel : Ruwantha Cooray for the Plaintiff-Appellant.  
Dharshana Kuruppu for the 1<sup>st</sup> Defendant-Respondent  
Chandana Liyanapatabendi P.C. with Harshana  
Rupasinghe for the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Defendant-  
Respondents.

Argued &

Decided on : 27.05.2014

**K.T. Chitrasiri,J.**

Heard, Counsel for the Plaintiff-Appellant as well as the Counsel for the 1<sup>st</sup> Defendant-Respondent. At this stage both Counsel for the appellant and the 1<sup>st</sup> Defendant-Respondent agree to have lot 1 in plan bearing No: 311 drawn by Ruban Meegama, Licensed Surveyor, marked as X in evidence, excluded from the land sought to be partitioned in this case. It is the decision of the learned District Judge as well, having answered the issue No.23 in the affirmative. Therefore, final outcome of the judgment dated 23.12.1998 of the learned District Judge of Walasmulla is to remain as it is.

However both Counsel submit that it is wrong on the part of the learned District Judge, to have expressed an opinion to the effect that the 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> Defendant-Respondents have established prescriptive rights over the aforesaid Lot 1 in the plan X. Learned President's Counsel for the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Defendant-Respondents also submit that it was never the position of the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Defendants that was taken was in the District Court. Those defendants have not even raised an issue claiming prescriptive rights over the said Lot 1 in Plan X.

Therefore, it must be noted that the decision as to the prescriptive rights of the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Defendant-Respondents made by the learned District Judge, in respect of Lot 1 in Plan X found in the judgment dated 23.12.1998 is erroneous and has no effect or force in any manner whatsoever.

In view of the note mentioned in the preceding paragraph, Counsel for the appellant moves to withdraw this appeal. Application to withdraw the appeal is allowed. Accordingly, subject to the above matter concerning the prescriptive rights of the 13<sup>th</sup> to 15<sup>th</sup> defendant-respondents, this appeal is dismissed without costs.

*Appeal dismissed.*

JUDGE OF THE COURT OF APEPAL

Jmr/-