

IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA.

C.A.No.85/97(F)

D.C.Horana 4035/P

Pallage Justin Perera,
Haltota West,
Haltota.

Plaintiff-Appellant

Vs.

1. Yakupitiyage Asoka Ranjith
2. Yakupitiyage Sarath Chandralal
3. Yakupitiyage Nihal Ranjith
4. Yakupitiyage Seetha Kanthi
5. Hettiarachchige Premawardhana
All of Haltota West, Haltota.

Defendant-Respondents

Before : A.W.A.Salam,J.

Counsel : Ranil Samarasooriya with J. Jayasooriya for Plaintiff-Appellant and Sanath Jayathilake for Defendant-Respondent.

Argued on : 16.03.2012.

Decided on : 17.09.2012.

A.W.A.Salam,J.

This appeal arises from the judgment and interlocutory decree entered on 14.6.1994 by the learned district judge of Horana in the above partition action. By the said judgment and interlocutory decree the learned district judge rejected the devolution of title set out by the plaintiff-appellant and entered judgment to partition the land on the devolution of title set out by the defendant-respondent. For purpose of convenience the plaintiff-appellant will be referred to in the rest of this judgment as the "plaintiff" and the 5th defendant-respondent as the "5th defendant".

There was no controversy as to the identity of the corpus. It is common ground that the land sought to be partitioned is depicted as lot 2 in the preliminary plan bearing No 2435 prepared by D.M. Athulathmudali, L.S and Court Commissioner.

The plaintiff averred in the plaint that by virtue of the final decree entered in partition action No 3534, the subject matter of the action was allotted to one Davith Singho who died leaving his widow Lillee Nona and four children. Accordingly, the widow became entitled to an undivided 1/2 share of the corpus and the children 1/8 share each. The

plaintiff in his plaint did not concede any rights to the 5th defendant. The position of the plaintiff is that the 5th defendant attempted to enter the building on the corpus from or about October 1989 without any manner of title.

The 5th defendant in his statement of claim admitted that in partition action No 3534 the aforesaid Davith Singho was allotted the subject matter of the present action and a person by the name Liyanage Dandiris and the said Davith Singho were jointly allotted lot E. The said Davith has conveyed an undivided area of 6 yards X 5 yards from and out of lot E to one Sirisena and it has finally changed hand to the 5th defendant. Further the 5th defendant averred that by another deed the said Davith transferred an undivided 5 yards X 2 yards from and out of lot E to him. He further pleaded that Davith by another deed (738) conveyed to him an undivided extent of 10 perches from and out of lot E.

The 5th defendant further maintained that on 4.11.1960 by indenture of lease bearing No 2584 attested by B W Senanayaka NP, he took on lease an area of 12 fathoms X 10 fathoms in order to construct a house. He further stated that he constructed a house on the land leased out to him by Davith and was in occupation of the said house

until 1960 right up to the time of the 2nd defendant Chandalal forcibly evicted him from the said house.

It was strenuously argued on behalf of the plaintiff that the learned judge has erred in coming to his finding that the 5th defendant is entitled to lot B, when all his deeds refer to lot E, depicted in plan 1446 produced marked as P1. As a matter of law, it is to be observed that the learned district judge has seemingly oblivious to the principle of law that the language used in a document is plain in itself, evidence may not be given to show that it was not meant to apply to such facts, as has been laid down in section 94 of the Evidence Ordinance. It is useful at this stage to reproduce the illustration to section 94 of the Evidence Ordinance which reads as follows..

A sells to B by deed "my estate at Negambo containing 100 acres". A has an estate at Negambo containing 100 acres. Evidence may not be given of the fact that the estate meant was one situated at a different place and of different size.

As has been contended by the plaintiff the deeds 5D1 and 5D10 produced by the 5th defendant in plain language state that the land sold to the 5th defendant was lot E in plan No 1350. In the lower court the 5th defendant has categorically taken up the position that the partition case has been filed to

exploit the misdescription of the land in the deeds produced by the 5th defendant. It is quite clear from the final decree entered in case No 3534 that lot E has been allotted to the 12th defendant and the plaintiff in that case. The plaintiff in the earlier partition case was the predecessor in title of the 5th defendant namely Davith Singho. According to the final decree, lot E in extent of 18.43 perches and bounded on the north by cart road Raigam to Anguruwatota, East by the cart road to Milleniya, South by Pahalagewatta and West by Lot D. Quite significantly, the Western boundary referred to in the deeds of the 5th defendant is lot D which is the corpus in the present action. The learned district judge has failed to analyze all these matters when he investigated title into lot D.

On the contrary the deeds produced by the plaintiff refer to Lot D and the boundaries and extent are applicable only to lot D unlike in the case of the document produced by the 5th defendant.

On a clear analysis of the evidence placed before the learned district judge in the documents produced, it is abundantly clear that there has been no proper investigation of title, prior to the entering of the interlocutory decree allotting undivided shares to the parties.

Above all, Section 12 declaration has not been

submitted by the plaintiff at any time during the pendency of the case.

Taking into consideration all these matters, I am of the view that a great injustice has occurred by reason of the failure on the part of the learned district judge to evaluate the evidence according to law and to consider the failure regarding compliance under section 12 of the Partition Act. For reasons stated above, the impugned judgment and interlocutory decree are set aside and the case sent back for rehearing. The learned district judge shall take steps to compel the plaintiff to comply with section 12 before the matter is taken up for trial.

There shall be no costs.

Judge of the Court of Appeal

NR/-