

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

C.A. 1320/96 (F).
D.C. Matara 15570/P

Balasooryage Amaradasa,
Medakoratuwa,
Pallawela,
Radawela.
3rd Defendant-Appellant.

Vs.

Weerabaddane Wijeratne Mendias,
Radawela,
Dewalagama,
Welkade.

Plaintiff-Respondent (deceased)

Weerabaddane Wijeratne Premasiri,
Radawela,
Dewalagama,
Welkade.
1st Defendant-Respondent & others.

BEFORE: A W A SALAM, J

COUNSEL: Rohan Sahabandu for the 3rd Defendant
Appellant and B.U.P. Jayawardane for the Plaintiff
Respondents.

ARGUED ON: 26.04.2012.

DECIDED ON: 18.05.2012

A.W.A. Salam, J.

This is an appeal preferred against the order of the learned District Judge of Matara confirming the scheme of partition bearing No. 4506 of S.L. Galappaththy Licensed Surveyor and Commissioner of Court. The facts briefly are that the learned District Judge having entered interlocutory decree to

partition the land which is the subject matter of the action, scheme of partition was prepared and forwarded to Court by the Commissioner which the 3rd Defendant-Appellant opposed. Subsequently, inquiry was fixed with a view to ascertain the reasonableness of the Commissioner's plan. When the inquiry came up on 30.08.1996 the Appellant moved for a postponement and it was granted subject to the Appellant having to pay a sum of Rs. 750/- by way of prepayment costs before 10.00 a.m. on the day the matter was re-fixed for.

Finally, when the matter came up for inquiry on 24.09.1996 the 3rd Defendant-Appellant was absent and his Attorney-at-Law entered appearance on his behalf. The Court having observed that the prepayment order had not been honoured by the 3rd Defendant-Appellant proceeded to confirm the scheme of partition aforementioned.

The principal argument advanced on behalf of the Appellant is that even in the absence of the 3rd Defendant-Appellant, the Court was duty bound to inquire into the objections of the 3rd Defendant-appellant before confirmation of the scheme of partition. On a perusal of the order by which the prepayment order had been imposed on the 3rd Defendant-Appellant, it is quite clear that the consequences of noncompliance of the prepayment order has been clearly laid down. The 3rd Defendant-Appellant has agreed either expressly or by necessary implication as to the said consequences to take place in case of default of the prepayment order.

In the circumstances the ground urged by the Appellant to avoid the impugned order cannot be accepted. As such this appeal does not merit any favourable consideration and therefore is dismissed subject to costs.

JUDGE OF THE COURT OF APPEAL.

NR/-