

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

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C.A. 404/97F
D.C. Walasmulla 823/P

Seetha Siriwardena,
Godellawatta, Bowala,
Walasmulla
RESPONDENT-APPELLANT
VS

1. Premadasa Siriwardena,
Godellawatta, Bowala,
Walasmulla
2. Dharmasena Siriwardena,
Godellawatta, Bowala,
Walasmulla
3. 3A Sunil Siriwardena,
Godellawatta, Bowala,
Walasmulla
DEFENDANT-RESPONDENT
4. Don Charles Siriwardena,
Sunil Siriwardena,
Godellawatta, Bowala,
Walasmulla
PLAINTIFF-RESPONDENT

BEFORE : A W A SALAM, J

COUNSEL : Kaminda De Alwis for the respondent-appellant
and A E Munasingha for the defendant-respondent.

ARGUED ON : 22.05.2012.

DECIDED ON : 13.07.2012.

A W Abdus Saām, J

The respondent-appellant in this appeal challenges the propriety of the order dated 17 July 1999 of the learned district judge, allowing the application for writ of possession

initiated by the 1st defendant-respondent. The factual background to the appeal emanates from the final decree entered in partition action 823/P, by virtue of which the 1st defendant-respondent was allotted lot 1 depicted in the scheme of partition. Objection being taken against the application for writ of possession by the respondent-appellant, the learned district judge heard the parties on the application and entered the impugned order allowing the writ of possession. The present appeal has been preferred against this order.

At the hearing of the appeal a preliminary objection was raised by the 1st defendant-respondent as to the maintainability of the appeal, inasmuch as the respondent-appellant was not a party to the partition action. As the respondent-appellant was not a party to the partition action it was contended on behalf of the 1st defendant-respondent that she could not validly file a petition of appeal in terms of section 754 of the Civil Procedure Code which mandates that it is only a party to a case who is aggrieved by a judgement can prefer an appeal. Since the respondent-appellant was not a party to the case, it is inconceivable that she has a right of appeal against the impugned order. It is abundantly clear from the wording of the section 754 that to invoke the provisions of subsection (1) of section 754 of the Civil Procedure Code the appellant needs to be a party to the action.

It was contended on behalf of the respondent-appellant that the 1st defendant is precluded from seeking a writ of possession as he had made the application 10 years after

the entering of the final decree. A perusal of the Journal entries maintained in the original court reveals that the final decree has been entered on 22.06.1987 and the application for writ has been made on 20.02.1999.

In the circumstances I am of the view that the preliminary objection raised against the maintainability of the appeal should be upheld for the reason that the order appealed against cannot be subject of an appeal by a person who is not a party to the case. In the circumstances the appeal preferred by the respondent-appellant is dismissed without costs.

Judge of the Court of Appeal

NR/-