

In the Court of Appeal of the Democratic  
Socilist Republic of Sri Lanka

CA 1273/96F  
DC Kegalle 21650/P

L A Jayasingha, Bulugahadeniya,  
Kalewela, Hettimulla

Deceased 1<sup>st</sup> defendant-appellant

L A H Chandimal Jayasingha,  
Bulugahadeniya,  
Kalewela, Hettimulla

Substituted-  
defendant-appellant

Vs

L R Podinilame, Bulugahadeniya,  
Kalewela, Hettimulla

plaintiff-respondent  
And others

BEFORE : A W A SALAM, J

COUNSEL : Upul Kumarapperuma for the substituted 1st  
defendant appellant and S A D S Suraweera for the substituted 2<sup>nd</sup>  
and 3<sup>rd</sup> defendant appellant.

ARGUED ON : 17.01.2012.

WRITTEN SUBMISSIONS TENDERED ON : 20.06.2012

DECIDED ON : 25.06.2012.

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A W Abdus Salam, J

This is a partition action. On the date fixed for trial, parties came to a settlement and the trial was conducted without any points of contest being suggested, on the understanding that the parties are to be allotted such undivided shares as agreed among them. Accordingly the learned district judge delivered his judgment after the filing of the schedule of shares. In the said judgment the 1st defendant-appellant was allotted 1200 square feet of the corpus. Thereafter, the 1st defendant-appellant made application to have the judgment and interlocutory decree amended on the footing that the share allocation made to him has been incorrectly entered and the correct share should be 1200+2106.6717 square feet of the corpus.

On a perusal of the proceedings it appears that the 1st defendant-appellant has claimed undivided rights from the corpus under two different sources. The two deeds on which the 1st defendant gets right have been marked as 1D3 and 1D4. The learned district judge considered the application of the 1st defendant-appellant and delivered his order on 1st November 1996 refusing the application as the judgment and interlocutory decree had been entered by his predecessor who had by that time retired from judicial service. Further the learned district judge held that he has no power to amend the judgment and interlocutory decree without first identifying as to whether the defect in the judgment is a clerical

mistake or an arithmetical mistake. He further held that such an amendment has to be done by an appellate court and not by the original court.

In the case of Silva versus Silva (15 NLR 146) a full bench of the Supreme Court held that an interlocutory decree for partition is a decree within the meaning of section 207, and can only be modified in accordance with the provisions of section 189 of the Civil Procedure Code. In deciding this case their Lordships followed the decision in Silva Vs Ponnasamy (13 NLR 87). In the case of Dharmadasa Vs Maria (50 NLR197), it was once again held that the partition action proceeds on oral and documentary evidence and the failure to reserve the life interest entitled to on a deed is an accidental slip or omission which empowers the court to amend the decree under Section 189 of the civil procedure code. In delivering the judgment in this case, the court considered the judgment in Silva vs Silva and 13 NLR 87 and Silva Vs Silva 15 NLR 146.

The judgment in S. Thambipillei Vs. Muthu Kumarasamy 57 NLR 97 contains an important discussion on the powers granted to court to amend judgments and decrees. In that case the Supreme Court when delivering a judgment on an appeal inadvertently omitted to make a formal order that a decree granting the defendants counterclaim for delivery of possession of the property in dispute should be entered in addition to the decree for dismissal of the plaintiffs claim. Upon the omission being pointed out it was held that it being an accidental slip falls within the meaning of section

189 of the Civil Procedure Code.

Finally, the decision in Sumanadeva Vs Sediris 1990 1 Sri Lanka Law Report 27 evidence was led in the District Court during a retrial that 7<sup>th</sup> and 8<sup>th</sup> defendants were children of one X. An interlocutory appeal being preferred in the same case the Court of Appeal said that 3<sup>rd</sup> - 13<sup>th</sup> defendants are the children of X. When the title was re-investigated after the judgment of the Court of Appeal, on the question as to who the children of X are, the learned District Judge held that 7<sup>th</sup> and 8<sup>th</sup> defedants are the children of X. This was considered as accidental slip in not paying attention to the findings of the Court of Appeal and the same was corrected under section 189 of the Civil Procedure Code.

Taking all these matters into consideration, it is quite apparent that the learned district judge has failed to appreciate the duty cast and the powers conferred on him to correct a judgment and decree based on clerical or arithmetical mistakes or on proof that a mistake had occured by accidental slip. In the circumstances, I feel obliged to set aside the impugned order and accordingly I do so without any hesitation. The learned District Judge is now directed to address his mind as to whether the alleged mistake falls within Section 189 of the Civil Procedure Code and if it does to amend the judgment and interlocutory decree accordingly.

There shall be no costs