

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

Malewana Vithanage Dona
Nandawathie,
No. 442, Kelanimulla,
Angoda.

Plaintiff

C.A. No. 530 / 98 F

Vs.

D.C. Colombo No. 15986 / L

1. Galhenage Malani Perera,
No. 237/2, Kelanimulla,
Angoda.
2. Athukoralage Peman Perera,
No. 442, Kelanimulla,
Angoda.

Defendants

AND NOW BETWEEN

Galhenage Malani Perera,
No. 237/2, Kelanimulla,
Angoda.

1st Defendant Appellant

Vs

Malewana Vithanage Dona
Nandawathie,
No. 442, Kelanimulla,
Angoda.

Plaintiff Respondent

Athukoralage Peman Perera,
No. 442, Kelanimulla,
Angoda.

2nd Defendant Respondent

BEFORE : UPALY ABEYRATHNE J.

COUNSELS : C. Weerakoon with K. Keerthirathne for the
1st Defendant Appellant
A.A. De Silva PC with Bernard De Soyza
for the Plaintiff Respondent

WRITTEN SUBMISSIONS ON : 23.01.2012

ARGUED ON : 10.07.2012

DECIDED ON : 01.11.2012

UPALY ABEYRATHNE, J.

The Plaintiff Respondent (hereinafter referred to as the Respondent) instituted the said action against the 1st and 2nd Defendants in the District Court of Colombo seeking for a declaration of title and ejection of the 1st Defendant from the land described in the 2nd schedule to the plaint. The 1st and 2nd Defendants filed a joint answer praying for a dismissal of the Respondent's action and for a declaration of title that the 2nd Defendant is entitled to the land described in the schedule to the answer. The 1st Defendant did not claim any right or title to the land described in the schedule to the plaint or the answer. It appears from the said joint answer that the Appellant has admitted the position of the 2nd Defendant.

The case proceeded to trial on 14 issues. The issues No 1 and 2 had been raised on behalf of the Respondent and issues No 3 to 14 had been raised on behalf of the 2nd Defendant. It must be noted that no issues had been raised on behalf of the Appellant. After the examination of evidence of the Respondent and

the 2nd Defendant and their witness a date has been fixed for judgment. But prior to the delivery of judgement of the case a motion with terms of settlement which has been entered into between the Respondent and the 2nd Defendant has been tendered to Court by the 2nd Defendant. The learned Additional District Judge upon the said terms of settlement has delivered a judgement in favour of the Respondent. Being aggrieved by the said judgment dated 23.07.1998 the Appellant has preferred the present appeal to this court.

At the hearing of this appeal the Appellant contended that the learned Additional District Judge erred in law in delivering the judgment in accordance with the settlement entered into between the Respondent and the 2nd Defendant in that the said settlement adversely affected the Appellant who was not a party to the said settlement and the consent of the 2nd Defendant to bind the Appellant is not a lawful agreement or compromise as contemplated by Section 408 of the Civil Procedure Code.

Section 408 of the Civil Procedure Code stipulates that “If an action be adjusted wholly or part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the action, such agreement, compromise, or satisfaction shall be notified to the court by motion made in presence of, or on notice to, all the parties concerned, and the court shall pass a decree in accordance therewith, so far as it relates to the action, and such decree shall be final, so far as relates to so much of the subject-matter of the action as is dealt with by the agreement, compromise, or satisfaction.”

I have carefully considered the said settlement. As seen from Journal Entry No 60 of the case record the 2nd Defendant has revoked her proxy given to Mr. Waruna L. Jayaweera Attorney At Law and has appointed Mr L. M. Tilakaratne Attorney At Law to appear and defend the case. Thereafter, the 2nd Defendant by motion dated 17.07.1998 and with notice to the Attorney At Law of the Appellant, has tendered to Court the terms of settlement entered into between the Respondent and the 2nd Defendant.

As it appears from the said Journal Entries the terms of settlement as agreed upon has been presented to Court and notified thereto and recorded by Court and a decree has been entered. Hence I am of the view that the said settlement which has been entered into between the Respondent and the 2nd Defendant is in strict compliance with the provisions of Section 91 and Section 408 of the Civil Procedure Code.

In the case of Dasanaik Vs Dasanaik 30 NLR 385 it was observed that “Where an application is made to have an adjustment or compromise of an action entered under section 408 of the Civil Procedure Code, it must be clearly established that both parties have agreed to the compromise and that effect could be given to it by a decree of Court.”

Hence I find no reason to interfere with the said judgment of the learned District Judge dated 23.07.1998. Therefore I dismiss the instant appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal