

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

R. R. N. Wijegunawardene widow
of deceased 4th Defendant
Pallekkankanamge Herbert Dias
Wijegunawardene.

PETITIONER-APPELLANT

C.A 20/1998 (F)
D. C. Matugama P2313

Vs.

K. Don Leslie Bandula Kumarasiri
Timber Trade Centre,
Near Police Station, Meegahatenne

PLAINTIFF-RESPONDENT

2. S. Ramanie Kannangara
Near Police Station,
Mananagedera, Meegahatenne

And 10 others

DEFENDANT-RESPONDENTS

BEFORE: Anil Gooneratne J.

COUNSEL: Appellant is absent and unrepresented
T. Weerakkody for Plaintiff-Respondent

ARGUED ON: 13.10.2011

DECIDED ON: 20.10.2011

GONNERATNE J.

The Appellant in this case was present in person when this appeal was first listed to be mentioned on 1.7.2011. Thereafter on two occasions (inclusive of date for hearing) the appellant was absent and unrepresented. It is very unfortunate that the Appellant did not take necessary steps to proceed with this appeal and prosecute this appeal having previously deposited brief fees. On this ground alone this appeal could have been rejected. Nevertheless the learned counsel for the Plaintiff-Respondent assisted this court by his submissions and also urged that on a preliminary point alone this appeal should be rejected. It was his contention that the Appellant should have in the first instance moved this court by way of Leave to Appeal. In any event learned counsel for Plaintiff-Respondent supported the order of the learned District Judge dated 16.12.1997

The Petition of Appeal has been filed by the widow of the 4th Defendant in the partition suit. By the Petition of Appeal the Petitioner-Appellant has sought to set aside the above order of the learned District Judge and to set aside the judgment dated 20.12.1996 and has prayed for trial do nova. Perusal of the original court record I find that judgment was delivered on the uncontested evidence of Plaintiff by the District Judge on 20.12.1996 in this partition suit. Based on Plaintiff's evidence and plan and report marked x and x1 respectively judgment was entered and certain shares have been allocated to the Plaintiff and other Defendants. The record indicates that interlocutory decree was entered and court has directed the final survey and accordingly on the return of the final survey final decree entered and registered.

The final survey and report was filed on 27.3.1997. The Petitioner has applied to the District Court on 27.10.1997 about 7 months after filing of final survey. In terms of Section 48(4) of the Partition Act No. 21 of 1977, Petitioner-Appellant should have objected within 30 days of such filing of final survey. The learned District Judge has considered all the above matters in his order of 16.12.1997. There is no valid ground to reverse such order or set aside the order of the District Court.

The 4th Defendant whilst living had been present in the District Court (J.E 21.3.1993) and claimed the plantation in lot 2. It is also recorded that the 4th Defendant had conveyed his interest by deed marked P2 & P3. Thereafter he had died. The Petitioner-Appellant has taken up the position that the 4th Defendant her husband was ill or insane and that decree was entered when he was not in a position to attend court.

This is a case where final decree was entered. It has a conclusive effect as against the whole world. No other ground whether fraud or otherwise can it be disturbed – Carolis Appu Vs. Ratnayake et al 1 S.C.R 274. Followed in 23 NLR 370, 56 NLR 345; 4 CWR 406.

In the circumstances there is not even a remote possibility to set aside the learned District Judge's order. I cannot find substantial grounds or special circumstances to interfere with the order by way of revision. On the other hand party concerned should have taken steps within the required time frame of 30 days as stated above. As such I affirm the order of the original court. Appeal and or revision application refused and dismissed without cost.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL