

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

Kumbuke Dona Somawathie
Godigamuwa, Gonapola Junction

PLAINTIFF

C.A 563/96(F)
D.C. Horana 2474/P

Vs.

2. Ukwattage Engonona
Godiganuwa, Gonapola Junction

and several others

DEFENDANTS

AND BETWEEN

34. Masakorallage Karunadasa
Godigamuwa, Gonapola Junction

36. Hapuarachchige Dona Chandrakanthi
Godigamuwa, Gonapola Junction..

DEFENDANTS-APPELLANTS

Vs.

Kumbuke Dona Somawathie
Godigamuwa, Gonapola Junction
(Deceased)

PLAINTIFF-RESPONDENT

1. Ukwattage Engonona
Godiganuwa, Gonapola Junction
and several others

1st TO 33rd, 35th, AND 37th
DEFENDANT-RESPONDENTS

An application for substitution on behalf of the deceased 1st Defendant of D.C Horana Case No. 2474/P, 4th Defendant Respondent, 10th Defendant in District Court Case No. 2474/P, 13th Defendant-Respondent and 30th Defendant.

34. Masakorallage Karunadasa
Godiganuwa, Gonapola Junction
35. Hapuarachchige Dona Chandrakanthi
Godiganuwa, Gonapola Junction

DEFENDANTS-APPELLANT-
PETITIONERS

Vs.

1. Kumbukkage Leelawathie
Godiganuwa, Gonapola Junction
2. Kumbukkage Dona Chitrawathie
Godigamuwa, Gonapola Junction
3. W. Ratnasiri alias Anulasiri
Kotikagoda, Padukka.
4. W.H.T. Weerasinghe
306A, Mandawala Road, Malamulla.
Panadura.
5. A. Tulin Fernando
Delgahawatte, Venivalkola, Polgasowita.

RESPONDENTS

BEFORE: Sisira de Abrew J. &
Anil Gooneratne J.

COUNSEL: Ranjan Suwandarathne with T.B.Waduresa
for the 34th and 36th Defendant-Appellant

Dr. Jayatissa de Costa P.C
for the Substituted-Plaintiff-Respondent

L.Chaminda for the 37th Defendant-Respondent

ARGUED ON: 07.12.2010

DECIDED ON: 21.03.2011

GOONERATNE J.

This was a partition action filed in the District Court of Horana, some years ago. The Appeal was heard by this court on the 6th and 7th December 2010. There had been several parties to this action and as the years went by it has also become necessary to substitute parties as some of them had died. Judgment was delivered in the Original Court on or about 30.04.1996. Parties proceeded to trial on 13 points of contest, as recorded in the proceedings of 05.11.1992 & 16.02.1993. Originally no admissions were recorded. However on 07.09.1003 counsel appearing for 34th & 36th Defendants informed court that he accept the subject matter or the corpus of

this action and withdrew points of contests Nos. 5 & 6. The 29th & 37th Defendants admitted plaintiff's pedigree.

The learned District Judge has in the judgment stated that land sought to be partitioned is shown in the plan 'X' filed of record, is the land depicted in plan No. 1385 of 14.3.1988. This court permitted all necessary parties to make oral submissions. However this court after perusal of the judgment of the learned District Judge found that the learned Trial Judge had not answered the points of contests raised at the trial in his judgment. All counsel including the learned President's Counsel for the Substituted-Plaintiff-Respondent accepted the fact that the learned Trial Judge has failed to answer the several points of contests. As such court advised the parties to file a motion, indicating a settlement if there is any, before delivery of judgment by this court.

The failure to answer the issues would amount to non compliance with Section 187 of the Civil Procedure Code. The said section reads thus:

The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision; and the opinions of the assessors (if any) shall be prefixed to the judgment and signed by such assessors respectively.

The above position was considered by this court in the case of The Finance Co. Ltd Vs. P, Kusumawathie & others 2008(B.L.R) pg. 211 which incorporates the judgment reported in 59 NLR 211.

Held:

- (a) the impugned judgment is not in conformity with the provisions of Section 187 of the Civil Procedure Code and failure of the trial judge to examine the evidence and to answer all the issues of the defendants has definitely prejudiced the substantial rights of the parties.
- (b) Bare answers to issues without reasons are not in compliance with the requirements in Section 187.

At pg. 212 – per L.W. de Silva A.J at pg. 216 in the case of

Dona Lucihamy vs. Cicilianahamy 59 NLR 214

Section 187 of the Civil Procedure Code thus reads as follows:-

“The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision; and the opinions of the assessors (if any) shall be prefixed to the judgment and signed by such assessors respectively.”

In the case of Dona Lucihamy vs. Cicilianahamy (59 NLR 214) it was held that:

“Bare answers without reasons, to issues or points of contest raised in a trial are not in compliance with the requirement of the Section 187 of the Civil Procedure Code”.

Per L. W. De Silva, A.J at page 216;

“Bare answers to issues or points of contest – whatever may be the name given to them - are insufficient unless all matters which arise for decision under each head are examined”.

The impugned judgment is not in compliance with the above section of the Civil Procedure Code. This is something which would prejudice the substantial rights of parties. Trial Judge has committed a cardinal error, by not answering the points of contests. Therefore I set aside the Judgment of the learned District Judge dated 30.04.1996.

This court directs the Registrar of the Court of Appeal to send the original case record in D.C. Horana 2474/P to the Registrar of the respective District Court, forthwith. Court orders a re-trial and the case is remitted for trial de-nova with a directive to conclude the trial expeditiously

Re-trial ordered.

JUDGE OF THE COURT OF APPEAL

Sisira de Abrew J.

I agree.

JUDGE OF THE COURT OF APPEAL