

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

Court of Appeal No: CA 868/2006 (Revision)

District Court of Jaffna No: 388/L

K.P. Christy Joy and another

Defendant-Petitioner

Vs.

Samuel A. Meshadurai
appearing by his attorney

Plaintiff-Respondent

Before: Eric Basnayake J

Counsel: S. Madalshwaran with P. Peramunagam for the Defendant-Petitioner

Rohan Sahabandu for the Plaintiff-Respondent

Argued On: 21.10.2009

Written Submissions Tendered On: 28.2.2007 & 23.8.2007

Decided On: 23.9.2011

Eric Basnayake J

The defendant-petitioners (defendants) filed this revision application on 29.5.2006 inter alia to have the consent judgment dated 23.11.2005 of the learned District Judge of Jaffna set aside. The plaintiff-respondent (plaintiff) filed this action in the District Court of Jaffna on 26.2.2004 for a declaration of title, ejectment of the defendant and for damages. In the plaint, the plaintiff's land has been described in the schedule as 15/22 shares of "Seenathottam". After the defendants filed answer the plaintiff moved to amend the plaint.

In the amended plaint the schedule has been amended to include the whole land instead of 15/22 shares. According to the plaint the original owners were the parents of the plaintiff and his sister. Thereafter the plaintiff's sister became the owner. The plaintiff's sister had sold 15/22 shares to the plaintiff by deed No. 8360 of 18.10.1978. Although the schedule to the plaint mentioned a share of 15/22, there appears to be no other owners.

According to the plaint the defendants had, without any right, entered this land by making use of the war situation prevailing at that time. The defendants were considered as trespassers. The defendants in the answer claimed that they got this property from Mr. Mathivathan who is a cousin of the defendant. The defendants claimed that they were in possession for a period of 16 years and that prior to that it was Mathivathan who was in possession. The defendants claimed the property on the ground of prescription.

The defendants did not claim that the house which is on this property was constructed by them. The defendants claimed that this house was damaged due to explosions and a sum of Rs.1 million was spent on reconstruction. The

defendants are claiming the 7/22 shares in the event the plaintiff is declared owner in respect of the 15/22 shares. If the defendants are ordered to vacate from the area that is covered by 15/22 shares, the defendants are claiming a sum of Rs.500000 as expenditure on the reconstruction. In the plaint the plaintiff claimed 15/22 shares. The defendants thus claim the balance 7/22 shares. There is no basis for the defendants to forward a claim of 7/22 shares.

When this case was called on 23.11.2005 this case was settled as follows:-

- The defendants undertook to satisfy court within a period of six months that there are other co-owners. In the event the defendants fail to provide this information, the defendants agreed to vacate the premises by handing over peaceful possession to the plaintiff. The plaintiff is entitled to a writ of execution in the event the defendants fail to vacate.
- The defendants were to submit to the Registrar of the court, the expenditure on the repairs by 23.12.2005. The Registrar was to examine this amount and also to assess the rent payable by the defendants from 1990.
- The parties agreed to pay each other the amount arrived at by the Registrar.

Subject to the above terms the judgment was entered as prayed for by the plaintiff and consent decree was entered. In terms of the settlement, the Registrar filed his report on 7.2.2006. The learned counsel for the plaintiff submitted that when the Registrar visited the site both parties were present. The expenditure on the reconstruction was estimated at Rs.205169.46. The rent has been assessed at

Rs.123500. The learned counsel for the plaintiff submitted that the plaintiff had deposited in court a sum of Rs.81669.46 being the difference between the amount spent on the repair and the estimated rent.

The defendants are now seeking to set aside the settlement arrived at on 23.11.2005. The defendants did not make an application to the District Court to set aside the consent decree or the settlement. Instead the defendants filed this revision application on 29.5.2006 in the Court of Appeal complaining that the learned Judge could not have entered judgment declaring the plaintiff entitled to the entirety of the property when the plaintiff was entitled to an undivided 15/22 shares. The defendants complained that the condition of the settlement requiring the defendant to search the other co-owners and on failure to suffer the consequence of ejection is ridiculous. The learned counsel for the defendant invites court to consider the above matters as forming exceptional circumstances.

The Civil Procedure Code by section 408 makes provision for parties to adjust their action. The section is as follows:-

If an action be adjusted wholly or in part by any lawful agreement or compromise.....such agreement, compromise or satisfaction shall be notified to the court...and **the court shall pass a decree in accordance therewith and such decree shall be final...** (emphasis added).

When parties arrive at a settlement or a compromise as per section 408 the terms are binding on the parties (Balasubramaniam vs. Letchiraman (2006) BLR 1, Ummu Vareela Majumdeen vs. Keerthi CALA 119/2002 D.C. Kandy 16327/L (Minutes of 18.6.2004, Gunawardene vs. Ran Menika (2002) 3 Sri L.R. 243, Malini vs. Somapala (2000) 2 Sri L.R. 196, Saheeda Umma vs. Haniffa (1999) 1 Sri L.R.

150, John Keels vs. Kurruppu (1996) 2 Sri L.R. 6, Suriapperuma vs. Amerasinghe (1989) 1 Sri L.R. 325, Saranelis vs. Agnas Nona (1987) 2 Sri L.R. 109, Sinna Veloo vs. Lipton Ltd., 66 N.L.R. 214, Nadaraja vs. Pathakudy 53 N.L.R. 273, Kandiah Pillai vs. Vythialingam 49 N.L.R. 127, Banda vs. Siyatu 32 N.L.R. 270, Dassanike vs. Dassanaike 30 N.L.R. 385).

In this case both parties were represented by lawyers and the settlement was arrived at in court on 23.11.2005 and the parties have signed the record. According to the settlement the Registrar of the court had to make an assessment on the expenditure of the reconstruction of the building. The Registrar was also required to make an assessment with regard to the amount the defendant owed for his occupation of the building from 1990. For this purpose the Registrar had visited the premises and had had discussions with the parties. Thereafter the Registrar had tendered a report to court on 7.2.2006. The report was to be considered on 17.2.2006. After consideration the report was accepted and the plaintiff had deposited the difference between the amount spent on the reconstruction and the estimated rent. The defendants never complained to court with regard to the terms arrived at in court. The defendants never moved court to have the settlement set aside on the ground of mistake or unreasonableness or any other ground.

The defendants claimed 7/22 shares in this case. 7/22 shares were claimed on the basis that the plaintiff filed action to claim 15/22 shares. That is not a basis for the defendants to make a claim for shares. The defendants could claim rights either by way of purchase or prescription. Purchase has to be done from the true owners. The defendants did not purchase any shares. The defendants did not

inherit shares. However, the defendants claim 7/22 shares. That is how the defendants agreed to satisfy court with regard to the 7/22 shares.

Exceptional circumstances

It is well settled law that revisionary jurisdiction of this court will be exercised on the availability of exceptional circumstances (Rustom vs. Hapangama & Co (1978/79 (2) Sri L.R. 225, (1978/79/80) 1 Sri L.R. 352, Rasheed Ali vs. Mohamed Ali (1981) 1 Sri L.R. 262, Thilagaratnam vs. Edirisinghe (1982) 1 Sri L.R. 56, Iynul Kareeza vs. Jayasinghe (1986) C.A.L.R. 136, Hotel Galaxy (Pvt) Ltd. Vs. Mercantile Hotels Management Ltd. (1987) 1 Sri L.R. 5, Jonita vs. Abeysekera, Sri Skantha L.R. Vol. IV 22, Wijesinhe vs. Thamaratnam Sri Skantha L.R. vol. IV 47, Samadh vs. Musajee (1988) 2 CALR 147, Navaroch vs. Shrikanthan (1997) 1 Sri LR. 286, Vanik Incorporation Ltd. Vs. Jayasekera (1997) 2 Sri L.R.365, Seylan Bank vs. Thangaveil (2004) 2 Sri L.R. 101).

The defendants invite court to consider the following matters as constituting exceptional circumstances, namely:-

- Judgment is contrary to law
- When the plaintiff is entitled to only 15/22 shares the court could not have entered judgment in favour of the plaintiff for the whole land.
- Unreasonableness of requiring the defendant to find out the co-owners and failure to do so resulting in ejectment.

The defendants never disputed the plaintiff's 15/22 share. Thus the defendants admit the plaintiff as a co-owner. The plaintiff considers the defendants as trespassers. It must be stated that a co-owner is entitled to sue a trespasser and

- to have the defendants ejected from the whole land (Unus Lebbe vs. Zayee 1893 3 S.C.R 56, Hewavitharana vs. Dangu Rubber Co., Ltd 17 N.L.R. 49).

The above matters relied on by the defendants cannot be considered as having formed exceptional circumstances. The settlement was arrived at by the parties in court on 23.11.2005. In terms of the settlement the defendants had to fulfill part of their obligation by 23.5.2006. That is to bring before court any other co-owners or failing to do so, to hand over vacant possession to the plaintiff by 23.5.2006. The defendants did not bring before court any other co-owners and thus was obliged to hand over vacant possession by 23.5.2006. From 23.11.2005 until 29.5.2006 the defendants did not complain to any one about the dissatisfaction with regard to the terms of the settlement. It is to this court that the defendants first complained by filing this revision application to have the settlement set aside.

I am of the view that the defendants have not shown any exceptional grounds for invoking the extra ordinary jurisdiction of this court. Hence this application is dismissed with costs.

Judge of the Court of Appeal