

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

CA 347/2000 (f)

DC Balapitiya Case No.2005/P

Uhanowitage Sirisena,
Sesathgodawaththa,
Pahala Omaththa,
Ganegoda.

Plaintiff

Vs.

Eclirisinghage Somasiri,
Pahala Omaththa,

and others

Defendants

AND NOW BETWEEN

Uhanowitage Nanclisena
Pahala Omaththa
Ganegoda

3rd Defendant-Appellant.

Vs.

Uhanowitage Sirisena
Sesathgodawaththa
Pahala Omaththa
Ganegoda

Plaintiff- Respondent

C .A. Appeal No. 347/2000(F) - D.C. Balapitiya No. 2005/P

Before : **UPALY ABEYRATHNE, J.**

Counsel : M.S.A. Wadood with Palith Subasinghe
and Charitha Kulatunga for the 3rd
Defendant- Appellant.

Daya Guruge for the Respondents

Argued &
Decided on : 29.01.2013.

Upaly Abeyrathne, J.

Both Counsel concluded their oral submissions.

The plaintiff-appellant has instituted the said action in the District Court of Balapitiya to partition the land described in the schedule to the plaint. The 3rd defendant-appellant in paragraph 2 of her statement of claim stated that lots E and G shown in the preliminary plan bearing No. 192 prepared by Y.R.D. Samarawickrema the licensed surveyor should be excluded from the partition.

On the date of trial, the learned District Judge without proceeding to inquire into the dispute between the parties had arrived at a decision that the land described in the schedule to the plaint should be partitioned according to the

evidence of the plaintiff-respondent. It appears from the proceedings dated 15.2.1996, that the learned District Judge had failed to proceed to record the issues on which the right decision of the case appears to the court to depend. Proceedings on the said date namely 15.02.1996 further shows that the learned District Judge had failed to hold an inquiry according to the Sections 25 and 26 of the Partition Act.

Section 25 (1) of the Partition Act stipulates that “ On the date fixed for the trial of a the partition action or on any other date to which the trial may be postponed or adjourned, the court shall examine the title of each party and shall hear and receive evidence in support thereof and shall try and determine all questions of law and fact arising in that action in regard to the right, share, or interest of each party to, of, or in the land to which the action relates, and shall consider and decide which of the orders mentioned in section 26 should be made.”

Learned Counsel for the plaintiff-respondents conceded that the learned District Judge had failed to adhere to the provisions contained in section 25(1) of the Partition Act.

In the said circumstances, I hold that this case should be sent back to the District Court of Balapitiya for a fresh

inquiry on the same plaint and the statements of claim already filed by the parties. I make no order for costs.

The Trial Judge is directed to conclude the trial expeditiously.

Registrar is directed to send the main case record to the relevant District Court.

Case sent back for retrial.

JUDGE OF THE COURT OF APPEAL

/mds