

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

C.A. 19/98(F)

D.C. Matugama Case No: 1899/P

Sidni Horden De Alwis Senevirathna
Kuru Welakatiya,
Welipanna.

Appellant

Vs.

Indrani Somalatha
Gorakaduwa,
Palawatte.

Respondent

C.A. 19/98(F)**D.C. Matugama Case No: 1899/P**

BEFORE : **K.T. CHITRASIRI, J.**

COUNSEL : Ranjan Suwandarathne with Dinoo Dharmaratne for the
1st Defendant- Appellant.

Rohana Deshapriya for the Substituted 3rd Defendant-
Respondent.

**ARGUED &
DECIDED ON** : 07.06.2013

K.T. CHITRASIRI, J.

This is an appeal seeking to set aside the judgment dated 18.12.1997. By that judgment, learned District Judge of Matugama dismissed the plaint filed in order to have a partition of the land referred to in the plan marked 'X' in evidence. (Vide page 61 in the brief) Both Counsel submitted that the dismissal of the action is on the basis that the land sought to be partitioned belongs to the Land Reform Commission. This is clearly evident by the following sentence found in the judgment.

“එම නිසා විෂය වස්තුව අයත් වන්නේ ඉඩම් ප්‍රතිසංස්කරණ කොමිෂන් සභාවටය”. (page 131 of the brief/page 3 in the judgment).

Learned District Judge has come to the aforesaid conclusion despite the fact that there had been an application seeking to add the Land Reform Commission a party to the action. The said application had been filed by its petition dated 24.11.1997 and the minute bearing number 54 had been made to that effect on 25.11.1997. Therefore, it is clear that the impugned judgment has been pronounced

dismissing the action without making an order on the application made pending the judgment to add the Land Reform Commission as a party to the action.

In the cases of *Galagoda Vs mohideen*, [40 NLR 92] *Gunathilake Vs Muriel Silva*, [79(1) N.L.R. 481], *Kularatne Vs Ariyasena*, [2001 B L R .Pg.6] *Richard and another Vs Seibel Nona* [2001 (2) SLR1] *Abeyasinghe Vs Kumarasinghe* [2008 B L R 300], it was held that under Section 25 of the Partition Act, a duty is cast upon the trial Judge to investigate title of the parties in a partition action. In this instance, both Counsel appearing for the appellant as well as the respondent, submitted that an officer from the Land Reform Commission has testified in Court as to an inquiry held, to determine whether the land sought to be partitioned belongs to the land Reform Commission or not. The said inquiry had been stayed due to the pendency of this partition action.

Pursuant to the said evidence of the officer from the Land Reform Commission, an application has been made to add the L R C as a party to the action and has sought permission of Court to file its statement of claim. It had not been looked into at all. Judgment has been delivered while pending the said application. Both Counsel submit that it is wrong to have dismissed the action stating that the land sought to be partitioned belongs to the Land Reform Commission when there was an application by the Land Reform Commission itself to become a party to the action.

In the circumstances, it is clear that the learned District Judge has not given an opportunity for the Land Reform Commission to present its claim to Court. It

amounts to a failure on the part of the learned Trial Judge to perform his duty in terms of Section 25 of the Partition Act.

For the aforesaid reasons, the judgment dated 18.12.1997 of the learned District Judge is set aside. Learned District Judge of Matugama is directed to consider the application dated 24.11.1997 made by the Land Reform Commission and to proceed with the action from that point onwards.

Subject to the above directions, appeal is allowed without costs.

Appeal allowed without costs.

JUDGE OF THE COURT OF APPEAL

Jmr/-