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

C.A.672/98
D.C.Tangalle 1966/P

Jayasekara Pathiranage Wimalarathna
Kudahilla,
Beliatta.

And others

Appellant

Vs.

Jayasekara Pathiranalage Abeyrathna
Kudahilla,
Beliatta.

Respondent

C.A.672/98 **D.C.Tangalle 1966/P**

BEFORE : K.T.CHITRASIRI, J.

COUNSEL : Lasitha Chaminda with Mihiri Abeyratne for the 5th to 10th Defendant-Appellants

Nuwan Kodikara with Dinesha Pathirathna for the 1A Defendant-Respondent

ARGUED &

DECIDED : 01. 07. 2013

K. T. CHITRASIRI, J.

Heard both Counsel in support of their respective cases.

This is an appeal seeking to set aside the judgment dated 14.07.1998 of the learned District Judge of Tangalle. By that judgment, a claim to have an exclusion of lots 1 and 2 referred to in the Plan bearing No.1278 dated 24.06.1983, marked as "Y" in evidence had been rejected. Accordingly, the learned District Judge has decided that the land sought to be partitioned should be the entire land comprising of lots 1, 2, 3 and 4 referred to in the aforesaid plan marked "Y". It is evident by the answers to the issues bearing Nos. 7 and 8 as well.

Upon perusal of the judgment dated 04.07.1998, it is seen that the learned District Judge having identified the issue namely, the identity of the corpus (vide pages 176 and 177 of the appeal brief) has dealt with the same in the manner described in his judgment. (vide pages 187 onwards in the appeal brief) In that judgment he has *inter alia* stated thus:

> "පැ 2, පැ 3 සහ 2 වී 1 හැර, ඉහත සඳහන් අනෙක් සියළුම ඔප්පු දමනිය ගහහේන සහ වලේ හේන ඒකාබද්ධ ඉඩමට ලියා ඇත . 1 වී 1 සිට 1 වී 7 දක්වා ඔප්පු පැමිණිල්ලේ පෙළපතේද සඳහන් කර ඇත . පැමිණිලිකරු ඉල්ලා ඇත්තේ, දමනිය ගහහේන බෙදා වෙන්කිරීමට පමණි ඔහුගේ ස්ථාවරය වලේ හේන වෙනම ඉඩමක් බවයි."

Basically, the learned District Judge has relied upon the deeds marked 1V1 to 1V7 of the 1st, 2nd and 4th defendant-respondents when he decided to include all the four lots referred to in the plan marked "Y", as the land sought to be partitioned. All those deeds marked 1V1 to 1V7 and also the deed marked P1 refer to two lands called Damaniyagahahena and Walehena. Accordingly, the learned Judge has decided to include both those lands as the corpus of this action on the basis of those deeds of the respondents. However, it must be noted that the deeds marked P2, P3 and 2V1 relied upon by the respondents themselves including the 1st defendant-respondent, refer only to the land called Damaniyagahahena. Hence, it is evident that some of the deeds relied upon even by the respondents do not indicate that they are entitle to the land called Walehena since those deeds P2,P3

and 2V1 do not deal with the land Walehena. This fact has not been adverted to by the learned District Judge.

The claim of the appellants to have lots 3 and 4 in the plan marked "Y" excluded, had been on the basis of a Crown Grant dated 08.01.1923. The said Grant had been marked as "5V1" in evidence. The name of the land claimed by the appellants as referred to in the Grant, is the said land Walehena of which the eastern boundary is Damaniyagahahena. This land is shown on the reverse of the Grant and it had been superimposed on to the plan bearing No.1278A marked as "Z" in evidence. In that plan marked "Z", the Crown Grant claimed by the appellants is shown as lots 1B and 2B which tally with the boundaries and extent of the land Walehena as claimed by the appellants.

Even though, clear evidence such as those is available to show that the land claimed by the appellants falls within the corpus, learned District Judge has declined to decide so. He was basically depending on the fact that a larger land had been referred to in those deeds marked "P1" and "1V1" to "1V7" and has concluded to include the land Walehena also into the corpus. Therefore, it is clear that the decision of the learned District Judge to include the land referred to in the Crown Grant dated 08.01.1923 as part of the land to be partitioned has been made without considering the totality of the evidence led before him.

Plaintiff as well as the 1st to 4th defendants has initially produced and marked the deed bearing No.15339 dated 06.12.1917 [P1] to establish their rights. Having relied upon the said deed P1, the 1st defendant has then marked the deed "1V1" dated 09th July1939, connecting it to the title referred to in the said deed P1 in order to prove the chain of title of the 1st to 4th defendant-respondents. At this stage it must be noted that the Crown Grant relied upon by the appellants which is dated 08.01.1923, had been issued before the execution of the said deed marked 1V1 produced in support of the claim of the respondents.

Therefore, it is seen that the first deed (1V1) relied upon by the respondents to include the land Walehana into the corpus had been executed disregarding the title shown in the Crown Grant marked "5V1" by which a part of the land referred to in the said deed marked 1V1 had been alienated to the predecessors-in-title of the appellants by then. Accordingly, it is clear that the 1st to 4th defendant-respondents could not have claimed title to the entire land consisting of lots 1-4 in plan "Y" since the Crown Grant claimed by the appellants also falls within those 4 lots. Learned District Judge has failed to consider this point when he decided to disallow the claim of the appellants in order to have the land referred to in the Grant excluded.

Furthermore the boundaries of the Crown Grant too, support the fact that the land claimed by the appellants by the said Grant falls on to the eastern boundary of lots 3 and 4 in both the plans marked "Z" and "Y". Learned District

Judge has failed to appreciate this point as well at the time he decided to include lots 1, 2, 3 and 4 in the plan marked "Y" into the corpus in this case.

When the learned Counsel for the respondents was requested to assist Court on those points particularly as to the title emanated from the Crown Grant relied upon by the appellants as opposed to the deeds "1V1" to "1V7" produced by the respondents, he could not show any reason as to why the learned District Judge has rejected the claim to have an exclusion of the land referred to in the Crown Grant.

In the circumstances, it is clear that the learned District Judge has misdirected himself when he decided to include the land referred to in the Grant claimed by the appellants by answering the issues bearing Nos.7 and 8 affirmatively. Accordingly, it is my view that he should have answered the said issues 7 and 8 in the negative form relying upon the rights derived from the Crown Grant and also by identifying the land sought to be partitioned by looking at the names, extent and the situation of the lands referred to in all the deeds marked in evidence. In the light of the above, it is my view that the learned District judge misdirected himself when he decided to include lots 1 and 2 in the plan marked "Y" into the corpus.

For the aforesaid reasons, I allow the appeal and accordingly, the learned District Judge is directed to amend the judgment limiting the land sought to be partitioned to lots 3 and 4 referred to in the plan No.1278 dated 02.07.1983

marked as "Y". Accordingly, he is also directed to exclude lots 1 and 2 referred to in the aforesaid plan marked "Y" from the corpus. Learned District Judge is further directed to enter Interlocutory Decree accordingly. However, allocation of shares referred to in the judgment should remain as decided by the learned District Judge since no appeal is preferred challenging the same.

Accordingly, this appeal is allowed with costs subject to the above conditions.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL