

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

CA 1140/96 (F)

D.C. Panadura Case No.85/P

Udugaha Pattuwage Don Dayaratne, No.
227/A, Temple Road, Kuda Gonaduwa,
Moronthuduwa.

Plaintiff.

Vs.

1. Pelpolage Wediyes Gunawardane,
Temple Road, (deceased)
- 1A Pelpolage Bartin Gunawardana,
Kudagonaduwa, Moronthuduwa.
2. Kahawalage Dayawathie, No.227A,
Temple Road, Kudagonaduwa,
Moronthuduwa.
3. P. Bartin Gunawardane.
4. P. Sumanadasa Gunawardane.
5. P. Pemawathie.
6. P. Dayawathie alias Karunawathie,
Temple Road, Kidgonaduwa.
7. Kahavitage Dom Piyadasa
Appuhamy, Thalagahawatte,
Kudagonaduwa, Moronthuduwa.
8. Kahavitage Don Seeman
Appuhamy, Baduwatte,
Mahagonaduwa, Moronthuduwa.
(deceased)

- 8A Kahavitage Don Chandrasena, (As
the legal representative of the
deceased 8/D)
9. Kahavitage Don Lionel, Temple
Road, Kudagonaduwa,
Moronthuduwa.
10. Kuruvitage Dinasena de Silva,
"Dinakara" Mahagonaduwa,
Moronthuduwa.
11. Kahavitage Don Aladin Appuhamy,
Kudagonaduwa, Moronthuduwa.
12. Kahavitage Don Martin Appuhamy,
Temple Road, Kidagonaduwa,
Moronthuduwa.
13. Kuruvitage Piyasena Silva,
Gonaduwa, Moronthuduwa.
14. Kuruvitage Buddhadasa Silva,
Gonaduwa, Moronthuduwa.
15. Kuruvitage Pemawathie Silva, No.
7, Nelum Mawatha, Sirimal Uyana,
Ratmalana.

Defendants.

- 1A Pelpolage Bartin Gunawardane,
Temple Road, Kudagonaduwa,
Moronthuduwa.

1st Defendant-Appellant.

Vs.

Udugahapattuwege Don Dayaratne, No.
227/A, Temple Road, Kuda Gonaduwa,
Moronthuduwa.

Plaintiff-Respondent.

And

2. Kahawalage Dayawathie, No.227A,
Temple Road, Kudagonaduwa,
Moronthuduwa.
3. P. Bartin Gunawardane.
4. P. Sumanadasa Gunawardane.
5. P. Pemawathie.
6. P. Dayawathie alias Karunawathie,
Temple Road, Kidgonaduwa.
7. Kahavitage Dom Piyadasa
Appuhamy, Thalagahawatte,
Kudagonaduwa, Moronthuduwa.
8. Kahavitage Don Seeman
Appuhamy, Baduwatte,
Mahagonaduwa, Moronthuduwa.
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Moronthuduwa.
11. Kahavitage Don Aladin Appuhamy,
Kudagonaduwa, Moronthuduwa.

12. Kahavitage Don Martin Appuhamy,
Temple Road, Kidagonaduwa,
Moronthuduwa.
13. Kuruvitage Piyasena Silva,
Gonaduwa, Moronthuduwa.
14. Kuruvitage Buddhadasa Silva,
Gonaduwa, Moronthuduwa.
15. Kuruvitage Pemawathie Silva, No.
7, Nelum Mawatha, Sirimal Uyana,
Ratmalana.

Defendant-Respondent.

Before : A.W.A. Salam, J. & Sunil Rajapaksha, J.

Counsel : Rohan Sahabandu PC with Sarath Walgama for the
Appellant. W.D. Weeraratne for the 2nd Respondent.
N.A. Gunawardhana for the 7th-12th Defendant-Respondents.

Argued on : 14.05.2013

Decided on : 29.08.2013

A.W.A. Salam, J.

This appeal arises from the judgment and interlocutory decree entered in a partition action. The facts relevant to the appeal and the sequence of events that took place up to the time of filing the appeal, leaving out unnecessary details are that the plaintiff sued the defendants for the

partition of a land, the identity of which was never in dispute. The land depicted in preliminary plan dated 18 January 1988 bearing No 1022 made by M.C.G.Fernando Licensed Surveyor constitutes the corpus.

The only question raised in the pleadings revolved around the the question relating to the original ownership of the corpus. The plaintiff in his plaint, averred that the original owner of the corpus was one Kahatawitage Bastian who became entitled to the same by right of long and prescriptive possession. The rights of the original owner from and out of the corpus in terms of the averments in the plaint had devolved as set out below...

1. Plaintiff- an undivided 1/4
2. 1st defendant- an undivided 2/4
3. 2nd defendant- an undivided 1/4

The 7, 8, and 9 defendants who have preferred the present appeal maintained that the original owner of the corpus was one Kahatawitage Don Singho alias Seaman Singho and his rights from and out of the corpus devolved on the parties in the following proportion..

1. Plaintiff- an undivided 1/36
2. 1st defendant - an undivided 2/36
3. 2nd defendant - an undivided 1/36
4. 7th defendant - an undivided 6/36
5. 8th defendant - an undivided 4/36

6. 12th defendant - an undivided 4/36
7. 10th defendant - an undivided 12/36
8. 11th defendant - an undivided 6/36

The trial proceeded on 13 points of contest and the plaintiff gave evidence in proof of his case as regards the original ownership and the manner in which it devolved on the parties. He produced documents X, X1 and P1 and closed his case. On behalf of 7th to 11th defendant, the 10th defendant gave evidence and marked two documents as 7D1 and 7D2. At the conclusion of the trial the learned district judge delivered his judgment rejecting the position of the plaintiff as regards the original ownership attributed to Kahatawitage Bastian and accepted the original ownership attributed to Kahatawitage Don Singho alias Seaman Singho. He further held that the undivided rights from and out of the corpus should be given to all the parties in the following manner..

1. Plaintiff- an undivided 1/36
2. 1st defendant - an undivided 2/36
3. 2nd defendant - an undivided 1/36
4. 7th defendant - an undivided 6/36
5. Don Martin Appuhamy - an undivided 4/36
6. Kahatawitage Don Jinasena De Silva - an undivided 4/36
7. Kahatawitage Don Aladin Appuhamy - an undivided 12/36
8. 11th defendant - an undivided 6/36

The main contention that was made at the hearing of the appeal was that the judgment is totally devoid of any sort of analysis of the evidence and

the learned district judge had failed to adduce any reasons whatsoever thus failing to comply with the requirements of Section 187 of the Civil Procedure Code, as regards the basic requirements of a judgment. Consequently, the learned President's Counsel of the appellants and the learned Counsel for plaintiff-respondent strenuously argued that the impugned judgment being so devoid of the basic requirements of a judgment cannot in law allowed to stand and therefore requires to be set aside.i

For the purpose of ready reference the relevant part of Section 187 of the Civil Procedure Code without the inapplicable words is reproduced below...

“The judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.....”

The judgment of the learned district judge runs into 20 typed written pages. The first three paragraphs of the judgment set out the background to the action, and the fact that the 3rd, 4th, 5th, and 6th defendants had sought a dismissal of the partition action at the beginning and later withdrawn the same. In the next paragraph the learned district judge

reproduces the admissions from the proceedings. Thereafter the learned district judge had reproduced the points of contest suggested by the plaintiff and then proceeded to narrate the description of the witnesses who gave evidence at the trial.

In the next paragraphs the learned district judge narrates the evidence of various parties, reproducing the points of contest raised by the defendants. In the entire judgment no analysis of the evidence has been attempted even in the remotest way by the learned District Judge. The credibility of the version of the plaintiff with that of the contesting defendants had not been discussed or compared with each other. The finding of the learned district judge is found at page 17 of the judgement and it reads as follows....

මෙම නඩුවේ පැමිණිල්ල වෙනුවෙන් ඉදිරිපත් කල ලිඛිත ඇමතීම්, 3 සිට 6 දක්වා විත්තිකරුවන් වෙනුවෙන් ඉදිරිපත් කල ලිඛිත ඇමතීම් සහ 7 සිට 10 දක්වා විත්තිකරුවන් වෙනුවෙන් ඉදිරිපත් කල ලිඛිත ඇමතීම්ද මා විසින් පරීක්ෂා කරන ලදී.

මෙම නඩුවේ ඉදිරිපත් කල සාක්ෂි සහ ලිඛිත ඇමතීම් මා විසින් පරීක්ෂා කරන ලදී. මෙම නඩුවට අදාල ඉඩම වන ගොරකගහවත්ත නැමැති ඉඩම X වශයෙන් ලකුණු කල අංක 1022 දරණ පිඹුරේ පෙන්වා ඇති බවට මම තීරණය කරමි. තවද, පැමිණිල්ල වෙනුවෙන් ඉදිරිපත් කරන ලද සාක්ෂි අනුව මෙම

නඩුවේ මුල් අයිතිකරු කනට්ටගේ බස්තියන් නැමැති අය වශයෙන් සඳහන් කරන නමුත් අඩු වශයෙන් පැ 1 දරණ ඔප්පුවද මෙම අධිකරණයට ඉදිරිපත් නොකරන ලදී. 7 සිට 12 විත්තිකරුවන් වෙනුවට ඉදිරිපත් කරන තර්කය වන මෙම ඉඩමේ මුල් අයිතිකරුවාගේ කනට්ටගේ දොන් සිඤ්ඤෝ නොහොත් සීමන් යන තර්කය මෙම අධිකරණය විසින් පිළිගන්නා ලදී.

මෙම නඩුවේ 10 වන විත්තිකරු වන කරුවටගේ ජිනසේන සිල්වා යන අය සාකඡ්ඡාව කැඳවූ අතර ඔහු විසින් දෙන ලද සාක්ෂි මෙම අධිකරණය විසින් පිළිගන්නා ලදී.

මේ අනුව මෙම නඩුවට අදාළ ඉඩම පහත සඳහන් ආකාරයට බෙදා වෙන් කිරීමට මම තීරණය කරමි.

Taking into consideration the findings of the learned district judge which are totally devoid of any analysis of the evidence or proper examination of the testimony of the witnesses, I am not inclined to accept the argument that the judgment of the learned district judge should be allowed to stand without any variation, notwithstanding the fact that it does not conform to Section 187 of the Civil Procedure Code.

It is trite law that particularly in a partition action, it is the sacred duty incumbent on the trial judge to cautiously examine and investigate the actual rights and title to the land sought to be partitioned. In doing so, he must consider the evidence led on the points of contest and answer all of

· them giving reason for his opinion as to what influenced him in accepting the evidence on a particular point or the reason for his rejection of the same.

Merely answering only points of contest raised by one party in a partition action and failing to consider the points of contest raised by the other parties, as has been done by the learned District Judge in this case undoubtedly leads to a denial of justice. Irregularities of this nature are fatal to the judgment in a partition action which undoubtedly result in a serious miscarriage of Justice.

In the case of Sopinon Vs Pitipana Arachchi and two others 2010 1 SLR at page 87 it was held inter alia that a basic principle in all enactments on partition law is that where there has been no investigation of title, any resulting partition decree necessarily has to be set aside. In the same case it was further emphasised that a judge who hears a partition action must evaluate and consider the totality of the evidence giving a short summary of the evidence of the parties and witnesses and state the reasons for his preference to accept the evidence of one party as opposed to that of another.

In the instant case, the learned trial judge has failed to conform to every norm relating to the essential characteristic of a judgement. In the

circumstances, it is my considered view that the impugned judgement being the judgement in rem cannot be allowed to stand. As such, I am compelled to allow the appeal and set aside the judgement and interlocutory decree entered by the learned district judge. Accordingly, the judgement and interlocutory decree appealed against are set aside and the case sent back for retrial.

There shall be no costs.

Judge of the Court of Appeal

Sunil Rajapaksha, J
I agree

Judge of the Court of Appeal

NR/-