

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

D.V.A.L.Sulaiha Umma
Kahawatte
Ambatenna

Plaintiff-Appellant

C.A.NO.1215/98 (F)
D.C.KANDY CASE NO.11208/P

Vs

1. Hawwa Umma alias Maimoon
Natchiya
**Deceased 1st Defendant-
Respondent**

1A.K. O.Tajideen Hajiar
Udalatawinna Madige
Udatalawinna
Katugoastota
**Substituted 1A Defendant-
Respondent**
And Others

Defendant-Respondents

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

COUNSEL : H.Withnachchi for the Plaintiff-Appellant
Ranjan Suwandaradne with A.M.Jiffry for the Substituted
1st, 2nd, 3rd, 5th and 6th Defendants-Respondents

ARGUED ON : 02.05.2014

**WRITTEN
SUBMISSIONS
FILED ON** : 27.05.2014 by the Substituted 1st, 2nd, 3rd, 5th and 6
Defendant-Respondents
17.06.2014 by the Plaintiff-Appellant

DECIDED ON : 14TH JULY 2014

CHITRASIRI, J.

Being aggrieved by the judgment dated 08.09.1988 of the learned Additional District Judge of Kandy; plaintiff-appellant preferred this appeal seeking to set aside the aforesaid judgment and to have her due shares in the land sought to be partitioned. Learned Additional District has declined to allocate shares to the parties due to the failure on the part of the plaintiff-appellant to establish devolution of title of the respective parties. He also has decided that the defendant-respondents too have failed to establish the prescriptive claim that they have advanced. Accordingly, he has dismissed the action filed to have a partition decree to the land depicted in the preliminary plan bearing No.439 dated 26.08.1984 drawn by T.B.Attanayake L.S.

At all material times, possession of the land sought to be partitioned had been with some of the defendant-respondents and the appellant had never been in possession. Contention of the learned Counsel for the appellant is that the trial judge has failed to consider the title of the respective parties to the action though it is his prime duty in terms of Section 25 of the partition law.

It is trite law that Section 25 of the Partition Law imposes a duty on the trial Judge to investigate title of the respective parties in a partition action even if some are not even before Court to present their cases. This proposition in law has clearly been accepted by long line of authorities and the following are a few of those.

- ✓ **Galagoda V Mohideen [40 N L R 92];**
- ✓ **Gunatilleka V Murieal Silva [79 (Vol.1) N L R 481];**
- ✓ **Kularatne V Ariyasena [2001 B L R 06];**
- ✓ **Richard and Another V Seibel Nona [2001 (2) S L R 01];**
- ✓ **Abeysinghe V Kumarasinghe [2008 B L R 300]**

Accordingly, I will now look at the evidence recorded in this case to ascertain whether the learned Additional District Judge has discharged the aforesaid duty of investigating title of the respective parties as required by law. The Plaintiff in her evidence has produced, amongst other deeds, the deeds bearing Nos.8083 and 2977 marked as P8 and P12 respectively, to prove her entitlement to the land sought to be partitioned. Then, the plaintiff has stated that the title referred to in the deed P8 had emanated from the deed marked P5. Hence, it is on the deed marked P5 that the plaintiff has relied to claim rights in the land put in suit.

According to her evidence one Sheriffdeen is the person who became entitled to the land by the aforesaid deed marked P5 (*vide proceedings at page 75 in the appeal brief*). However, looking at the deed marked P5, no such person by the name of Sheriffdeen has become entitled to the land. The transferees in that deed (P5) are Mohideen Pathumma and Ayesha Umma and not Sheriffdeen. Accordingly, it is clear that the plaintiff is not in a position to make a claim depending on the rights of Sheriffdeen. Hence, it is correct to have decided that

the plaintiff cannot claim title to the land sought to be partitioned depending on the deeds marked P5, P6, P7 and P8.

Remaining deed by which the plaintiff claims title to this land is the deed 2977 marked P12. The rights in the deed P12 derives from the deed marked P11. Similarly, the rights in P11 have derived from the deed marked P10. The transferee in the deed P10 is the daughter of Mohideen Beebi. Her name is Fareeda. Fareeda has transferred her rights by the deed P11 to Ally Uduman Samsudeen. He is the vendor in P12. However he (Samsudeen) has obtained title to the land, not by the deed marked P10, but by the deed bearing No.340 dated 13.12.1943. It is so stated in the deed P11 itself. The aforesaid deed 340 has not been produced in evidence. Therefore, the plaintiff cannot claim title by the deed marked P12 without producing the deed 340 in evidence.

Therefore, it is seen that the plaintiff has failed to establish that he has rights in the land sought to be partitioned. These matters have been clearly analyzed by the learned Additional District Judge in his judgment (*vide proceedings at pages 168 and 170 in the appeal brief*). In the circumstances, I do not see any error on the part of the learned trial Judge when he concluded that the plaintiff has no title to the land sought to be partitioned.

Learned Additional District Judge also has considered the prescriptive claims of the 3rd and the 5th defendant-respondents. Having considered so, he has come to the conclusion that no sufficient evidence is forthcoming to establish the prescriptive claims of the 3rd and the 5th defendant-respondents. They have

not appealed against the said decision. Hence, it is not necessary to look at the evidence as to the prescriptive claim of the defendants in this instance. Also, it must be noted that the defendants have not sought to have a partition decree even though number of deeds have been produced in evidence on their behalf. In the answer of the 1st, 2nd, 3rd, 5th and 6th defendant-respondents, they have only sought for a decree in their favour on the basis of the possession they had in the land. Learned District Judge has considered the evidence on the question of possession and has declined to grant relief sought by the defendants. They have not invited this Court to review the decision as to their prescriptive claim that they have made in respect of the land sought to be partitioned.

In the circumstances, it is clear that the learned Additional District Judge has made every effort to have a partition decree in this instance having discharged his duty referred to in Section 25 of the Partition Law. Therefore, this Court cannot find fault with the learned trial judge for not allocating shares considering the deeds marked in evidence particularly the deeds of the appellant.

For the aforesaid reasons, I am not inclined to interfere with the findings of the learned Additional District Judge. Accordingly, this appeal is dismissed. Parties are to bear their own costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL