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

Charles Godwin Don Carolis
No. 14A, Sir Marcus Fernando Mawatha,
Colombo 07.

Plaintiff

C.A No: 149/96(F)

D.C. Colombo Case No. 16251/L

1. Land Reform Commission.
   No. C/82, Gregory's Avenue,
   Colombo 07.
2. Christopher Godwin Don Carolis
   No. 14A, Sir Marcus Fernando Mawatha
   Colombo 07.

Defendant

AND NOW BETWEEN

Charles Godwin Don Carolis (Deceased)
No. 14A, Sir Marcus Fernando Mawatha,
Colombo 07.

Plaintiff-Appellant

Charles Godwin Don Carolis
No. 14A, Sir Marcus Fernando Mawatha,
Colombo 07.

Substituted Plaintiff Appellant

Vs

1. Land Reform Commission.
   No. C/82, Gregory's Avenue,
   Colombo 07.
2. Christopher Godwin Don Carolis
   No. 14A, Sir Marcus Fernando Mawatha
   Colombo 07.

Defendant - Respondents

CA 149/96 F

DC.Colombo No.16251/L

Counsel: Mr. Nihal Jayamanne P.C with Mrs.Noorani Amarasinghe for the substituted plaintiff appellant

Mr. S.S. Sahabandu P.C for the 1st Defendant Respondent

Before: A.H.M.D Nawaz J

E.A.G.R. Amarasekara J

Decided on: 08.03.2018

E.A.G.R. Amarasekara J

The Plaintiff Appellant (herein after sometimes referred to as the Plaintiff) instituted case no. 16251/L in the District Court of Colombo praying inter alia;

a. that the land mentioned in the 2nd paragraph of the plaint had not been taken over by the 1st Defendant Land Reform Commission
b. that the land reform commission has no right to claim title to the said land
c. compensation in a sum of rupees 50,000

The 2nd paragraph of the plaint describes the land as lots 11A and 11B depicted in plan no. 844 dated 05.12.1969 which is more fully described in the 1st schedule to the plaint. The extent of the consolidated lots 11A and 11B is 8 acres and 20 perches.

The afore said land described in the 1st schedule is from and out of a larger land of 321 acres 2 roods and 20 perches which is more fully described in the second schedule to the plaint. As per the admission No.1 made at the commencement of trial, the plaintiff was the owner of the land relevant to this case before the enactment of the land reform law. It seems that there was no dispute with regard to the ownership of the plaintiff to the larger land described in the 2nd schedule to the plaint prior to the enactment of the Land Reform Law. The contention of the plaintiff was that a portion of the land described in the second schedule to the plaint was vested in the Land Reform Commission but the land described in the 1st schedule to the plaint did not vest in the commission as it is not an agricultural land within the meaning given in the Land Reform Law. This stance of the plaintiff was based on the ground that the land described in the 1st schedule is entirely a rock which is not capable of being used for agriculture. The Plaintiff raised the following 2 issues in this regard.

02(අ) මෙම නඩුවට සම්බන්ධ ඉඩම සම්පූර්ණ කළුගලක් ද?

(ආ) එසී ඉඩම සම්පූර්ණයෙන් කළුගලක් බැවින් ඉඩම් ප්‍රතිසංස්කරණ පනතේ විධි විධාන අනුව ඉඩම් ප්‍රතිසංස්කරණ කොමිෂන් සභාවට නිතිමය වශයෙන් අත්පත් කර ගත හැකිද?

3. මෙම නඩුවට අදාළ විෂය වස්තුව ඉහත සඳහන් පරිදි කළුගලක් බැවින් එය කෘෂිකාර්මික ඉඩමක් නොවන්නේද?

Aforementioned issues were raised in anticipation of favourable answers to the Plaintiff's stance but the learned District Judge has answered these issues in the negative. This court is in agreement with the view expressed by the counsel for the Substituted Plaintiff Appellant that Land Reform Law is only applicable to "agricultural lands" and the ceiling was only on the "agricultural land". As per the definition given in Land Reform Law "agricultural land" means land used or capable of being used for agriculture within the meaning given in the Land Reform Law and "agriculture" means

I. the growing of rice, field crops, spices, condiments, industrial corps, vegetables, fruits, flowers, pasture and fodder
II. dairy farming, livestock rearing and breeding
III. plant and food nurseries.

If the Plaintiff was successful in proving that the said lots 11A and 11B are entirely or mainly or considerably a rock, those lots could not be considered as agricultural land as per the definition given to "agricultural land" and "agriculture" in the Land Reform Law as rocks prima facie cannot be used or

capable of being used for agriculture within the meaning given in the Land Reform Law. It should be noted the 1st Defendant Respondent has not led evidence to prove that lot 11A and 11B are capable of being used for agriculture but it was the burden on the Plaintiff Appellant to prove that lot 11A and 11B are not agricultural lands within the meaning given in the Land Reform Law.

Plaintiff Appellant's and the surveyor J.A. Burah's evidence were led before the learned District Judge in support of the Plaintiff's position. Plaintiff Appellant had basically taken up the position that the relevant land is entirely a rock (vide his evidence at pages 8 and 12 of the proceedings dated 01.11.1994) but marking P2, the plan no.844 made by surveyor Burah, he has admitted that it is mentioned in the 2nd page of the plan that the land is comprised of a rock and a forest. Surveyor Burah had given his evidence on 30.08.1995. He, in his evidence, had admitted that plan no.844 dated 05.12.1969 (P2) was made by him. It should be noted that he had come to give evidence only after 25 years from the making of the plan which does not have any report made at the time of survey with regard to the nature of the land other than the chart on the overleaf of P2. As per the chart lots 11A and 11B are comprised of slab rock, boulders and scrub jungle. The extent of or the nature of scrub jungle is not described in the plan or the chart. After 25 years without any report as mentioned before, he in his evidence in chief explain the land as uncultivable, consisting of rocks with trees here and there. A surveyor may do several surveys per year. There is no iota of evidence to show how he kept the memories of the survey done with regard to P2 intact throughout all these 25 years. On the other hand, under cross examination he has replied as follows:

ප්‍ර : පැමිණිල්ලේ 7 වන ඡේදයේ තිබෙනවා මෙම ඉඩම සම්පුරණයෙන් පිහිටා තිබෙන්නේ කළුගලක් වැනිද? මහත්මයා කියන හැටියට එම ප්‍රකාශය අසත්‍යයද ?

උ : ඔව්.

ප්‍ර : පැ.2 කියන ප්ලෑනේ මහත්මයා දක්වලා නැහැ මෙම ඉඩමේ කොයි කොයි ස්ථානවල කළුගල් තිබෙනවාද ? නැද්ද?

උ : ඕනෑම මිනින්දෝරුවෙකුට බැහැ මෙය ගලක් කියලා පෙන්වන්න සාමාන්‍යයෙන් තැන තැන පෙන්වලා තිබෙනවා ගල් කියලා.

ප්‍ර : මහත්මයා කිව්වා නේද උසාවිට මෙම ඉඩමේ තිබෙන්නේ සම්පුරණ ගලක් නොවේ කියලා?

උ : සම්පුරණ ගල නිසා මෙය පෙන්වා තිබෙනවා. ඒ අතරතුරේ ගස් වැවිලා තිබෙනවා.

ප්‍ර : මහත්මයා මිට ඉස්සෙල්ලා පිලිගත්තා නේද පැ.2 තිබෙන ඉඩම් ප්‍රමාණය සම්පුරණයෙන් ගලක් කියලා කියනවා නම් ඒක වැරදියි කියලා ?

උ : ඔව් ඒක හරි.

(Vide pages 7 and 8 of proceedings dated 30.05.1995)

Aforesaid answers show that there is no consistency in the evidence given by the surveyor. In certain occasions he had tried to say that the entirety of the relevant land is a rock while on other occasions he has said the stance taken by the Plaint to say that the entirety is a rock is not true. Further he had said that no surveyor can show the land as a rock and hither and thither there are rocks.

The surveyor had stated that he was unable to say whether the land in question falls within the definition given to "agricultural land" in the Land Reform Law.

The evidence led on behalf of the Plaintiff should be evaluated while considering the following observations;

I. the surveyor had given evidence almost after 25 years of making the plan without any report to refresh his memory with regard to the nature of the land
II. there are no separate extents mentioned in the plan for rocks and scrub jungle
III. there is no consistency among the witnesses and within the evidence they have given
IV. scrub jungle, if there is no stable evidence to show that it is uncultivable, may fall within the definition "agricultural land" as it may be capable of being used for agriculture within the meaning given in Land Reform Law,

It is my considered view that the evidence led on behalf of the Plaintiff is not strong enough to show that land in dispute is mainly an uncultivable rocky land or a land which is not suitable for agricultural purposes. Under such circumstances, being a judge hearing the case in appeal who does not get the chance of observing the witnesses, it is not proper to replace the answers given to issues no.2(a), 2(b) and 3 by the learned District Judge by answering them in the affirmative.

On the other hand, V1 and V2 documents (V3 complete document is not available for perusal) show that even the Plaintiff Appellant acted in a manner admitting the land in question fall within the definition of agricultural land contemplated by Land Reform Law. It is only in filing plaint in 1993 he took the position that this land in question is not an agricultural land.

It is true that there can be no estoppel against a statute but to use that principle in favour of the Plaintiff Appellant there must be clear and unequivocal evidence that the land in question is not an agricultural land in its entirety. As mentioned before there is no clear unambiguous evidence to

replace learned District Judge's answers to issues no.2(a), 2(b) and 3 by answers given in the affirmative. In such a backdrop Plaintiff Appellant's conduct shown through V1 and V2 admitting the land in question as an agricultural land must weigh against his position taken in the plaint, as the position taken in the plaint after many years of making his declarations in V1 and V2 might be an afterthought.

Even if only for the sake of argument one accepts this view of the appellant that the land in question is not an agricultural land this appeal must fail on the grounds discussed below in this judgement.

As mentioned at the beginning of this judgment, the Plaintiff has prayed for 2 declarations in the negative in the prayer to the plaint. Section 217(G) of the civil procedure court provides for a decree that declare a right or status. It is clear from the prayer to the plaint that the Plaintiff Appellant has not prayed to assert any right belongs to him.

One can argue that by praying for a declaration in the negative, one can still assert a right belongs to him. However even by getting a decree of declaration in the negative one may be able to assert a status. Whatever the situation is, it is questionable whether the Plaintiff Appellant has any locus standi or cause of action to sue the 1st Defendant Respondent as the Plaintiff Appellant admits in paragraph 12 of his plaint that he has already gifted the land in question to his son, the second defendant. If there is any right to be declared it must be with the 2nd Defendant Respondent (now the substituted plaintiff) and if there is any status to be declared in favour of someone it should be the 2nd Defendant Respondent. Therefore, if there is any cause of action or locus standi to file this action prima facie it should be the 2nd defendant who has them. It must be observed that the second defendant has not filed its answer even to assert his rights. Admission no. 2 states that the dispute between 1st Defendant Respondent and the plaintiff appellant commenced in 1992.Paragraph 10 of the plaint describe the dispute as claiming rights by the 1st respondent to the property possessed by the plaintiff appellant as the sole owner. As per the stance taken by the Plaintiff he had donated the land in1991 to his son (vide paragraph 12 of the plaint). Then the plaintiff has no right to dispute with the 1st defendant in 1992. It is true that the plaintiff appellant has a duty to defend the title he gave to his son through a gift but the cause of action described in the plaint does not refer to such a duty he has or the plaint does not describe the cause of action as one arose in fulfilling his duty. In fact, the plaint refers to the gift of property in paragraph 12 only after accrual of cause of action is described in paragraph 11. It seems 2nd defendant has been made party only to give notice but not to assert his rights. On the other hand, there are no issues raised or evidence led with regard to the duty he owed

towards the 2nd defendant respondent. Other than a mere statement made during the re-examination of the plaintiff's evidence with regard to the gift of the land, no deed of gift was marked to prove a gift or consequential duty towards the 2nd Defendant Respondent, the purported recipient of the gift. On the other hand, the plaintiff in his evidence in chief recorded on 01.11.1994 at page 14 has prayed for a declaration of title in his favour. Therefore, in my view this is not an action filed by the plaintiff to fulfill his duty towards his son, the recipient of the so-called deed of gift.

Therefore, this court is not satisfied with regard to the locus standi of the plaintiff to file this case as well as accrual of causes of action as stated in the plaint.

Therefore, this appeal is dismissed with cost.

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E.A.G.R. Amarasekara J

Judge of the Court of Appeal

I agree.

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A.H.M.D. Nawaz J

Judge of the Court of Appeal