

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

Jayasinghe Appuhamilage
Renuka Jayasinghe,
No.13,
Raddalgoda,
Kal Eliya.
Petitioner

CA Case No: CA/RI/936/2003
DC Gampaha Case No: 19393/P

Vs.

1. H.R. Pathmanga Ranaweera
2. H.R. Indra Ranaweera
3. H.R. Jinadasa (deceased)
- 3A. W.D. Jane Nona
- 3B. W.D. Dayaratne alias Upali
- 3C. H.R. Lalitha Ranjani
- 3D. H.R. Srma Ranjani
- 3E. H.R. Swarnalatha
- 3F. H.R. Mallika Sriya Ranjani

All of Raddalgoda

Kal Eliya.

Defendants-Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Rohan Sahabandu, P.C., for the Petitioner.
Chandana Wijesooriya for the 3A-3F Defendant-
Respondents.

Argued &

Decided on: 23.10.2018

Samayawardhena, J.

This is a partition action. After trial the Judgment has been pronounced and the Interlocutory Decree has been entered. The application of the 3rd defendant to amend the Interlocutory Decree has been refused by the District Court and the revision application filed against that order has been dismissed by this Court. After the original case record was sent by this Court to the District Court, the original case record has gone missing from the District Court. Thereafter the Criminal Investigation Bureau has taken over the investigation into the missing case record.

In the meantime, the plaintiff has died and the petitioner to the present application as the daughter of the deceased has made an application to substitute her in place of the plaintiff and then to confirm the Final Partition Plan and order delivery of possession of the allotments of land in terms of the Final Decree.

The third defendant has objected to these applications predominantly on the basis that without the original case record containing all the relevant documents, the Court cannot allow those applications.

The District Court has upheld that objection and dismissed the said applications by orders dated 21.06.2001 and 13.01.2003. It is these two orders the petitioner is seeking to set aside by filing this revision application.

Learned President's Counsel for the petitioner and learned Counsel for the 3rd respondent state that the District Court has now found the original case record.

In the circumstances, I *pro forma* set aside those two orders of the District Court and direct the learned District Judge to take appropriate steps in accordance with law to conclude this case expeditiously.

In that process, the learned District Judge shall bear in mind that the plaintiff shall not be made to suffer for the lapses on the part of the Court of which he has no control. It is the duty of the Court and not that of the plaintiff to zealously preserve the original case record.

Obviously, the legislature cannot anticipate and make provisions to cover all possible contingencies (such as making provisions in the event a case record is made to disappear from the Court custody—which was what happened in this case). There is no express provision found in the Civil Procedure Code, which is not exhaustive, to deal with such a situation. In such a contingency, it lies within the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court—vide section 839 of the Civil Procedure Code. (*Leechman & Company Ltd. v. Rangalla Consolidated Ltd [1981] 2 Sri LR 373, Seneviratne v. Abeykoon*

[1986] 2 Sri LR 1, Abeygunasekera v. Wijesekera [2002] 2 Sri LR 269)

Application of the petitioner is allowed with costs.

Judge of the Court of Appeal