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

**C. A. No. 991/97 (F)**

D. C. Hambantota No. 569/L

Prathapasinghe Rathnayake
'Jadura'
Agunukopalessa.

**PLAINTIFF**

**VS**

1. Abeyesinghe Vidana
   Pathirana Don Dionis
   Habarathwela
   Agunukopalessa.

2. Don Daineesias
   Prathapasinghe Rathnayake,
   Iththamaldeniy,
   Walasmulla.

3. Dona Liyana Prathapasinghe
   Rathnayake
   'Jadura', Agunukopalessa

4. Don Kerlin Prathapasinghe
   Rathnayake
   Pallegama, Hungama.

5. Meli Prathapasinghe
   Rathnayake
   Gonagala, Iduruwa.

6. Dona Corneliya
   Prathapasinghe Rathnayake
   Kotuwegoda
   Matara.

**DEFENDENTS**

**AND**

1. Abeyesinghe Vidana Pathirana Don Dionis (Deceased)
   Habaraththwela,
   Angunulopalessa.

   1a. Dona Coraneliya Abeysinghe Samaratunga

   1b. Don Hendrick Abeysinghe Vidana Pathirana

   1c. Abeysinghe Vidana Pathiranage Ariyawathie

   1d. Abeysinghe Vidana Pathiranage Leelawathie

   1e. Abeysinghe Vidana Pathiranage Leelasena

   1f. Abeysinghe Vidana Pathiranage Seelawathei

   1g. Abeysinghe Vidana Pathiranage Piyadass

   1h. Abeysinghe Vidana Pathiranage Nandasena

**SUBSTITUTED DEFENDANT-APPELLANTS**

**VS**

Edwin Prathpasinghe Rathnayake,
'Jadura'

**PLAINTIFF-RESPONDENT (NOW DECEASED)**

**AND NOW BETWEEN**

Abeysinghe Vidana Pathiranage Nandasena,
'Wedagedara', Habarathwela,
Angunukolapalessa.

**1h. SUBSTITUTED-DEFENDANT-APPELLANT**

**VS**

1. Willie Prathapasinghe Rathnatake
   Katuwanapara, Welipitya,
   Middeniya

2. Lionel Prathapasinghe Rathnatake,
   'Walawwa', Jadura,
   Angunukopalessa

3. Daya Keerthi Prathapasinghe Rathnatake,
   'Walawwa', Jadura,
   Angunukopalessa

4. Champika Rathnayake Prathapasinghe Rathnatake,
   'Walawwa', Jadura,
   Angunukopalessa

**SUBSTITUTED PLAINTIFF-RESPONDENTS**

| | | |
|---|---|---|
| **BEFORE** | : | **M. M. A. GAFFOOR, J.** |
| **COUNSEL** | : | Ronald Perera P C with Asintha Munasinghe for the Substituted Defendant-Appellant<br><br>Rohan Sahabandu, P C for the Substituted Plaintiff-Respondent |
| **WRITTEN SUBMISSIONS TENDERED ON** | : | 05.07.2018 – by the Substituted Defendant-Appellant<br><br>12.07.2018 - (by the Substituted Plaintiff-Respondent) |
| **DECIDED ON** | : | **30.11.2018** |

********

**M. M. A. GAFFOOR, J**

The Plaintiff-Respondent (hereinafter referred to as the "Respondent") on or about 08.03.1979 instituted an action in the District Court of Hambantota and sought the main relief of a Declaration of Title to the land which is described as Lot 4, 4a, 5, 6 and 7 depicted in Government Surveyor Plan No. 334, more fully described in the schedule to the Plaint, the same Lots are represented as Lot 4, 4aa, 4ab, 5b, 6a, 6b and Lot 7 in Plan No. 1175, prepared by S. K. Piyadasa, License Surveyor (marked as "X3").

In the said Plaint, the Respondent stated that the original owner of the land was one Don Andrius Prathapasinghe Ratnayake who is father of the Respondent and the 2$^{nd}$ to 6$^{th}$ Defendants and the said land was declared as a Private land under the Waste Land Ordinance which was Gazetted in Government Gazette dated 20.02.1914 which was marked as "P1" (*it was his position that he had possessed the said land for over 50 years and that is the reason why the land was declared as Private Land*).

According to the Respondent, he and the 2nd to 6th Defendants were owned and possessed the shares as 1/6 each. He further averred that from December 1978, the 1st defendant-Appellant (hereinafter referred to as the "Appellant") was disturbing their possession.

The Appellant stated in his amended answer (*page 94-95 of the appeal brief*) that the said Don Andrius Prathapasinghe Ratnayake (Respondent's father) had transferred his rights to one Don Simon and Don Davith, and the 1st Defendant had been in possession of Lots 5b, 5c, 5f of Plan No. 1175 X3 as a co-owner with the Respondent. On these facts the Appellant further pleaded that to declare,

1. The Appellant as owners of the Lots 4, 4aa, 4ab, 6a, 6b and 7 in the Plan No. 1175 – X3 (Prescriptive title)
2. The Appellant have co-ownership in of Lots 5a, 5b, 5c, 5d, 5e and 5f of "Habarakwela Kubura" in X3
3. The Appellant has right to possess the 5b, 5c, 5d, 5e and 5f.

The Appellant further pleaded that, if the Respondent is declared to be the owner of the land, a sum of Rs. 50,000/- be granted him as a development of the said land in dispute.

The trial commenced on 20.08.1990. At the trial, the Respondent gave evidence and led documents in evidence P1 and had raised issues 1 to 3 and the Appellant raised issues 4 to 9 gave evidence, and marked the documents "V1" to "V6" deeds in his evidence.

The trial concluded on 01.09.1992 and it is very unfortunate that the learned District Judge had delivered his order on 10.11.1997-after 5 years of the conclusion of the trial. The learned District Judge in the said order decided that,

1. The Defendant-Respondents are owners of all other Lots except Lots 4a and 4b to the subject matter and;
2. The Appellant is the owner of Lots 4a and 4b; and
3. The Appellant has co-ownership of Lot 5b of the subject matter.

Being aggrieved by the said order, the Appellant seeks this Court's intervention in several grounds which are based on his documents and testimonies and his main submission was that the said judgment has to be set aside and the Appellant shall be granted relief prayed for in the amended answer.

In this appeal, Counsel for the Appellant brought an important issue for this Court's attention that the learned District Judge delivered his first order on 10.10.1997 (*page 178-186 Of the appeal brief*) and second order was delivered on the next day 11.10.1997 as answered the issues which were raised by both parties (*vide, page 187-189 Of the appeal brief*).

Counsel for the Appellant further stated that when the first order was delivered on 10.10.1997 parties were duly noticed, however the second order delivered on 11.10.1997 which was not noticed to the parties.

Therefore, Counsel for the Appellant argues that according to Section 184(1) of the Civil Procedure Code a judge has a duty to pronounce judgment in open court either once or on some future day of which **notice is given to the parties or their attorneys-at-law is mandatory itself.**

Upon scrutinizing the findings of the District Judge, I find that the learned judge delivered his judgment without answering the issues on 10.10.1997 and on 11.10.1997 he had answered the all 9 issues, giving the justification for his doing so was that he mistakenly not included the answers in his judgment dated 10.10.1997.

"ප්‍රමාද දෝෂයකින් තීන්දුව සටහන් කිරීමේදී වියන්දීයයුතු ප්‍රශ්න පිළිතුරු ඇතුලත් කර නැත. එබැවින් මෙම නඩුවේ වියන්දීයයුතු ප්‍රශ්න වලට පිළිතුරු මෙසේ ඇතුලත් කරන අතර එය තීන්දුවට ඇතුලත් කිරීමට නියෝග කර සිටිමි" *(page 187, para 1 of the judgment dated 11.10.1997)*

It was the strong submission of the Appellant that according to Section 189 of the Civil Procedure Code, any amendment which is necessary to bring a decree in to conformity with the judgment **should be done after giving reasonable notices to the parties or their registered attorneys**.

Having considered these matters, I do not think that this is a tenable proposition. The delivery of the judgment is a formal step prescribed by law, and a judgment itself is a most formal document. Although it is clear from the definition section of the Civil Procedure Code, Section 5, as being the statement given by the Judge on the grounds for the decree or order, it must be borne in mind that the definition only applies, unless there is something in the subject or context repugnant thereto.

When we read the whole provisions in chapter XX, it will be observed that by Section 187 the judgment must contain a decision, and by Section 188 the Judge must make an order.

Section 186 read as follows:

> *"The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision; and the opinions of the assessors (if any) shall be prefixed to the judgment and signed by such assessors respectively."*

Section 187 read as follows:

> *"The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision; and the opinions of the assessors (if any) shall be prefixed to the judgment and signed by such assessors respectively."*

The learned District Judge on 10.10.1990 had come to a conclusion that the bone of contention between the contending parties is the same as the land described in the plaint of the Respondent as well as the deeds marked V1 to V6. In doing so, he had totally lost sight of Section 187 of the Civil Procedure Code, which provides that (as mentioned above) the judgment "shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision, and the opinions...." It is obvious that the bare answers to issues without reasons are not in compliance with the requirements of the said provision of the Code, and the relevant evidence to each issue must be reviewed or examined by the Judge, who should evaluate and consider the totality of the evidence [vide **JAMALDEEN ABDUL LATHEEF AND ANOTHER vs. ABDUL MAJEED MOHAMED MANSOOR AND ANOTHER**, [(2010) 2 SLR 33], even the learned Judge failed to do so. But he has strived to make an amendment on 11.10.1997 as answering the issues according to Section 187 to fulfill the necessary requirements.

Even though, he failed to comply with Section 189 of the Code without giving notices to the respective parties.

Section 189 read as follows:

> *(1) The court may at any time, either on its own motion or on that of any of the parties, correct any clerical or arithmetical mistake*

*in any judgment or order or any error arising therein from any accidental slip or omission, or may make any amendment which is necessary to bring a decree into conformity with the judgment.*

***(2) Reasonable notice of any proposed amendment under this section shall in all cases be given to the parties or their registered attorneys.***

In **MOHAMED IQBAL AND ANOTHER vs. MOHAMED SALLY AND ANOTHER** [(1995) 2 SLR 310], it was held that,

*(1) Section 189 of the Civil Procedure Code is exhaustive of the causes for which a Decree may be amended.*

*(2) This section cannot be invoked by Court for correcting mistakes of its own in law or otherwise.*

*(3) A Judge cannot reconsider or vary his judgment after delivery except as provided for in Section 189.*

In the above case, Ratnaraja, J. further held that,

*"The first two limbs of the section provide for the amendment of a judgment or order by the correction of any clerical or arithmetical error or a mistake arising from an accidental slip or omission. The third limb provides for the amendment of the decree to bring it in conformity with a judgment entered or a judgment amended in terms of the provisions of the first two limbs.* ***This power of court is to be exercised entirely at the discretion of Court. Thus Court is not bound to allow each and every application for the amendment of a judgment,***

> ***order or decree. The discretion should be exercised sparingly and in general, to avoid a miscarriage of justice. If not, the principle of finality of a judgment and decree will have no meaning.**" (Page at 314)*

Section 189 cannot be invoked by court for the purpose of correcting mistakes of its own, in law or otherwise even though apparent on the face of the order. Nor can a judge reconsider or vary his judgment after delivering it in open court, except as provided for in this section.

Therefore, it is quite clear that the learned District Judge has no power to amend or alter his order, except in conformity with section 189 of the Code without giving any notices to the parties or their respective Registered Attorneys (*vide* **MUTTU RAMANA CHETTY vs. MOHAMMEDU** [21 NLR 97], **DOINIS APPU vs. ARLIS** [23 NLR 346], **REZAN vs. RATNAYAKE** [49 NLR 31] and **GUNAWARDENA vs. FERDINANDIS** [(1982) 1 SLR 256].

For the above reasons, I hold that the impugned order is not in conformity with the provisions of the above section and failure of the trial Judge to give notices to the parties for amendment of his previous judgment dated 10.10.1997 dreadful and contrary to law *per se*.

I am mindful of the fact that the instant case instituted in the year of 1979 there was long time to reach an end as 1997; both parties endeavored to lead their respective cases and there are several persons no more at the movement who were included as interest parties (*many substitutions that have done*). However, this type of conduct by a District Judge cannot be condoned. And I do not wish to grant any relief or vary the fateful orders which are ruinous in face of law.

In the circumstances enumerated above, this Court is left with no alternative but to **send the case back to District Court of Hambantota to make a fresh order without a *re-trial*** and the present learned District Judge is directed to make an order expeditiously as possible based on the available evidences and raised issues.

Accordingly, the appeal is allowed and the impugned orders of the learned District Judge dated 10.10.1997 and 11.10.1997 is hereby set aside.

The Registrar of this Court is directed to forward this record in Case No. 569/L with a copy of this judgment to the respective Court forthwith.

*Appeal allowed,*
*Case sent back for a fresh order.*

**JUDGE OF THE COURT OF APPEAL**