

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

W.A. Anandalal,
No. 40,
Mahayaya,
Walasmulla.
Petitioner

CASE NO: CA/REV/77/2006
DC WALASMULLA: 380/P

Vs.

Don Edwin Dahanayake,
Walasmulla.
Plaintiff-Respondent

1. Atukorala Arachchige Don Charles,
Pahalagoda,
Walasmulla.
- 2A. Amarakoon Dissanayakage Dona
Sisiliyana,
Alawwa Multi-Purpose Co-Operative
Society,
Alawwa.
3. Land Reform Commission,
Colombo 7.

Defendant-Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Rasika Dissanayake for the Petitioner.
M.U.M. Ali Sabry, P.C., with Ruwantha Cooray for
the Plaintiff-Respondent.
Decided on: 01.03.2019

Samayawardhena, J.

This is a partition case. The petitioner filed this application in 2006 for revision and/or *restitutio in integrum* seeking to set aside the Judgment dated 28.02.1996 and the order dated 07.07.2004 made by the District Court of Walasmulla. Even though the petitioner has suppressed in the petition, not only the Judgment, even the Final Decree has been registered long before he filed this application in this Court. According to the Journal Entry No. 98, Final Decree has been registered in 2002.

The petitioner was never a party to the partition action. The contention of the petitioner in short is that a portion of the land subjected to partition, belongs to the State, and he was given a portion of it pending action by way of a Grant dated 25.08.1995 issued under the Land Development Ordinance by Her Excellency the then President of the Republic (vide document marked E with the petition), and therefore the Judgment is liable be set aside.

The said Grant has been issued a few months before the delivery of the Judgment.

It is significant to note that the said Grant is in respect of a portion of land known as *Dunumadalawahena*, and not a portion of the

land known as *Galpoththehena*, which was the subject matter of partition. This has been admitted by the petitioner himself in paragraph 20 of the petition. It appears from some of the deeds marked at the trial (vide for instance, Deed No. 3377 marked 1V2) that *Dunumadalawahena* lies to the south of *Galpoththehena*. However that cannot be ascertained unless a superimposition of the Surveyor General's Plan is done on the Final Partition Plan. Such a superimposition has neither been done nor is there any application by the petitioner for such a thing to be done.

The partition action was filed in 1983. While the case was in progress, the Land Reform Commission was made a party—the 3rd defendant to the case. Even though a representative of the Land Reform Commission was before the District Court (vide Journal Entry No. 58) and obtained a date to file the proxy and the statement of claim, they have not taken any interest to file the same and contest the matter. The Court has done its part.

There is no collusion between the parties. As seen from the Journal Entries, the 2nd defendant has even stabbed the plaintiff in front of the surveyor at the preliminary survey. The preliminary survey has been carried out under police protection. That was due to disputes among the co-owners. Entering a partition decree in those circumstances to end co-ownership is a dire necessity.

Upon entering the Judgment in 1996 after full trial, the Attorney-General has made an application in 2003 before the District Judge seeking *inter alia* not to execute the writ in terms of the Final Decree until a commission is taken out to the Surveyor General to show portions of State land if any in the corpus by way of a superimposition on the Final Partition Plan. This has been refused by the District Judge by order dated 07.07.2004. No appeal has

been filed by the Attorney General against that order notwithstanding he had all the wherewithal at his disposal to do so. The petitioner has no right to ask this Court to set aside that order made in pursuant to an application by the Attorney General.

The petitioner cannot also ask this Court to set aside the Judgment on his assumption that the portion of *Dunumadalawahena* given to him by way of a Grant by the State is included in the Final Partition Plan by which *Galpoththehena* was partitioned. The fact that a part of *Dunumadalawahena* is included in the land which was the subject matter of partition has not been established either before the District Court or before this Court.

The Attorney General is not a party to this application, and even though the Land Reform Commission is made a respondent, it is, as usual, not interested in the matter.

The petitioner cannot maintain a *restitutio in integrum* application as he was not a party to the main case in the District Court. Only a party to an action can come by way of *restitutio in integrum* seeking restitution.

Revision is a discretionary remedy. It cannot be invoked as of right. In the facts and circumstances of this case, I see no reason, on the application of the petitioner based on assumptions, to set aside the Judgment/Interlocutory Decree/Final Decree entered by the District Court after full trial.

Application of the petitioner is dismissed. No costs.

Judge of the Court of appeal