

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

Akuretiya Gamage Nandawathie,
Thimbolketiya,
Kolombage Ara.
And 7 Others
Petitioners

CASE NO: CA/REV/955/2005

DC RATNAPURA CASE NO: 8542/P

Vs.

Samuel Alexander Iddamalgoda
Elapata,
New Pinkanda Estate,
Niwithigala (Deceased)
Plaintiff-Respondent
Upali Nissanka Iddamalgoda
Elapata,
No. 503C,
Pannipitiya Road,
Pelawatta,
Battaramulla.
Substituted Plaintiff-Respondent

1. Egbert James Iddamalgoda
Elapata,
Niriella Estate,
Udakarawita.
2. E.U. Katugaha Elapatha,
Club Road,
Pelmadulla.
(Deceased)
- 2A. Hemasiri Indika Elapata
Katugaha,
Senanayaka Street,
Kandy.
3. Elaine Sita Ratwatte,
C/O E. Ratwatte,
Attorney-at-Law,
Kegalle.
Defendant-Respondents
4. Land Reform Commission,
No. C 82,
Hector Kobbekaduwa Road,
Colombo 7.
Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Faisz Musthapa, P.C., with Thishya Weragoda
for the Petitioners.
Avindra Rodrigo for the Plaintiff-Respondent.
Mudithavo Premachandra for the 4th
Respondent.

Decided on: 11.03.2019

Samayawardhena, J.

This is a partition action. The petitioners filed this application for revision and/or *restitutio in integrum* basically seeking to set aside the Judgment of the District Court dated 24.01.1973 on the basis that at the time of the pronouncement of the Judgment the land belonged to the Land Reform Commission and not to the plaintiff or to the parties in his pedigree.

The plaintiff filed this action in 1971 in the District Court of Ratnapura seeking to partition the land known as Mailagahayaya in extent 23 Acres 3 Roods and 21 Perches among the plaintiff and the 1st-3rd defendants in equal shares. At the trial, as seen from P5, the plaintiff has given brief evidence, and the District Judge, as seen from P6, has pronounced a brief Judgment in 1973 partitioning the land among the plaintiff and the 1st-3rd defendants as prayed for in the prayer to the plaint. However, the Final Decree has been entered long after that, i.e. in the year 2000, that is, more than 27 years after entering the Judgment/Interlocutory Decree. Writ of possession issued in 2003, has not been executed as the petitioners are now in occupation of the land allegedly on the permission of the Land Reform Commission.

The applications made to the District Court by the Land Reform Commission and the petitioners seeking to set aside the Judgment has rightly been refused by the District Court by order dated 01.03.2005 marked P13. After entering the Final Decree, how can the District Court set aside its own Judgment? It is thereafter the petitioners have filed this application in this Court.

The Land Reform Commission has been made the 4th respondent to this application, and the Land Reform Commission has filed objections together with documents.

Now it is crystal clear that by the time the plaintiff gave evidence before the District Court on 14.12.1972 and when the District Judge pronounced the Judgment on 24.01.1973, the land had been vested in the Land Reform Commission by operation of law, i.e. by operation of section 3 of the Land Reform Law, No. 1 of 1972, which came into operation on 26.08.1972.

According to section 3(1) of the Land Reform Law, *“On and after the date of commencement of this Law the maximum extent of agricultural land which may be owned by any person, in this Law referred to as the “ceiling”, shall (a) if such land consists exclusively of paddy land, be twenty five acres; or (b) if such land does not consist exclusively of paddy land, be fifty acres, so however that the total extent of any paddy land, if any, comprised in such fifty acres shall not exceed the ceiling on paddy land specified in paragraph (a).”*

Section 3(2) enacts that *“Any agricultural land owned by any person in excess of the ceiling on the date of commencement of this Law shall as from that date (a) be deemed to vest in the [Land Reform] Commission; and (b) be deemed to be held by such person under a statutory lease from the Commission.”*

Section 6 reads as follows: *“Where any agricultural land is vested in the Commission under this Law, such vesting shall have the effect of giving the land in the Commission absolute title to such land as from the date of such vesting, and free from all encumbrances.”*

Section 18 provides for making Statutory Declarations, which is mandatory. Section 18(1) states: “*The Commission may, by Order published in the Gazette and in such other form as it may deem desirable to give publicity to such Order, direct that every person who becomes the statutory lessee of any agricultural land shall, within a month from the date of the publication of the Order, or of becoming a statutory lessee under this Law make a declaration, in this Law referred to as a “statutory declaration”, in the prescribed form of the total extent of the agricultural land so held by him on such lease.*”

It is relevant to note that this Statutory Declaration is in relation to Agricultural Lands and no other. As seen from 4R1, 4R2, S1-S4 tendered by the 4th respondent Land Reform Commission to this Court, it is clear that the plaintiff (together with the 1st-3rd defendant-respondents) has made that Statutory Declaration in November 1972, i.e. before the plaintiff gave evidence at the trial and before the Judgment was pronounced.

According to section 19(1) of the Land Reform Law, upon the receipt by the Land Reform Commission of a Statutory Declaration made under section 18, the Land Reform Commission shall make a determination known as “*Statutory Determination*” specifying the portion or portions of the agricultural land owned by the statutory lessee, which he shall be allowed to retain, and thereafter the Land Reform Commission shall publish the Statutory Determination in the Gazette and shall also send a copy thereof to such lessee.

No such Statutory Determination in favour of the plaintiff-respondent and the 1st-3rd defendant-respondents has been made and published in the Gazette at the time of plaintiff giving

evidence or Judgment being pronounced or simply stated up to now.

The plaintiff and the 1st-3rd defendants have not disclosed these things to the District Judge when they obtained the Judgment. In short, they had no entitlement to the land at the time of the pronouncement of the Judgment except, in terms of section 3(2) of the Land Reform Law, deemed to be holding the land under a Statutory Lease from the Land Reform Commission with the absolute title of the land vested in the Land Reform Commission in terms of section 6 of the said Law.

By the Gazette 4R3 tendered by the Land Reform Commission to this Court with their objections, it is seen that the Land Reform Commission has decided to pay compensation to the 2nd defendant-respondent in respect of 17 Acres of this land vested in the Land Reform Commission.

The plaintiff-respondent together with his objections has tendered documents marked R1 and R2 to say that some portions of the land do not fall into the category of Agricultural Lands and therefore Land Reform Law has no application to those portions. Firstly, it is the plaintiff who made the Statutory Declaration stating that the entire land is an Agricultural Land. Secondly, such a portion has not been identified by way of a superimposition on the Preliminary/Final Plan of Partition, and it is not possible to do it at this stage of the case. Thirdly, R1 and R2 have been issued long after the Final Decree has been entered, and such Statutory Determination if any on the part of the Land Reform Commission is yet to be Gazetted.

The Judgment of the District Court cannot be allowed to stand. It is hereby set aside by invoking the revisionary jurisdiction of this Court but reserving the right to the plaintiff or any other party to file a fresh partition action to a portion of the land, if so advised.

Appeal allowed. No costs.

Judge of the Court of Appeal