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

W.W.A. Jayawardena,
Dombawela,
Udugampola.
1st Defendant-Petitioner

CASE NO: CA/RI/7/2019
GAMPAHA DC CASE NO: 17408/P

Vs.

Abhayawickramage Chandanee,
Kehelbaddara,
Udugampola.
Substituted Plaintiff-Respondent
And Several Other Defendant-Respondents

Before: Shiran Gooneratne, J.
Mahinda Samayawardhena, J.

Counsel: Chandrasiri Sooriyaarachchi for the 1st Defendant-Petitioner.

Respondents are absent and unrepresented.

Supported &
Decided on: 09.05.2019

Samayawardhena, J.

Learned counsel for the petitioner was extensively heard.

The 1st defendant-petitioner has filed this application for *restitutio in integrum* seeking to set aside (as seen from the reliefs prayed for in the prayer to the petition) the Judgment of the District Court pronounced as far back in 1979 and the Interlocutory Decree entered thereon and to order trial *de novo*.

The 1st defendant in the petition has mentioned a spate of (vague, as opposed to specific) grounds seeking to set aside the Judgment entered 40 years ago.

However, the main complaint of the learned counsel for the 1st defendant is that the District Judge in his Judgment has partitioned a land larger to the one described in the schedule to the plaint, and therefore the Judgment cannot be allowed to stand.

After the pronouncement of the Judgment, the 1st defendant has come before this Court by way of final appeal against the said Judgment mainly on the same ground as seen from the Petition of Appeal found in the Brief. Although a copy of the Appeal Judgment is not found in the Brief, the learned counsel for the 1st defendant admits that the appeal was dismissed by this Court.

If that is the position, the 1st defendant cannot, so many years after the said dismissal, again come before this Court by way of *restitutio in integrum* seeking the same relief basically on the same ground. That is plan law.

I must also add that the 1st defendant cannot come before this Court challenging the Judgment even on any other ground as a party to an action cannot challenge a Judgment in piecemeal, i.e. one point at a time. He must challenge the Judgment once and for all, taking up all the grounds of appeal in one appeal.

The learned counsel for the 1st defendant now informs Court that the immediate reason for the first defendant to come before this Court was the order of the learned District Judge dated 16.08.2017 (JE No.206) whereby the application of the plaintiff to have delivery of possession of the Lot allotted by the Final Decree has been allowed.

When inquired why that order is erroneous, the learned counsel says that by the Final Plan the corpus has been further expanded, which is not permissible. If that is the basis upon which that order is challenged, the 1st defendant could have complained it to the District Judge at the Scheme Inquiry held in terms of section 36 of the Partition Law, No.21 of 1977, before the confirmation of the Final Partition Plan. It is after the confirmation of the Final Partition Plan, under section 36(1)(b), the Final Decree is entered. Routine orders under section 52 for delivery of possession are made on the Final Decree. If the 1st defendant has not participated at the Scheme Inquiry, he himself has to blame for it.

On the other hand, even assuming what the 1st defendant says is correct (i.e. a land larger than the one stated in the Judgment/Interlocutory Decree is shown in the Final Plan), that cannot be a ground to aside the Judgment (which is the substantive relief sought by the 1st defendant in this application).

The 1st defendant shall go before the High Court of Civil Appeal if there is any specific order which he thinks has been erroneously made against him. If he is dissatisfied with the order of the High Court of Civil Appeal, he cannot come before this Court canvassing that order. In terms of section 5C of the High Court of the Provinces (Special Provisions) Act No.19 of 1990 amended by the High Court of the Provinces (Special Provinces) (Amendment) Act No. 54 of 2006, only the Supreme Court has the exclusive jurisdiction to set aside Judgments/Orders of the High Court of Civil Appeal.

This application is clearly devoid of merit.

We refuse to issue notice on the respondents and dismiss the application.

Judge of the Court of Appeal

Shiran Gooneratne, J.
I agree.

Judge of the Court of Appeal