

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

Nissanga Achchi Appuhamilage
Nandawathi Nissanga,
No. 145/4,
Borukgamuwa,
Pallewela.
Petitioner

CASE NO: CA/WRIT/334/2016

Vs.

Commissioner of Title Settlement,
Department of Land Settlement,
No. 1200/6,
Mihikatha Medura,
Rajamalwatta Road,
Battaramulla.
And 5 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Ravindra Sumathipala for the Petitioner.

Chaya Sri Nammuni, S.S.C. for the 1st-3rd
Respondents.

Decided on: 29.07.2019

Mahinda Samayawardhena, J.

The petitioner filed this application on 03.10.2016 seeking to quash by way of writ of certiorari the Determination of the Commissioner of Title Settlement (the 1st Respondent) made under section 14 of the Registration of Title Act, No. 21 of 1998, which was published in the Gazette marked P5 dated 06.01.2011, and the Certificate of Title issued by the Registrar of Title under section 37 of the Act marked P4 dated 20.05.2011 certifying that the petitioner has First Class Title of Absolute Ownership to the land described in the said Certificate. The petitioner also seeks to quash by way of certiorari the determinations made and the Certificates of Title issued in favour of the 4th-6th respondents.

It is the position of the petitioner that the title of the petitioner, and the 4th-6th respondents derives from the same source and therefore he filed a partition action in the District Court to put an end to the co-ownership among them. In that partition action the 4th-6th respondents have taken up an objection to the maintainability of the action under the provisions of the Registration of Title Act.

Section 32 of the Registration of Title Act reads as follows:

32(1) The registration of a person with a First Class Title of Absolute Ownership to a land parcel, shall vest in that person absolute ownership of such land parcel together with all rights and privileges belonging or appurtenant thereto, subject to any subsisting interests as registered in the Encumbrances Section of the Title Register.

Section 33 of the Act reads as follows:

33(1) Entries in the Title Register maintained under the provisions of this Act, shall be conclusive evidence of the existence of the ownership or interest specified in such entries and shall not be questioned in a Court of law except as provided for in this Act.

(2) The interests of a person whose name appears in the Title Register may be assailed only as provided for in this Act, and shall be held by such person together with all rights and privileges belonging or appurtenant thereto free from all interests and claims other than those appearing in the Title Register.

Under section 37 of the Act, which is quoted below, Certificate of Title shall form conclusive evidence of the title.

37(1) Any person, having a Title of Ownership or other interest in a land parcel registered under this Act, may on payment of the prescribed fee, obtain a Certificate of Title in respect of such Ownership or interest, from the appropriate Registrar of Title.

(2) Subject to the provisions of this Act, such Certificate of Title shall form conclusive evidence of the title to such interest.

Section 63 of the Act is to the following effect.

The Partition Act shall not apply to land parcels registered under this Act with a First Class Title of Absolute Ownership, or Second Class Title of Ownership.

It is in that context, the petitioner has filed this application whilst making an application to lay by the partition action.

The petitioner filed this application on the premise that she was taken by complete surprise when it was revealed in the District Court that, in respect of the subject land, actions have been taken by the Commissioner of Title Settlement under the Registration of Title Act. In paragraph 18 of the petition the petitioner stated that *“when she became aware of the above said facts, she was shocked and a fraud had been perpetrated by the 1st to 3rd respondents at the instigation of the 4th respondent in the whole process of issuing First Class Title.”* In paragraph 19 she further stated that during the material period she was resident in Kurunagala from 1995 until 2011.

The grievance of the petitioner is that the petitioner and the 4th-6th respondents each should have got 23 perches, but the 1st respondent has given 39.8 perches to the 4th respondent, 16.8 perches to the 5th respondent, 19.1 perches to the 6th respondent and 16.4 perches to the petitioner. Not only the 4th respondent but also the 5th and 6th respondents seek dismissal of the petitioner’s action.

The petitioner admits that the Act provides for an appeal procedure to a claimant against an order made by the Commissioner of Title Settlement under section 14 of the Act. The petitioner mainly challenges the order made by the Commissioner of Title Settlement under section 14 of the Act.

Section 22 of the Act reads as follows:

Any claimant aggrieved by any Declaration of the Commissioner of Title Settlement under section 14 may prefer an appeal against such declaration within the prescribed period to the District Court having jurisdiction over the area where the land parcel is situate.

Sections 24-26 *inter alia* deal with the procedure to be adopted and the orders which could be made by the District Court.

The petitioner in paragraph 24 of the petition says that she could not appeal against the determination of the 1st respondent as she was not a claimant before the 1st respondent.

However this assertion was proved to be false by the 1st respondent by tendering documents marked 1R1 and 1R2 with the statement of objections. Those two documents prove that the petitioner was a claimant before the 1st respondent and there had been an inquiry on that claim on 23.02.2010. At that inquiry the petitioner has admitted that her claim is now restricted to 16.4 perches.

The petitioner did not file counter affidavit against the said statement of objections of the 1st respondent. The counsel for the petitioner returned the brief to the petitioner and the petitioner had to retain a new counsel.

It is clear that the petitioner cannot maintain this action. Her application shall fail *inter alia* on suppression or distortion of material facts. When the Registration of Title Act, which is a Special Act, provides for the appeal procedure against the impugned determination of the 1st respondent, the petitioner cannot ignore the appeal procedure and come before this Court

more than five years after that order canvassing the same invoking the writ jurisdiction of this Court. There is no jurisdictional issue as the new counsel for the petitioner purports to suggest.

I refuse the application of the petitioner with costs.

Judge of the Court of Appeal