

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

- 13A. Don Seeman Kankanamalage
Chandradasa,
Ambagala,
Warakapola.
14. Don Seeman Kankanamalage
Gunaratne,
Ambagala,
Warakapola.
Defendant-Appellants

CASE NO: CA/989/2000/F

DC KEGALLE CASE NO: 24706/P

Vs.

Senarath Pathirannehelage
Jayawardena,
Ambagala,
Warakapola.
Plaintiff-Respondent
And Several Other Defendant-
Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Athula Perera for the Appellants.
Dr. Sunil Cooray for the Respondents.
Decided on: 16.10.2019

Mahinda Samayawardhena, J.

The Plaintiff filed this action in the District Court to partition the land described in the schedule to the Plaint among the Plaintiff and the 1st-12th Defendants. The 13th and 14th Defendants later intervened. After trial the learned District Judge entered Judgment as prayed for by the Plaintiff. Hence this appeal by the 13th and 14th Defendants.

In this case, there is no dispute regarding the corpus, but there is a dispute regarding the pedigree. By looking at the statements of claim, the dispute regarding the pedigree was: the 2nd-6th, 13th and 14th Defendants on the one hand, and the Plaintiff and the rest of the Defendants on the other.

According to the Plaint filed in 1987, the two original owners of the land were Punchi Nilame and Mudiyanse, and their rights devolved on the Plaintiff and the 1st-12th Defendants by way of deeds and inheritance. Those deeds have been marked at the trial.

The 2nd-6th and 13th Defendants in their statement of claim filed in 1989 stated that the two original owners were Punchi Nilame and Mudalihamy (not Mudiyanse). However, when the 14th Defendant filed a separate statement of claim in 1994, he agreed

with the Plaintiff to say that the original owners were Punchi Nilame and Mudiyanse alias Mudalihamy.

The 2nd-6th and 13th Defendants in their statement of claim set out, to some extent, the devolution of title to $\frac{1}{2}$ share of the land, and then state that they all became entitled to the balance $\frac{1}{2}$ share by prescription. It is difficult to understand how they claim prescriptive rights to undivided shares. However, it is interesting to note that, in the prayer to the statement of claim, they have sought only dismissal of the Plaintiff's action.

It is relevant to note that the 2nd-6th Defendants fall within the pedigree of the Plaintiff, and the Plaintiff has given shares to those Defendants in the Plaint.

The 14th Defendant in the prayer to his statement of claim seeks $\frac{1}{4}$ share of the whole land. This is not possible according to his own pedigree set out in his statement of claim.

Thereafter, at the trial, the 2nd-5th, 13th and 14th Defendants have raised one set of issues. The said issues Nos. 14-23 are confusing and contradictory. For instance, by issue No. 16 and 18, they ask undivided rights to the land according to their pedigree. But in the joint statement of claim of the 2nd-5th and 13th Defendants, they do not clearly state how many shares each of them is entitled to. It may be recalled that in the prayer to the statement of claim, they have only asked for the dismissal of the action. According to the statement of claim of the 2nd-5th and 13th Defendants, the 2nd and 3rd Defendants have no rights by inheritance as they have transferred their rights to the 5th Defendant by way of a deed. Hence it is irresponsible to ask the Court to give shares to all the contesting Defendants including

the 2nd and 3rd Defendants as pleaded in the plaint. By issue No.19 they say that they are entitled to the whole land. By issue No.23 they say they have prescribed to the land. What the said Defendants expected from the District Court was not clear.

At the trial, on behalf of these Defendants, only the 14th Defendant has given evidence. It is significant to note that, in the cross examination, he has admitted the Plaintiff's pedigree and his title deeds.¹

Out of the 2nd-6th, 13th and 14th Defendants, the 2nd-6th Defendants fell within the pedigree of the Plaintiff, and except the 13th and 14th Defendants, the 2nd-6th Defendants all got shares in the Judgment. The 2nd-6th Defendants appear to be satisfied with the Judgment as no appeal has been filed against the Judgment. Only 13th and 14th Defendants filed the appeal.

Learned Counsel for the 13th and 14th Defendants in his written submission has pointed out some minor defects in the long pedigree of the Plaintiff. The pedigree in this case is not straightforward. Whilst accepting the original owners, the contesting Defendants also came out with a different pedigree. When there is a complex pedigree in a partition case, it is not possible to set out in the plaint comprehensively, and establish at the trial with a high degree of proof, a perfect pedigree with no defect whatsoever. After a full trial, it is easy to the District Judge and the Appellate Court to summarily dismiss the action stating that the Plaintiff has failed to prove the pedigree by clinging on one or two defects. That is not justice. The pedigree in a complicated partition case shall be understood as a whole, and minor defects, shall, as far as possible, be reconciled,

¹ Vide pages 201-206 of the brief.

provided they do not go to the root of the pedigree, keeping in mind that the objective in filing the partition action is to end co-ownership. The duty of the Plaintiff in a partition action is to present a comprehensive pedigree “to the best of his knowledge and ability”. This observation of mine shall not be treated as a licence to present incomplete pedigrees in partition actions through carelessness and indifference.

In *Jane Nona v. Dingiri Mahatmaya*², Sirimane J. stated:

It is the duty of a plaintiff in a partition action to set out to the best of his knowledge and ability a full and comprehensive pedigree showing the devolution of title with reference to all the deeds of sale on which title is alleged to have passed. In view of the very far reaching consequences of a decree under the Partition Act, a Court should not assist a plaintiff who either through carelessness or indifference does not place before the Court evidence which should be available to him.

In my view, the learned District Judge cannot be found fault with accepting the Plaintiff’s pedigree in preference to the one unfolded by the 2nd-6th, 13th and 14th Defendants.

Appeal of the 13th and 14th Defendants is dismissed but without costs.

Judge of the Court of Appeal

² (1968) 74 NLR 105