

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

CA 852/99 (F)

DC KURUNEGALA- 5088P

RATNAYAKA MUDIANSSELAGE
KAPURU BANDA,
ALUTGAMA ,
BAMUNUKOTUWA

PLAINTIFF-APPELLANT

VS

RATNAYAKA MUDIANSSELAGE BANDA,
ALUTGAMA ,
BAMUNUKOTUWA and others

DEFENDANT-RESPONDENTS

Before : A.W.A. Salam, J.

Counsel : Upali de Almada with Lakmini Kariapperuma
and R J U Alamida for the Plaintiff –Appellant.

Argued on : 11.9.2012

Written Submissions tendered on: 22.11.2012.

Decided on : 16.05.2013.

A W A Salam, J

The facts relevant to this appeal are as follows. The plaintiff-appellant instituted partition action to have the corpus relevant to the action partitioned among the co-owners. By judgment and interlocutory decree entered in the case, the learned district judge directed that the corpus be partitioned among the co-owners referred to in the said judgment and interlocutory decree. Thereafter, as is required under the partition law final decree was also entered giving effect to the scheme of partition approved by court. Nearly 6 years thereafter an application was made by the 5th to 7th defendant-respondents seeking the amendment of the judgment and interlocutory decree, on the basis that the amendment sought are of clerical mistakes.

The 5th to 7th defendant – respondents made the application for amendment of the judgment and interlocutory decree on the ground that although Bandara Menika is referred to as the second wife of Ukkurala, yet, he ought to have been referred to as the father of Ukkurala. By the said application they sought to bring the answer given to point of contest No 13 in line with the proposed amendment. By the amendment the learned district judge has also sought to correct the finding in the judgment in relation to the exclusion of lots 1 in plan No 717 dated 29 August 1974.

The judgment and interlocutory decree have been entered on 20 August 1993. The application for amendment has been allowed on 14 July 1999. The order to amend the judgment and decree has been made by the successor in office of the learned district judge who delivered the judgment six years after the interlocutory decree. In any event the amendments sought do not fall within the ambit of Section 189 of the Civil Procedure Code to attract the characteristic of a clerical mistake or accidental slip.

In the circumstances, the impugned order dated 14 July 1999 is set aside. There shall be no costs.

Judge of the Court of Appeal

NR/-