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

C.A. Case No.364/2000 (F)

D.C. Matugama Case No. 2792/P

1. Punchi Wedikkarage Siriwardene
   of Nikgaha, Bulathsinhala.
2. Punchi Wedikkarage Leeyan Singho
   of Nikgaha.

PLAINTIFF-APPELLANTS

-Vs-

1. Punchi Wedikkarage Somapala (deceased)

1A. Punchi Wedikkarage Jayatissa
   of Kaballagoda, Horana.

2. Punchi Wedikkarage Premachandra
   of Nikgaha, Bulathsinhala.
3. Punchi Wedikkarage Gunadasa
   of Nikgaha, Bulathsinhala.
4. Haldola Vitnagae Jayatissa
   of Nikgaha, Bulathsinhala.
5. Gamage Themanis
   of Diyakaduwa, Mahagama.
6. P. Themanis
   of Diyakaduwa, Mahagama.
7. Lokuhewage Baby Nona
   of Ballapitiya, Horana.
8. Lokuhewage Celin Nona,
   of Ballapitiya, Horan.

DEFENDANT-RESPONDENTS

BEFORE	:	A.H.M.D. Nawaz, J.
COUNSEL	:	Chamantha Weerakoon Unamboowe with Oshadi Premarathne for the Plaintiff-Appellants. Vidura Ranawaka with Menka Warnapura, Suraj Rajapakshe and Chinthaka Kohomban for the 4th Defendant-Respondent
Decided on	:	19.06.2018

A.H.M.D. Nawaz, J.

The Plaintiff-Appellants (hereinafter sometimes referred to as "the Plaintiffs") seek to impugn the judgment of the learned Additional District Judge of *Matugama* dated 02.06.2000 on the ground that he had proceeded to reject the plaint for perceived defects therein even though a full trial had taken place.

The learned Additional District Judge has made order that the plaint ought to be rejected for the reason that it is defective. The learned Additional District Judge further states that since the plaint is defective and ought to be rejected, it is not necessary to consider the statements of claim of the Defendants or the issues.

The learned Counsel for the 4th Defendant-Respondent countered the submissions of Plaintiff-Appellants by contending that the rejection of the plaint at the conclusion of the trial did amount to a dismissal of the action and in such an event no prejudice has been caused to the Plaintiff-Appellants in the case because the Plaintiff-Appellants have not established their case at all by their failure to prove the pedigree and the title to the *corpus*.

It is axiomatic that once issues are framed, the case which the Court has to hear and determine becomes crystallized in the issues and the pleadings recede to the background-see ***Hanaffi v. Nallamma*** (1998) 1 Sri L.R. 73

Once issues are accepted by Court, the case goes to trial on the issues and evidence is led by parties to establish the issues. The issues accepted by Court in this case are found principally at page 49 of the appeal brief and the following two issues summarize the questions to be determined:-

> **Issus No.3:** Was *Punchi Wedikkarage Leenis Appu* the original owner of the land depicted as No.1 by virtue of long possession?
>
> **Issus No.4:** Does the title of the said *Leenis Appu* devolve on the 1st, 2nd, 3rd and 6th Defendants and the Plaintiffs?

The Plaintiff-Appellants traced their title to the original ownership of *Leenis Appu* and framed Issue No.3 on its account.

The Counsel for the Plaintiff-Appellants took this Court quite extensively through the evidence led in the case and contended that no evaluation of the evidence has been undertakes by the learned Additional District Judge of *Matugama*. No answers have been proffered by the learned Additional District Judge having regard to the evidence that had been placed before Court.

There have been rival claims made before the learned Additional District Judge of *Matugama* both by the Plaintiff-Appellants and the 4th Defendant-Respondent. Whilst the Plaintiffs claimed title by prescription through *Leenis Appu*, the 4th Defendant too sought to establish his title by prescription tracing the devolution from his grandfather *Garlis Singho*. No title deeds were produced by either party and their rival claims to the land revolved around the prescriptive title of their respective predecessors namely *Leenis Appu* and *Garlis Singho*. In fact it is a given or a donnee that in a partition action, title can be established even without title deeds to the *corpus*. But there appears to be a virtual abdication of duty on the part of the learned Additional District Judge of *Matugama* to investigate title by undertaking an evaluation of evidence in order to ascertain whether prescriptive title has been established.

The record teems with evidence on the part of both the Plaintiff-Appellants and the 4th Defendant-Respondent but the learned Additional District Judge of *Matugma* does not even refer to them in his judgment. For instance, in order to establish title of *Leenis Appu* who, according to the Plaintiffs, was the original owner of the corpus, the Plaintiffs produced through an officer of the Surveyor General's Department a document marked **පැ1** or **P1** (page 104 of appeal brief). **P1** is an extract of field notes made by an officer of the Surveyor General's Department. The Plaintiffs' purpose was to show that as per the said field notes, *Leenis Appu* was the original owner of the *corpus*. In fact document **P1** depicts Lot 349 which is the subject-matter of this partition action. The notation on **P1** goes as follows:-

> *"Lot 349*
> *Kadawalawatta Pitakattiya*
> *Chena Crown,*
> *Contains no Permanent Cultivations*
> *Claimed by Punchi Weddikkarage Leenis Appu"*

P1 the field notes were prepared in 1923 and Mr. Vidura Ranawaka for the 4th Defendant-Respondents argued that **P1** clearly showed that the subject-matter was a crown land and *Leenis Appu*, however long his possession had been, could not have prescribed against the state. Mrs. Chamantha Weerakoon Unamboowe for the Plaintiff-Appellants submitted **P1** clearly showed that *Leenis Appu* the predecessor of the Plaintiffs had been in possession of the land as far back as 1923.

The Counsel for the 4th Defendant-Respondent took up the position that since Lot 349 is designated as Crown land, there cannot be prescription on the part of the Plaintiffs and if it is crown land, no partition decree could be entered in respect of the land.

It has to be remembered that when **P1** was produced by an officer of the Surveyor General's Department, the 4th Defendant-Respondent never objected to this document being marked in evidence. There are only 2 questions posed to the officer in cross-examination and none of the questions related to any crown land being involved in the

subject-matter. In other words the 4th Defendant could have cross-examined the witness on the basis that the land was a crown land. It has to be noted that there is a notation in **P1** to the effect *Leenis Appu* had disputed the claim of the crown and this stance was not challenged at all by the 4th Defendant. It was argued by Mrs. Chamantha Weerakoon Unamboowe for the Plaintiff-Appellants that the failure to cross-examine the officer of the Survey-General's Department showed that the 4th Defendant knew that it was private land.

It would appear that the case below had not been conducted on the basis that Lot 349 was a crown land. Mr. Vidura Ranawaka argued *though* that it was indeed a crown land. The title of the crown could be defeated only by a Crown grant. It was his contention that no such evidence of a Crown grant was placed before the learned Additional District Judge of *Matugama.*

It is trite that whether a land is a crown land or a private land is a question of fact that has to be resolved having regard to the evidence placed before Court and there is no evaluation of evidence at all on this point. The learned Additional District Judge has proceeded to reject the plaint and in my view it is an abdication of the duty cast upon him in terms of Section 25 of the Partition Law.

None of the points of contest that were raised in the case have been answered by the trier of fact. If after the formulation of issues the pleadings recede to the background, it is the points of contest on which parties have led evidence and it is the bounden duty of the learned District Judge to have reached his conclusions on the points of contest. The judgment dated 02.06.2000 is thus devoid of reasons and vitiated by a fundamental vice. It is preposterous on the part of the learned Additional District Judge to reach out to the plaint and dismiss it citing inconsistencies in the plaint, when evidence has been led by the disputants. It is my view that the irregular procedure followed by the learned Additional District Judge has eventuated in a miscarriage of justice which transcends the bounds of procedural error. It is manifest upon an appeal that there is a grievous failure

to indulge in a thorough investigation of title, the Court should set aside the decree and make an order for a proper investigation-*Sumanawathie v. Andreas* (2003) 3 Sri.LR 324. In the circumstances I set aside the judgment of the learned Additional District Judge of *Matugama* dated 02.06.2000 and order a trial *de novo*.

Though I quite reluctantly take the decision to remit the case back to the District Court to directing a trial *de novo* owing to a long lapse of time that the proceedings of this case have traversed in its labyrinthine path, I direct the learned District Judge of *Matugama* to conclude the trial based on the same pleadings as expeditiously as he could. The Court may act upon the evidence that has already been led.

JUDGE OF THE COURT OF APPEAL