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

Kanaththa Badahelage
Somawathi,
Medagoda,
Amithirigala.
19A and 22nd Defendant-Petitioner

CASE NO: CA/REV/1582/2006
DC AVISSAWELLA CASE NO: 17099/P

Vs.

Jayasinghe Arachchige Amitha
Rajapaksha,
Medagoda,
Amithirigala.
1A Plaintiff Respondent
And Several Other Defendant-Respondents

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

Counsel: Upul Kumarapperuma for the Petitioner.
Kavinda Dias Abeysinghe for the Plaintiff-Respondent.
Tissa Bandara for the 31st Defendant-Respondent.

Argued on: 17.10.2019

Decided on: 25.10.2019

Mahinda Samayawardhena, J.

This is a partition case. The 19A and 22nd defendant—one and the same, namely, K.B. Somawathi (hereinafter "the petitioner")—filed this revision application seeking to set aside the order of the learned District Judge of Avissawella dated 02.03.2006 whereby the application of the petitioner made under section 189 of the Civil Procedure Code to rectify the Judgment delivered by the District Court on 29.02.2000 was refused.

The background to this application is briefly as follows: The plaintiff filed this action in the District Court by plaint dated 31.03.1983 to partition the land described in the schedule to the plaint among the plaintiff and the 1st-17th defendants. The petitioner did not file a statement of claim. At the trial, the petitioner was represented by an Attorney-at-Law and the case was settled. The 4th and 6th defendants gave evidence and the learned District Judge delivered the Judgment in open Court. This happened on 29.02.2000.[1] Thereafter, Interlocutory Decree has been entered in terms of the Judgment and the commission has been issued to prepare the final plan. As seen from the Journal Entry No. 103, the proposed final partition plan has been sent to Court in September 2005.

[1] Vide proceedings dated 29.02.2000.

It is significant to note that, between the date of the Judgment and the date of the proposed final partition plan, there was more than 5 years and 6 months, and the case was called in open Court a number of times, but the petitioner did not state that there is a clerical or arithmetical mistake in the Judgment.

After the receipt of the proposed final plan and when the Court gave a date (in terms of section 35 of the Partition Law) for consideration of the proposed scheme of partition, the petitioner revoked the earlier proxy and filed a new proxy and made the application under section 189 of the Civil Procedure Code to correct the Judgment stating that it is not in consonance with the evidence led at the trial.[2]

In the Judgment the plaintiff has been allotted an undivided ½ share of the land and the 5th-22nd and 31st defendants each undivided 1/8th share. The Judgment also describes how the improvements shall go to the parties.

By this application, the petitioner states that, according to the pedigree of the plaintiff, the plaintiff is only entitled to an undivided 3/20 share and the other defendants mentioned above are entitled to each 17/20 share and the plantation shall also be given accordingly.

I have no doubt that this application does not come under section 189 of the Civil Procedure Code read with section 25 and 79 of the Partition Law.

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[2] Vide JE No.104 and the application of the Petitioner dated 07.10.2005.

Section 189 allows the Court to correct any clerical and arithmetical mistake in any Judgment or order arising from any accidental slip or omission. In the facts and circumstances of this case, there is no such mistake that has occurred due to accidental slip or omission. The case was reportedly settled and evidence was led and the Judgment was delivered instantly wherein soil rights of the parties and entitlement to improvements including the plantation were decided in open Court. This happened in front of the petitioner's former Attorney-at-Law.

If the petitioner was not agreeable to the fractional shares decided upon by Court, it would have been pointed out to the learned Judge, then and there, as it was a Judgment delivered upon a settlement. Otherwise, when he obtained a copy of the proceedings, if she later realized that there was an arithmetical mistake in the calculation of shares, and also in the apportionment of the plantation, she should have, through her former Attorney-at-Law informed the Court to correct that mistake. She does not need to retain a new Attorney-at-Law to tell it to Court after more than 5 ½ years from the date of the Judgment.

On the other hand, if it was a mistake, it is difficult to understand why none of the other defendants or their Attorneys-at-Law did not realize it until the petitioner realized it more than 5 ½ years from the date of the Judgment. It is unbelievable that none of the 31 defendants did not get proceedings of that day for more than 5 ½ years from the date of the Judgment.

Although the petitioner has referred to section 25 of the Partition Law, which requires the District Judge to investigate title to the land to be partitioned; when the case is settled, that requirement is no more applicable. Settlements in partition cases are not prohibited or obnoxious to the Partition Law provided (a) all the persons who have right, share or interest to, of, or in the land to be partitioned have been made parties to the case; and (b) all of them participate in the settlement.[3] When the case is so settled, the case is decided not on the pedigrees set out in the pleadings or investigation of title, but on the agreement reached among the parties, which may or may not be completely contradictory to the pedigrees set out in their pleadings.[4]

The learned counsel for the petitioner contends that settlements in partition cases are possible only if the Court has investigated the title of each party. The requirement of investigation of title to the land of each party and entering the Judgment on settlement reached among the parties are, in my view, irreconcilable. The end result as to fractional shares (a) upon an investigation of title and (b) upon compromise reached among the parties, is practically, almost always, different. If it is the same, there is no necessity to have a compromise as the Judgment can then straightaway be entered on investigation of title.

For the aforesaid reasons, I dismiss the application of the petitioner, but without costs.

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[3] Kumarihamy v. Weragama (1942) 43 NLR 265, Gunawardena v. Ran Menike [2002] 3 Sri LR 243

[4] Rosalin v. Maryhamy (1994) 3 Sri LR 262, Faleel v. Argeen [2004] 1 Sri LR 48

Judge of the Court of Appeal

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Court of Appeal