

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

Arangalage Arnolis Perera,  
No.145,  
Rajahena Road,  
Athurugiriya.  
Plaintiff-Appellant

**CASE NO: CA/498/1996/F**

**DC HOMAGAMA CASE NO: 1490/L**

Vs.

Kahandawa Arachchige Priyanthi,  
Paankade,  
Sikurada Pola,  
Athurugiriya.  
Defendant-Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Manohara De Silva, P.C., for the Plaintiff-  
Appellant.

Ranjan Suwadaratne, P.C., for the Defendant-  
Respondent.

Decided on: 21.11.2019

Mahinda Samayawardhena, J.

The plaintiff filed this action against the defendant seeking declaration of title to the land described in the schedule to the plaint, ejectment of the defendant therefrom, and damages. The defendant filed the answer seeking dismissal of the plaintiff's case. After trial, the District Judge dismissed the plaintiff's action with costs. This appeal by the plaintiff is against that Judgment.

This is a *rei vindicatio* action and therefore the burden is entirely on the plaintiff to prove his case.

The plaintiff relied on the Final Decree of Partition marked P2, entered in District Court Colombo Case No. 7150/P, to claim title to the land.

The plaintiff cannot claim prescriptive title to the land as the plaintiff has filed this action on the basis that the defendant is in forcible possession of the land at least from 1985.

The defendant produced the Deed No.3196 marked V1 to say that, the plaintiff, who was the 1<sup>st</sup> defendant in the said partition case, during the pendency of the partition case, sold his rights, which he would get from the Final Partition Decree, to his father, Jayasena, who was the 2<sup>nd</sup> defendant in the partition case, and therefore the plaintiff has no title to the land.

Although the plaintiff in his plaint has not mentioned about this deed, and in the replication boldly stated that it is a forged document, he has admitted that deed in his evidence in chief itself.

Thereafter the plaintiff's position was that it is an invalid deed, in terms of section 66 of the Partition Law, No.21 of 1977, as amended, as it was executed during the pendency of the partition case. This argument is unsustainable.

A party in a partition action can sell, pending partition, whatever the interests he might ultimately be allotted in the final decree of partition. Sale of contingent rights pending partition is permitted and not obnoxious to the Partition Law. (*Rajapakse v. Dassanayake* (1928) 29 NLR 509, *Salee v. Natchia* (1936) 39 NLR 259, *Sirisoma v. Saranelis Appuhamy* (1950) 51 NLR 337)

By this deed marked V1, what the plaintiff sold was, as seen from the schedule thereof, "*The Lot or Lots that may be allotted to me with the buildings thereon and the compensation under the Final Decree for partition that may be entered in case No.7150/P of the District Court of Colombo*". That is not prohibited or in contravention of section 66 of the Partition Law.

In *Manchanayake v. Perera* (1945) 46 NLR 457 it was held:

*A conveyance executed after the institution of a partition action, and before the entering of the final decree, purporting to "sell, assign, transfer, and set over" to the vendee "the interest to which the said vendor may be declared entitled to in the final decree to be entered into in the said case from and out of all that land" (i.e., the subject of the partition suit) is valid and not obnoxious to section 17 of the Partition Ordinance. It passes an immediate interest in the property and is not merely an agreement to convey in the future.*

In *Wijesinghe v. Sonnadara* (1951) 53 NLR 241 it was held:

*The sale by a co-owner in land of whatever interests might ultimately be allotted to him under the decree in a pending partition action may be construed as a conventio rei speratae. In such a case, if some benefit, even to a far smaller extent than the parties had originally hoped for, accrued to the seller under the partition decree, the purchaser is not entitled to claim a cancellation of the sale on the ground of failure of consideration.*

In that eventuality, the transferee need not be added as a party to the partition action (*Abeyratne v. Rosalin* [2001] 3 Sri LR 308), although in the instant case, the transferee, Jayasena, was a party to the partition action.

There is also no necessity to execute another deed after entering the Final Decree as the Lot will automatically pass to the transferee without any further conveyance. (*Sillie Fernando v. Silman Fernando* (1962) 64 NLR 404, *Karunaratne v. Perera* (1966) 67 NLR 529)

I dismiss the appeal with costs.

Judge of the Court of Appeal