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

Jayakody Arachchige Naradha Jayakody,
'Sarasavi', Goigam Godella,
Udugampola.
Defendant-Respondent-Petitioner

SC/APPEAL/141/2017
WP/HCCA/GAM/122 & 122A/2011(F)
DC GAMPAHA 559/L

Vs.

Wickramaarachachige Sriyawathi Jayakody,
No. 162 HC, Mahara, Kadawatha.
Plaintiff-Appellant-Respondent

Before: Hon. Justice A.H.M.D. Nawaz
Hon. Justice Mahinda Samayawardhena
Hon. Justice Arjuna Obeyesekere

Counsel: Hemasiri Withanachchi with Shantha Karunadhara for the Petitioner.
Sudharshani Cooray for the Respondent.

Argued on: 01.08.2024

Written Submissions on:
By the Appellant on 10.09.2024
By the Respondent on 25.10.2024

Decided on: 10.12.2024

Samayawardhena, J.

The plaintiff filed this action against the defendant in the District Court of Gampaha seeking a declaration of title to the land described in the second schedule to the plaint and the ejectment of the defendant therefrom. The defendant sought dismissal of the plaintiff's action. In addition, he sought a declaration of title to the land described in the schedule to the answer, which is different from the land claimed by the plaintiff. After trial, the District Court dismissed the claims of both parties and dismissed the action in its entirety. On appeal by the plaintiff, the High Court of Civil Appeal of Gampaha allowed the appeal and directed the District Court to enter judgment for the plaintiff. The defendant has now appealed to this Court.

The owner of the land described in the first schedule to the plaint (කෝන්ගහවත්තේ බස්නාහිර දිග දෙකෙන් පංගු කැබැල්ල) with an extent of approximately 2 Acres, was Arnolis Jayakody. The plaintiff's husband (Edmond Jayakody) and the defendant's father (Kularatne Jayakody) are the sons of Arnolis Jayakody. By Deed No. 20673 dated 21.09.1975, Arnolis Jayakody gifted an undivided 3 Roods of that land, along with the house, to Kularatne Jayakody. On the same date, by Deed No. 20674 attested by the same Notary, he gifted an undivided 1 Acre and 1 Rood to Edmond Jayakody. These facts remain undisputed.

The case for the plaintiff as pleaded in the plaint was that, Edmond Jayakody, instead of his undivided rights, amicably partitioned a portion of the land (not the entirety of land comprising the undivided portions of Edmond Jayakody and Kularatne Jayakody) into 2 lots as Lot 1 and 2, by Plan No. 487 dated 30.11.1978. Lot 1 was sold to an unidentified party (neither the Deed number nor the identity of the transferee was disclosed), while Lot 2 is the land in dispute, which the plaintiff alleges is being forcibly possessed by the defendant. The plaintiff seeks a

declaration of title to Lot 2 and the ejectment of the defendant therefrom. At the trial, it was recorded as an admission that Lot 2 in Plan No. 487 is the disputed portion of the land.

Plan No. 487 is not an amicable Partition Plan jointly prepared by Edmond Jayakody and Kularatne Jayakody. The defendant produced Plan No. 590 dated 21.12.1977 claiming it to be the amicable Partition Plan, but there is no evidence to accept that position either. If Plan No. 590 was considered as the amicable Partition Plan to end co-ownership between Edmond Jayakody and Kularatne Jayakody, there would not have been a reason for Edmond Jayakody to subsequently prepare Plan No. 487 and assert that Plan No. 487 is the amicable Partition Plan.

The District Judge dismissed the action on the basis that this is a co-owned land and there is no evidence to conclude that the plaintiff is exclusively entitled to Lot 2 in Plan No. 487. The District Judge was of the view that the dispute should be resolved through a partition action.

There was no superimposition of Plan No. 590 (older Plan) on Plan No. 487. The High Court of Civil Appeal did not carefully look at the discrepancies of the two Plans but considered them as identical whereas they are not. For instance, the extent of Lots No. 1 and 2 of Plan No. 487 is 1 Acre and 37.2 Perches, whereas Lot No. 3 in Plan No. 590 (which the High Court thought identical to Lots No. 1 and 2 in Plan No. 487) is only 3 Roods and 17.5 Perches.

The defendant produced Deed No. 22324 dated 03.12.1978 (which the plaintiff should have produced) as V5. According to schedule 1 of this Deed, Edmond Jayakody sold 2 Roods and 12 Perches out of the land described in the first schedule to the plaint, namely කෝන්ගහවත්තේ බස්නාහිර දිග දෙකෙන් පංගු කැබැල්ල (the larger land of about 2 Acres owned by Arnolis Jayakody) to Magilin Nona (who is not a party to this case).

According to schedule 2 of Deed No. 22324, Edmond Jayakody also sold undivided 68 Perches of a land known as Lot D in කෝන්ගහවත්ත හෙවත් හික්ගහලන්ද in extent of undivided 3 Roods out of 1 Acre and 6 Perches to Magilin Nona. In this Deed No. 22324, Edmond Jayakody states that Plan No. 487 was prepared in amalgamation of those two lands (කෝන්ගහවත්තේ බස්නාහිර දිග දෙකෙන් පංගු කැබැල්ල and Lot D in කෝන්ගහවත්ත හෙවත් හික්ගහලන්ද). It may be recalled that the plaintiff filed this action seeking a declaration of title to a portion of කෝන්ගහවත්තේ බස්නාහිර දිග දෙකෙන් පංගු කැබැල්ල, not seeking a declaration of title to both a portion of කෝන්ගහවත්තේ බස්නාහිර දිග දෙකෙන් පංගු කැබැල්ල and Lot D in කෝන්ගහවත්ත හෙවත් හික්ගහලන්ද.

With this new evidence elicited by the defendant, it is abundantly clear that Plan No. 487 is not an amicable Partition Plan jointly prepared by Edmond Jayakody and Kularatne Jayakody for the land described in the first schedule to the plaint (කෝන්ගහවත්තේ බස්නාහිර දිග දෙකෙන් පංගු කැබැල්ල).

Even Edmond Jayakody did not act upon Plan No. 487 as a distinct and defined portion carved out in lieu of his undivided rights. For instance, in the Mortgage Bond No. 3802 executed on 27.07.1982 and produced by the defendant marked V14, Edmond Jayakody mortgaged his undivided rights which he became entitled to by Deed No. 20674, not Lot 2 in Plan No. 487.

The identification of the land in suit for the purposes of the case and the proof of title to that specific portion of land are two distinct matters. While the former pertains to the establishment of the physical boundaries or location of the disputed land, the latter concerns the establishment of a legal right or ownership over it.

In view of the afore-mentioned factual situation, following findings of the High Court cannot be accepted as correct:

It is therefore clear that it is the lot 2 in "P-2" plan No 487; a divided and defined allotment of land, was the subject matter of this action, which is a sub divided portion of defined lot 3 in the plan No 590 marked V-1 by the defense. The fact that the two sons of the said Arnolis Jayakody, the plaintiff's husband and the defendants' father, had got the main land described in the 1st schedule to the plaint, amicably divided was very well demonstrated by the production of V-1 plan and the evidence of the defendant and no objection was raised for same on behalf of the plaintiff. Moreover, the P-2 plan No 487, which subdivided the lot 3 in V-1 plan No 590, was marked subject to proof and it stood duly proved by calling the relevant surveyor K.A.P. Kasthuriratne.

In my view, the High Court erred both in fact and in law when it set aside the judgment of the District Court.

The District Judge was correct in concluding that the plaintiff failed to prove sole ownership to Lot 2 in Plan No. 487.

It is important to note that neither the District Court nor the High Court came to the finding that the plaintiff had prescribed to Lot 2 in Plan No. 487. No such argument was presented before this Court either.

The two questions of law upon which leave to appeal was granted are as follows:

(a) Have the Learned Civil Appellate High Court Judges erred in Law by accepting Plan No. 487 (P2) relied upon by the Plaintiff to establish that the land in the 1st schedule to the Plaint was amicably divided between the Plaintiff's husband and the Defendant's father as per the said Plan?

(b) Whether the Plaintiff had established the burden rested upon her in Law in a *rei vindicatio* action for a declaration of title to the land described in the 2nd schedule to the Plaint?

I answer the first question of law in the affirmative and the second question of law in the negative. I set aside the judgment of the High Court and restore the judgment of the District Court. I make no order as to costs.

Judge of the Supreme Court

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

Judge of the Supreme Court

Arjuna Obeyesekere, J.
I agree.

Judge of the Supreme Court