
ARNOLIS PERERA**Vs.****PRIYANTHI**

COURT OF APPEAL
SAMAYAWARDHENA, J.
CA/498/1996/F
DC HOMAGAMA 1490/L

Partition Law, No. 21 of 1977, section 66- Alienation pending partition

The plaintiff filed action against the defendant seeking a declaration of title to the land in suit on a partition decree, ejection of the defendant therefrom, and damages. The defendant filed answer seeking dismissal of the plaintiff's action on the basis that, pending partition, the plaintiff had sold by way of a deed his allotment from the final partition decree and therefore the plaintiff has no title to the land. The plaintiff then took up the position that it is an invalid deed in view of section 66 of the Partition Law, No. 21 of 1977, as it was executed during the pendency of the partition case. After trial, the District Court dismissed the plaintiff's action. The plaintiff appealed to the Court of Appeal.

Held:

1. A party in a partition action can sell, pending partition, whatever the interests he might ultimately be allotted in the final decree of partition. The sale of contingent rights pending partition is not obnoxious to section 66 of the Partition Law.
2. In such an eventuality, the transferee need not be added as a party to the partition action.
3. Nor is there any necessity to execute another deed after entering the final decree as the lot will automatically pass to the transferee without any further conveyance.

Cases referred to:

1. Rajapakse v. Dassanayake (1928) 29 NLR 509
2. Salee v. Natchia (1936) 39 NLR 259
3. Sirisoma v. Saranelis Appuhamy (1950) 51 NLR 337
4. Manchanayake v. Perera (1945) 46 NLR 457
5. Wijesinghe v. Sonnadara (1951) 53 NLR 241
6. Abeyratne v. Rosalin [2001] 3 Sri LR 308

7. Sillie Fernando v. Silman Fernando (1962) 64 NLR 404

8. Karunaratne v. Perera (1966) 67 NLR 529

APPEAL from the Judgment of the District Court of Homagama.

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

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

cur. adv. vult.

November 21, 2019

SAMAYAWARDHENA, J.

The plaintiff filed this action against the defendant seeking a declaration of title to the land described in the schedule to the plaint, ejectment of the defendant therefrom, and damages. The defendant filed answer seeking dismissal of the plaintiffs 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 since 1985.

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

Although the plaintiff in his plaint has not stated anything about this deed, and in the replication boldly states 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 interests he might ultimately be allotted in the final decree of partition. The sale of contingent rights pending partition is permitted and not obnoxious to the Partition Law. (Rajapakse v. Dassanayake, 1 Salee v. Natchia, 2 Sirisoma v. Saranelis Appuhamy³)

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

In Manchanayake v. Perera⁴ 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. Sonnadara⁵ 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. Rosalin⁶), 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 although in practice such a deed is executed for better manifestation of the transfer. (Sillie Fernando v. Silman Fernando, 7 Karunaratne v. Perera⁸)

I dismiss the appeal with costs.

Appeal dismissed.

Judgment by: Mahinda Samayawardhena, J.

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