
KUMARAPALA

Vs.

WIJESUNDARA

SUPREME COURT
DE ABREW, J.
MALALGODA, J.
DEHIDENIYA, J.
SC/APPEAL/93/2012
SC/HCCA/LA/443/2011
WP/HCCA/KAL/77/2003/F
DC MATUGAMA 749/P
APRIL4, 2018

Partition Law, No. 21 of 1977, section 32(1)(f) — Certificate of surveyor—Subdivision of land for development purposes—Urban Development Authority Law, No. 41 of 1978, section 21— Regulations under the Urban Development Authority Law—Minimum extent of land

The plaintiff filed the partition action seeking partition of the land in suit. After trial, the District Court delivered the judgment allocating 1/8 share to the plaintiff and 7/8 share to the 4th defendant. The court commissioner who prepared the final scheme of partition reported to court that the plaintiff's lot is less in extent than the minimum extent of land that can be divided for development purposes. The District Court ordered the plaintiff to sell his portion to the 4th defendant. On appeal, the High Court set aside the order of the District Court on the basis that without a specific provision of law, the District Court could not have deprived the plaintiff of his right to enjoy his portion of the land. The 4th defendant appealed to the Supreme Court.

Held:

1. Section 32(1)(f) of the Partition Law mandates the surveyor to transmit to the court together with his return to the commission a certificate to the effect that the plan of partition is in conformity with the written law relating to the subdivision of land for development purposes.
2. In terms of Regulation 17(1) made by the Minister under section 21 of the Urban Development Authority Law, No. 41 of 1978, and published in the Gazette, if any portion of land is to be divided for development purposes, the extent of the specific portion should not be less than 6 perches.
3. The order of the District Court is in conformity with the law applicable to the sub-division of lands.

APPEAL from the Judgment of the High Court of Civil Appeal in Kalutara.

S. N. Vijithsingh for the Defendant-Respondent-Appellant.

C. Laddhuwahetti with Lakni Silva for the Plaintiff-Appellant-Respondent.

cur. adv. vult.

April 5, 2019

DEHIDENIYA, J.

The Plaintiff-Appellant-Respondent (hereinafter sometimes called and referred to as the ‘Plaintiff’) instituted this partition action at the District Court of Mathugama seeking to partition the land called ‘Matugamkandapaula’. The District Court delivered the judgement allocating 1/8 share to the Plaintiff and the balance 7/8 to the Defendant-Respondent-Appellant (hereinafter sometimes called and referred to as the 4th Defendant).

The Court issued the commission for final partition to the Court Commissioner who executed the commission and reported to Court with this plan No. 9717 stating that a lot is lesser than the minimum extent that a land can be divided for the development purposes. The learned District Judge, after considering this issue has come to the conclusion that, the land cannot be divided and ordered the Plaintiff to sell his portion to the 4th Defendant. The Learned District Judge came into this decision on two issues. One is that one lot is lesser than the permitted minimum extent of

land that could be divided for development purposes. The second issue considered by the Learned District Judge, the inconvenience to the 4th Defendant, if the small piece of land is given to the Plaintiff.

The Plaintiff being aggrieved, appealed against and the Learned High Court Judge set aside the said order. The High Court decided that, the right of a person to hold property cannot be taken off without specific provision of law and there is no such law in operation. Further, High Court was of the view that the inconvenience of the 4th Defendant, should not deprive the Plaintiff from having title to property.

Section 32(1)(f) of the Partition Law (as amended by Act, No. 17 of 1997) provides that, the surveyor to report to Court whether the partition is in conformity with the written law relating to the subdivision of land, for development purposes. The Commissioner by his report attached to final partition plan No. 9717, reported that the lot 48, the smaller lot which was allocated to the Plaintiff, is not in conformity with the said law. The section reads thus,

32(1) The Surveyor shall make his return to the Commission, verified by affidavit, substantially in the form set out in the Second schedule to this Law, on or before the returnable date or the extended date (as the case may be) fixed under section 27, and together with such return he shall transmit to the court,

(f) A certificate to the effect that the plan of partition is in conformity with the written law relating to the subdivision of land for development purposes.

The Plaintiff's argument is that, there is no law preventing the division of the lots, into small extents. His argument is that, the regulations gazetted under the Urban Development Authority Law relates only to the height of the building and not to the extent of the land. He further argues that, without a specific legal provision, a person's right to have the property cannot be taken away. The 4th Defendant's contention is that, the regulations made under the Urban Development Authority Law, No. 41 of 1978 has prevented a land is being divided in lesser lots than a certain amount.

The Urban Development Authority Law, No. 41 of 1978 was in operation when the Partition Amendment Act, No. 17 of 1997 came into operation. Therefore, the Legislature enacted the Partition Amendment Act knowingly, that the Urban Development Authority Law is in operation.

Under section 21 of the Urban Development Authority Law, the Minister may make regulations for the purpose of carrying out or giving effect to the principles of that law. Acting under this section, the Minister has published an extraordinary Gazette 392/9- 1986, dated 10th March 1986 publishing regulations under the Urban Development Authority Law. Once a regulation is made by the Minister, and is approved by the Parliament, it has the authority of a law passed by the Parliament. The Plaintiff has not challenged the validity of this Gazette notification.

The regulation 17(1) of the regulations made under the Urban Development Authority Law, No. 41 of 1978, published in the extraordinary Gazette 392/9- 1986 dated 10th March 1986, provides thus,

The minimum extent and the minimum width of lots for different classes of buildings, not being the high-rise buildings, should be in conformity with the specification set out in Form 'C', of schedule (III) unless the Authority has stipulated a higher or lower minimum extent and /or higher or lower width of lots in a development Plan already approved for the area or proposed for the area.

The regulation 17(1) refers to the minimum extent of land that could be divided for development purposes other than the high-rise buildings.

Schedule III, Form 'C', specifies the 'Specification as to lots' as follows,

Character of Building 1	Minimum site area (Square Meters) 2	Minimum width of area (Meter) 3
All buildings except those included below	150	6
Public Assembly buildings and Public buildings	300	123

It is evident that, the schedule specifies the 'minimum site area' as 150 square meters which is equivalent to 6 perches. This implies the fact that, if any portion of land is to be divided for development purposes, the extent of the specific portion should not be less than 6 perches. It is clear that, the extent of land which has been allocated to the Plaintiff by the partition action is lesser than the minimum extent (6 perches) which has

been specified by the law. The Plaintiff's contention is that, the regulation 17 of the regulations made under the Urban Development Authority Law, No. 41 of 1978 deals with the minimal extent needed with regard to the height of a building. This contention is incorrect as the regulation 17 itself proves that, it is applicable to the 'minimum extent and the minimum width of lots for different classes of buildings'. There is no doubt on the applicability of the regulation 17 to the case.

It is clear to this Court that, the view of the Learned District Judge is correct in relation to the case, in which he decided that, the land which has been allotted to the Plaintiff cannot be divided for the development purposes and ordered the Plaintiff to sell his portion of land to the 4th Defendant. The order of the Learned District Judge is in conformity with the law which is applicable to the subdivision of the lands. The view of the Learned High Court Judge prioritizing the title to the property by the Plaintiff is of secondary importance when considering the stance of the Learned District Court Judge which is lawful.

By considering the above facts, this Court set aside the judgement of the High Court dated 29- 09- 2011 and affirms the order of the Learned District Court Judge.

DE ABREW, J. - *I agree.*

MALALGODA, J. - *I agree.*

Appeal allowed.

Judgment by: L.T.B. Dehideniya, J.

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