

PUSHPA
v
LEELAWATHIE AND OTHERS

SUPREME COURT
S.N. SILVA, C.J.
PERERA, J.,
WEERASEKERA, J.
SC 46/99,
SC SP/LA 132/99
CA Rev. 300/99,
CALA 54/99,
DC GALLE 11139/P
MARCH 31, 2000

Partition Law No. 21 of 1977 – Section 23 (1), 25(1) – Filing of documents –30 days before trial – Is the date of trial the first date on which the case is fixed for trial? – Additional list of documents filed well before the next date of trial – Could it be accepted? – Civil Procedure Code – section 121– Applicability?

Held:

- (1) In terms of section 23(1) Partition Law list of documents has to be filed not less than 30 days before the date of trial.
- (2) When section 23(1) is considered with section 25(1) it is clear that the date of trial is not necessarily the first date on which the case is fixed for trial but would also include any date to which the trial is postponed.
- (3) As the additional list is filed (18.12.1998) well before the next date of trial (5.3.99) the documents could be accepted.

APPEAL from an order of the Court of Appeal.

Sirimal D. Vithanage for plaintiff-petitioner-appellant.

Cur.adv.vult.

March 31, 2000
S. N. SILVA, CJ.

This is an appeal from the order of the Court of Appeal dated 01 29.4.99 and the order of the District Court dated 5.3.99. By the order made on 5.3.99 the learned Additional District Judge refused

the application of the plaintiff-appellant to produce certain documents on the basis that these documents have not been included in a list filed in compliance with section 121 of the Civil Procedure Code.

We note that the applicable provision is section 23(1) of the Partition Law, in terms of which the list of documents has to be filed not less than 30 days before the date of trial. When this provision is considered in the light of section 25(1) it is clear that the date of trial is not necessarily the first date on which the case is fixed for trial but would also include any date to which the trial is postponed. The documents in question have in fact been included in the additional list filed on 18.12.1998 well before the next date of trial being 5.3.99. In the circumstances we allow this appeal and set aside the order made by the Additional District Judge on 5.3.99 and remit the case for trial *de novo*. We make no order as to costs. 10

PERERA, J. - I agree.

WEERASEKERA, J. - I agree.

Appeal allowed.