

MENDIS
v.
DUBLIN DE SILVA AND TWO OTHERS

SUPREME COURT,

FERNANDO, J., KULATUNGA, J. AND DHEERARATNE J.,

S. C No 67/86 – S. C SPECIAL LA/130/86 – C. A. APPEAL No 57/79(F) –
D. C. HAMBANTOTA P/80,

MARCH 14 and 15, 1990.

Constitution-Interpretation "aggrieved party" within the meaning of Article 128(1) of the Constitution – Partition Law, No. 21 of 1977, S 25(2) – Locus standi.

In a partition action the principal contest was between the plaintiff on the one hand and the 8th and 9th defendants on the other who claimed certain lots of the corpus by prescription. The 5th defendant who was the husband of the 9th defendant claimed certain improvement before the surveyor, but filed no statement of claim. The District Judge dismissed the action and the plaintiff appealed to the Court of Appeal making all parties to the action respondents, but only the 8th and 9th defendants resisted the appeal. The Court of Appeal reversed the judgement of the District Court and proceeded to allot shares to the plaintiff and 1st to 3rd defendants and declared the 5th defendant entitled to compensation for improvements. The 5th defendant appealed to the Supreme Court and a preliminary objection was taken on behalf of the plaintiff that the 5th defendant lacked *locus standi*.

Held :

In terms Article 128(1) of the Constitution an appeal lies to the Supreme Court at the instance of an aggrieved party. Such a party must be a party who has suffered a legal grievance, a party against whom a decision has been pronounced which wrongly deprived him of something or wrongly affected his title to something. These attributes are not present in the 5th defendant and therefore the appeal should be rejected.

Cases referred to :

In re Sidebottam 1880, 14 Ch. Div. 458

APPEAL from judgement of the Court of Appeal – preliminary objection.

I. M. R. Wijetunge, P. C. with M. L. De Silva for petitioner

N. R. M. Daluwatte, P. C. with L. V. P. Wettasinghe, P. Keerthisinghe and Miss S Abhaygeewa for plaintiff-respondent.

Cur. adv. vult

April 6, 1990.

DHEERARATNE, J.

This matter comes up by way of a preliminary objection raised by learned Counsel for the plaintiff-respondent, for entertaining by this Court the appeal preferred by the 5th defendant against the judgment delivered by the Court of Appeal, on the ground that the appellant lacks *locus standi*

A brief reference to the history of this case is necessary to appreciate the point raised by learned Counsel. The plaintiff filed this action in the District Court as far back as 30.3.1967, seeking to partition the land called lot c (Northern Block) of contiguous lands called Medagamakele and Digana. Although originally the action related to an extent of 26A, OR, 30P, after several surveys, the corpus was restricted to an extent of 6A. 3R. 18P. One of the principal contests to the case of the plaintiff came from the 8th and 9th defendants (the last being the wife of the 5th defendant) who pleaded for the dismissal of the action, on the ground that they – the 8th and 9th defendants – had prescribed to certain portions of the corpus.

The 5th defendant filed proxy on 9.11.1974 through his Attorney-at-Law Mr. T. S. Doole, who was also the Attorney-at-Law for the 8th and 9th defendants, but while 8th and 9th defendants filed a statement of claim, the 5th defendant did not. The 5th defendant claimed certain improvements in the corpus before the Surveyor, was present throughout the trial, and was the principal witness to testify in support of the case of his wife.

The learned trial Judge after a protracted trial lasting several days, gave judgment on 28.4.1978, dismissing the plaintiff's action, while upholding the claim of prescription of the 8th and 9th defendants to certain portions of the corpus. The plaintiff appealed from that judgment to the Court of Appeal making all the defendants inclusive of the 5th defendant, respondents. At the argument in the Court of Appeal, only the 8th and 9th defendants resisted the plaintiff's case through Counsel. The Court of Appeal on 31.7.1986 in reversing the judgment of the original Court, rejected the claim of prescription of the 8th and 9th defendants and proceeded to allot shares in the corpus to the plaintiff and 1st to 3rd defendants, further declaring the 5th defendant entitled to compensation for certain improvements effected by him on the lots claimed by the 9th defendant.

The present appeal, quite strangely, is not filed by the 8th or the 9th defendants, but by the 5th defendant. It is pointed out by learned Counsel for the plaintiff that in terms of Article 128(1) of the Constitution, the 5th defendant is no "aggrieved party" to the proceedings of the Court of Appeal, at the instance of which party only that Court has jurisdiction to grant leave to appeal (if not granted *ex mero motu*).

Our attention was invited to the case of *In re Sidebotham*,⁽¹⁾ in which James L. J., at p. 465 expressed as follows :—

“A person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which wrongly deprived him of something, or wrongly affected his title to something.”

I am unable to identify in the 5th defendant any of those attributes of an aggrieved man referred to by James L. J., Springing as they must, from the judgment of the Court of Appeal. The petition filed in this Court by the 5th defendant, appears to me to be a veritable statement of claim, and that too filed for the first time in the long and lengthy partition proceedings, spanning a period of about 20 years. This claim is made in the teeth of S. 25(2) of the Partition Law, No. 21 of 1977, which reads as follows :—

“If a defendant shall fail to file a statement of claim on the due date the trial may proceed *ex parte* as against such party in default, who shall not be entitled, without leave of Court, to raise any contest or dispute the claim of any other party to the action at the trial.”

I find it difficult to subscribe to the proposition advanced on behalf of the appellant, that a defaulting party, who is disentitled to raise a contest or a dispute as a matter of right **at the trial**, acquires such a privilege **once the trial is concluded**. How much so ever genuine, may be the 5th defendant's sharing in common a grievance with his wife. I am unable to hold that in the eyes of the law he is an aggrieved party to the judgment of the Court of Appeal. In the District Court, he asked nothing and received nothing ; in the Court of Appeal he gained perhaps unasked, partly what his wife lost, although it may be a poor consolation for the extent of his wife's loss.

The appeal is rejected with costs fixed at Rs. 525.

FERNANDO, J.—I agree.

KULATUNGA, J.— I agree.

Appeal rejected.