

SAPIN SINGHO
v.
LUWIS SINGHO AND OTHERS

COURT OF APPEAL
DISSANAYAKE, J. AND
SOMAWANSA, J.
CA NO. 165/89 (F)
DC GAMPAHA NO. 19414/P
FEBRUARY 18, 2002

Partition – Partition Law, No. 21 of 1997, sections 48, 48 (4) and 48 (4) (a) – Right of party to prove his title to a share left unallotted in the final decree – Right recognised.

Held:

- (1) A practice has developed whereby even an intervenient is permitted to prove his title to an unallotted share after the interlocutory decree is entered.
- (2) The right of a party to prove his title to a share left unallotted in the final decree is recognised.

APPEAL from the judgment of the District Court of Gampaha.

Cases referred to :

1. *Tambavitage Don Tepelis v. Thambavitage Don Albert* – CA No. 352/92 – DC Horana No. 2333/P.
2. *Dantanarayana v. Nonahamy* – 79 NLR Vol. 2 - 241.
3. *CA No. 868/92 – CAM 14. 10. 1993 – DC Mt Lavinia No. 13732/P.*

P. P. de Silva for 2nd and 4th defendant-appellants.

Plaintiff-respondent absent and unrepresented.

February 18, 2002

N. E. DISSANAYAKE, J.

This is an appeal arising out of the order dated 31. 05. 1989 made ⁰¹ by the learned District Judge of Gampaha, refusing an application of the 2nd and 4th defendant-appellants made by way of petition and affidavit that they be allotted shares which were left unallotted in the interlocutory decree.

Learned Counsel appearing for the plaintiff-respondent raised objection to the said application of the 2nd and 4th defendant-appellants on the ground that the 2nd and 4th defendant-appellants have not made the application under section 48 of the Partition Law. The learned District Judge had upheld the said objection by his order ¹⁰ dated 31. 05. 1989.

Learned Counsel appearing for the 2nd and 4th defendant-appellants contended before us that section 48 of the Partition Law has no application to an application of this nature and contended that the learned District Judge had erred in upholding the contention of learned Counsel for the plaintiff-respondent that section 48 of the Partition Law applied.

Learned Counsel appearing for the 2nd and 4th defendant-appellants cited the case of *Tambavitage Don Tepalis v. Thambavitage Don Albert*⁽¹⁾ the judgment of Edussuriya, J. ²⁰

Edussuriya, J. at page 2 of the judgment stated that:

"Section 48 (4) (a) is not applicable to an application of this nature and although there is no provision in the Partition Law under which an application of this nature can be made, a practice has developed in our Courts whereby even an intervenient is permitted

to prove his title to an unallotted share after the Interlocutory decree was entered.⁹

Edussuriya, J. in his judgment further referred to the decision in the case of *Dantanarayana v. Nonahamy*.⁽²⁾ Edussuriya, J. also in his judgment, referred to the decision in case No. CA No. 868/92⁽³⁾ where the Court of Appeal recognised the right of a party to prove his title to a share left unallotted in the final decree. ³⁰

Therefore, the learned District Judge has erred in rejecting the application of the 2nd and 4th defendant-appellants to allot the unallotted share in the interlocutory decree.

We set aside the order dated 31. 05. 1989 of the learned District Judge and direct the learned District Judge to hold an inquiry into the application made by the 2nd and 4th defendant-appellants by way of petition and affidavit. ⁴⁰

Appeal is allowed with costs.

The Registrar is directed to forward this record to the Registrar of the District Court of Gampaha forthwith and the learned District Judge is directed to hold an inquiry in respect of the said application expeditiously.

SOMAWANSA, J. – I agree.

Appeal allowed.