IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Kotapamunuge Dhammika,
67, Siriniwasa, Panadugama,
Akuressa.
Substituted Plaintiff-Respondent-Appellant

SC/APPEAL/79/2019
SP/HCCA/MA/RA/15/2011
DC MATARA 20197/P

Vs.

Bandupala Jayasundara,
'Menik', Porathota,
Akuressa.
Kotapamunuge Kumarasiri,
Siriniwasa, Panadugama,
Akuressa.
Koswatta Ralalage Seelawathie,
Mahawila, Godapitiya.
1st-3rd Defendants-Respondents-Respondents

Mohomed Hameen Nabeesathul Mishriya,
Potumullagewatta,
Godapitiya,
Akuressa.
4A Substituted Defendant-Petitioner-Respondent

Before: Hon. Justice Murdu N.B. Fernando, P.C.
Hon. Justice Yasantha Kodagoda, P.C.
Hon. Justice Mahinda Samayawardhena

Counsel: Manohara De Silva, P.C. with Harithriya Kumarage for the Substituted Plaintiff-Respondent-Appellant.

P. Peramunugama for the 4A Defendant-Petitioner-Respondent.

Argued on: 03.07.2024

Written Submissions on:

By the Appellant on 22.05.2019 and 15.07.2024
By the Respondent on 14.06.2019 and 15.07.2024

Decided on: 12.11.2024

Samayawardhena, J.

The plaintiff filed this action in the District Court of Matara seeking to partition the land known as Warakagahaowitawatta (වරකගහඕවිටවත්ත), approximately 1 acre in extent as morefully described in the plaint, among the plaintiff (½ share) and the 1st-3rd defendants (½ share). At the preliminary survey, the 4th defendant presented himself as a new claimant. The preliminary plan comprises Lot 1 and Lot 2. The 4th defendant sought to exclude Lot 2 on the basis that Lot 2 formed part of a different land known as Walewatta (වලේවත්ත). He did not claim any rights to Lot 1.

At the trial, the plaintiff raised no issues on the pedigree. The only contest raised at the trial was the identification of the corpus. The contest was between the plaintiff and the 4th defendant. The 1st-3rd defendants did not participate in the trial, nor did they establish their title, if any. It appears

that they are not interested in the land at all but the plaintiff made them parties in order to file a partition action. Such an approach undermines the objective of a partition action. A partition action is brought to put an end to the inconvenience of common ownership.

The plaintiff's pedigree is simple and straightforward. He produced only three deeds, marked P1-P3, to assert his entitlement to a ½ share of the land.

The District Judge, by judgment dated 01.10.2010, rejected the claim of the 4th defendant to exclude Lot 2 and proceeded to decide that both Lot 1 and Lot 2 form part of Warakagahaowitawatta. He allocated a ½ share to the plaintiff, while the remaining ½ share was left unallotted. This speaks volumes about the nature of this partition action.

Acting in revision, the High Court of Civil Appeal of Galle, in a well-considered judgment, set aside the judgment of the District Court on the ground that the land to be partitioned had not been properly identified. This appeal by the plaintiff is against the judgment of the High Court of Civil Appeal.

It is a well-established principle of law that if the identification of the corpus is found to be unsatisfactory, the partition action must fail. The identification of the corpus is a *sine qua non* for the investigation of title. If the identification of the corpus is doubtful, the necessity for the investigation of title does not arise.

Upon reading the judgment of the District Court, it is evident that the District Judge concluded that Lot 2 is part of Warakagahaowitawatta, not because there was sufficient evidence supporting that conclusion, but because the 4th defendant failed to establish that Lot 2 is part of Walewatta. This approach is incorrect. There was no burden on the 4th defendant to prove anything.

Even the surveyor, in the report on the preliminary plan, does not state that the land depicted in the preliminary plan is the land to be partitioned. The surveyor has not answered that question at all. The surveyor was not called to give evidence, despite the fact that the only issue before the Court was the identification of the corpus.

In the judgment, the District Judge has found fault with the 4th defendant for not taking out a separate commission to depict the correct corpus. This is a wrong approach. The 4th defendant does not seek to partition Warakagahaowitawatta. He has no interest in Warakagahaowitawatta.

When the contesting defendant or defendants do not seek partition of the land, it becomes the duty of the plaintiff to correctly identify the land to be partitioned, both in terms of its extent and boundaries. Failure to do so will result in the dismissal of the action. However, this does not imply that the existing extent and boundaries must perfectly align with those in the old deeds. The extent and boundaries are likely to vary over time, but any such discrepancies should ideally be explained in evidence, rather than in submissions.

In comparing the boundaries between the land to be partitioned and the land depicted in the preliminary plan, the District Judge, in his judgment, states that the only boundary that does not tally is the western boundary. This is incorrect.

Let me compare the four boundaries. According to the plaintiff's deeds, the northern boundary of Warakagahaowitawatta is the land known as Puswalkoratuwa. However, in the preliminary plan, Puswalkoratuwa appears as the northern boundary of only Lot 1.

According to the plaintiff's deeds, the western boundary is the public road, which is correct. Both the deeds and preliminary plan confirm the public road as the western boundary.

The southern boundary of the land as stated in the deeds is a land known as Warakawita, but according to the preliminary plan, Warakawita is the southern boundary of Lot 1 only. The southern boundary of Lot 2 is admittedly Walewatta, not Warakawita.

According to the plaintiff's deeds, the eastern boundary is Walewatta. However, the preliminary plan indicates that the eastern boundary of Lot 1 is Lot 2, which the 4th defendant claims is part of Walewatta. If Lot 2 is considered as part of Warakagahaowitawatta, then the eastern boundary of Warakagahaowitawatta is the Pradeshiya Saba Road, not Walewatta. The plaintiff did not give evidence on when the Pradeshiya Saba Road came into existence.

In any event, even if Lots 1 and 2 are considered forming part of Warakagahaowitawatta, there exists a significant discrepancy in the extent, which has not been explained by the plaintiff. The plaintiff filed the action to partition 1 acre land. The extent of both Lots 1 and 2 is 2 roods and 10 perches, which is nearly half the size of the land the plaintiff sought to partition.

I agree with the finding of the High Court of Civil Appeal that the land to be partitioned has not been properly identified. The argument of learned President's Counsel for the appellant that, if Lot 2 does not form part of Warakagahaowitawatta, the High Court ought to have directed the partition of Lot 1 rather than dismissing the action, is unsustainable because of the unexplained discrepancy in the extent by the plaintiff in his evidence. It is settled law that a partition action cannot be maintained to partition only a portion of the land.

The question of law on which leave to appeal has been granted namely, whether the High Court of Civil Appeal erred in concluding that the land has not been properly identified, is answered in the negative.

The appeal is dismissed with costs to be payable by the substituted plaintiff to the substituted 4th defendant.

Judge of the Supreme Court

Justice Murdu N.B. Fernando, P.C.

Judge of the Supreme Court

Justice Yasantha Kodagoda, P.C.

Judge of the Supreme Court