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

Mohammed Faiys Mufeez Arfath,
No. 48, Kankanamgoda Road,
China Fort, Beruwala.
Plaintiff-Judgment Creditor-
Respondent-Respondent-Appellant

SC/APPEAL/148/2023
WP/HCCA/KAL/REV/31/2018
DC KALUTARA L/5805

Vs.

Selladore Pathmanathan,
No. 48, Kaleel Place, Kalutara South.
Also No. 151/1, Dam Street,
Colombo 12.
2nd Defendant-Judgment Debtor-
Petitioner-Petitioner-Respondent

Mohammed Saleem Mohammed
Siyam,
No. 179, Hill Street,
Kalutara South.
1st Defendant-Judgment Debtor-
Petitioner-Respondent-Respondent

Before: Hon. Justice P. Padman Surasena
Hon. Justice Mahinda Samayawardhena
Hon. Justice Arjuna Obeyesekere

Counsel: Nizam Kariapper, P.C. with Nizam Ilham Kariapper for the Appellant.

J.A.J. Udawatta with Anuradha Ponnamperuma for the Respondent.

Argued on: 05.11.2024

Written Submissions:

By the Appellant on 06.03.2024
By the Respondent on 11.12.2024

Decided on: 05.03.2025

Samayawardhena, J.

The plaintiff-Judgment Creditor-Respondent-Respondent-Appellant (appellant) instituted this action in the District Court of Kalutara by plaint dated 23.04.2010 against the 1st Defendant-Judgment Debtor-Petitioner-Respondent-Respondent (1st defendant respondent) and the 2nd Defendant-Judgment Debtor-Petitioner-Petitioner-Respondent (2nd defendant respondent) seeking *inter alia* declarations (a) that he is entitled to a ½ share of the land described in the schedule to the plaint including the boutique room bearing assessment No. 531 standing thereon by Deed No. 1980 dated 04.10.1996, and (b) that Deed No. 1397 dated 13.02.2010, executed by the 1st defendant respondent in favour of the 2nd defendant respondent, is a nullity. The 1st defendant respondent filed answer seeking *inter alia* the dismissal of the plaintiff's action. The 2nd defendant respondent did not file answer and the case was fixed for *ex parte* trial against him. The 1st defendant respondent's source of title originates from the final partition decree entered in 1994 in partition case No. P/5880 filed in the same District Court. The appellant admitted this in the plaint but contended that the final decree entered in the said partition decree is a nullity, as it had been obtained fraudulently.

Halfway through the trial, the case was fixed for *ex parte* trial against the 1st defendant respondent as well. When the case came before the new District Judge on 27.03.2014 for further *ex parte* trial, five lines of evidence were led before the new Judge, who immediately thereafter delivered the *ex parte* judgment dated 27.03.2014 granting all the reliefs sought by the plaintiff in the prayer to the plaint with costs. The *ex parte* judgment in this complicated case, where the plaintiff *inter alia* challenges a partition decree, reads as follows: "මෙහෙයවන ලද සාක්ෂි හා ඉදිරිපත් කරන ලද ලේඛන සලකා බලා පැමිණිල්ලේ නඩුව පිළිබඳව සැහීමකට පත් වෙමි. ඒ අනුව නඩු ගාස්තු සහිතව විත්තියට එරෙහිව පැමිණිල්ලේ වාසියට නඩුව තීන්දු කරමි. ඒ අනුව තීන්දු ප්‍රකාශයක් ඇතුලත් කරන්න." There can be no doubt that the District Judge, rather than carefully examining the pleadings, issues raised, and evidence led at the *inter parte* trial and *ex parte* trial, mechanically entered decree for the plaintiff granting all the reliefs sought without even considering the specific reliefs claimed by the appellant in the plaint.

Upon service of the *ex parte* decree, the defendant respondents made an application to purge their default but this was rejected by the District Judge by order dated 05.05.2016. Thereafter, the writ was executed on 16.10.2017. The defendant respondents filed an application before the District Court seeking to recall the writ but this was also refused by the District Judge by order dated 22.01.2018.

The 2nd defendant respondent then filed a revision application before the High Court of Civil Appeal in Kalutara on 02.07.2018 seeking to set aside the *ex parte* judgment of the District Court and the subsequent orders made based on that *ex parte* judgment. After hearing both parties, by judgment dated 10.12.2020, the High Court allowed the revision application and dismissed the plaintiff's action. It is against this judgment of the High Court that the appellant has come before this court. This court granted leave to appeal on the following questions of law:

(a) Did the Civil Appeal High Court err in law by granting relief under section 839 of the Civil Procedure Code when purge default applications of the defendant respondents were dismissed?

(b) Did the Civil Appeal High Court err in law by overruling the preliminary objections of the appellant?

The judgment of the High Court is a well-considered judgment and there is no necessity for me to repeat its contents here. The main point stressed on behalf of the appellant in the pre-argument written submission filed before this court is that there were no exceptional circumstances for the High Court to invoke revisionary jurisdiction after a long delay from the date of the *ex parte* judgment. I am not inclined to accept this argument on several grounds.

The purported *ex parte* judgment of the District Court, limited to three simple sentences, does not constitute a judgment in the eyes of the law. It blatantly violates sections 85 and 187 of the Civil Procedure Code.

More importantly, a final decree entered in a partition action cannot be challenged collaterally. Section 48 of the Partition Law underscores the finality and conclusiveness of partition decrees while providing limited circumstances under which they may be challenged (*Fernando v. Marsal Appu* (1922) 23 NLR 370, *Mohamedaly Adamjee v. Hadad Sadeen* (1956) 58 NLR 217, *Madurapperuma v. Wijesundara* [2019] 1 Sri LR 512). Additionally, section 49 of the Partition Law allows for the recovery of damages if there was a failure to name a person as a party to the action. In appropriate cases, the invocation of revisionary jurisdiction presents another popular avenue for challenging partition decrees. The appellant has not directly challenged the partition decree through any of these methods.

The undivided rights which the appellant relies on through a Deed executed two years after the final decree of partition cannot be recognised in law, as those undivided rights were wiped out once the partition decree was entered.

In this case, there was no inordinate delay, as the respondents had been unsuccessfully trying to vindicate their rights in the District Court before going to the High Court. Even if there was a delay, when there is a manifest miscarriage of justice on the face of the record, the court cannot turn a blind eye by stating that there was a delay. In the Supreme Court Case of *Biso Menika v. Cyril De Alwis* [1982] 1 Sri LR 368 at 379, Sharvanada J. (as he then was) stated that "*When the court has examined the record and is satisfied the order complained of is manifestly erroneous or without jurisdiction, the court would be loath to allow the mischief of the order to continue and reject the application simply on the ground of delay, unless there are very extraordinary reasons to justify such rejection.*"

I answer both questions of law in the negative. With regard to the first question, I must further state that the High Court did not grant relief under section 839 of the Civil Procedure Code but rather exercised its revisionary powers to grant relief.

The judgment of the High Court is affirmed and the appeal is dismissed with costs.

Judge of the Supreme Court

P. Padman Surasena, J.
I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.
I agree.

Judge of the Supreme Court