

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

C.A. No. 441/97(F)

D.C. Matara No. 13247/P

D.J. Liyanapathirana

Appellant

Vs.

Alexina Liyanapathirana

Respondent

C.A. No. 441/97(F)

D.C. Matara No. 13247/P

BEFORE : K. T. CHITRASIRI, J.

COUNSEL : Lal Matarage instructed by Nilantha de Silva for the 5th
& 6th Defendant-Appellants

Nizam Kariapper with M.I.M.Iynullah & Ananda
Kulawansa for the Substituted 1st Defendant-
Respondent.

Nilanga Udalagama for the 4th Defendant-Respondent.

K. V. Sirisena for the 7B and 7C Defendant-
Respondents

ARGUED AND

DECIDED ON : 30th June, 2014.

K. T. CHITRASIRI, J.

At this stage, it is brought to the notice of Court that the documents marked in evidence as 5V1 to 5V4 are not found in the brief. Nothing is recorded in the journal entries or in the proceedings to show that those documents were tendered to Court either. Contention of the learned Counsel for the appellant is that the 5th and 6th defendant-appellants should have been allocated more shares, if the contents of those documents were

considered by the learned District Judge. He further submits that the learned District Judge has not even considered properly the conditions contained in the document marked P1 which is the last will executed by the original owner of the land sought to be partitioned. Counsel for the appellant also submits that he is in a position to submit those documents marked 5V1 -5V4 in the event a re-trial is ordered. All other Counsel have no objection to have a re-trial, particularly in order to have a clearer interpretation of the conditions contained in the document marked P1.

In view of the above submissions, it is clear that the learned District Judge had been prevented from considering the contents of the documents marked in evidence on behalf the two appellants as those were not found in the record. Section 25 of the Partition Law imposes a duty on the trial Judge to consider the rights of the parties in a partition action and then to arrive at the correct decision. Therefore, it is necessary to have this matter referred back to the District Court enabling the learned District Judge to consider the rights of the parties as required by law. In the circumstances, this case is remitted to the District Court of Matara to have a trial de novo. Accordingly, the judgment of the District Judge dated 11th August 1997 is set aside.

Learned District Judge of Matara is directed to hold a re-trial having in mind the duty casts upon him under Section 25 of the Partition Law No.21 of 1977.

Re-trial ordered.

Parties are to bear their own costs.

Registrar is directed to have the original record sent back to the District Court of Matara forthwith.

JUDGE OF THE COURT OF APPEAL

Kwk/=