

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

C.A. No. 1156/98(F)

D.C. Walasmulla No. 246/P

Wijemunige Gunapala
Nugawatte,
Walasmulla.

Appellant

Vs.

Wijemunige Sophiya alias Sopi Hamine
Walasmulla.

Respondent

C.A. No. 1156/98(F)

D.C. Walasmulla No. 246/P

BEFORE : K. T. CHITRASIRI, J.

COUNSEL : Lasitha Chaminda for the 3A defendant-appellant.

Plaintiff-respondent is absent and
unrepresented.

ARGUED AND

DECIDED ON : 30th June, 2014.

K. T. CHITRASIRI, J.

This is an appeal seeking to set aside the order dated 10th December 1998 of the District Judge of Walasmulla. By that order, the learned District Judge has declined to allow the application that was made to vary or amend the final decree entered on 31st July, 1997. (Vide proceedings at pages 82 and 83). The final decree so entered is found at pages 93 to 97 in the appeal brief. Accordingly, the final decree dated 31st July 1997 remains as it is.

The above circumstances show, that this appeal is not an appeal filed to challenge the judgment of the District Court. On the face of the decision, it is an order made in respect of the plantation found on

the land put in suit. This decision not being a judgment but being an order of the Court, no final appeal can be filed. If a person is aggrieved by such an order, he should first obtain leave of this Court and then only he is allowed to proceed with the appeal. Section 36(a) of the Partition Law No.21 of 1977 stipulates that a person who is dissatisfied even with a final decree in a partition action, he may prefer an appeal with the leave of the Court of Appeal first had and obtained. The order that is being challenged is an order that had arisen out of the matters referred to in the final decree entered in this case. Therefore, the appellant could not have come by way of a final appeal. Hence, it is clear that this appeal is misconceived. Accordingly, this appeal is dismissed with costs.

Appeal dismissed

JUDGE OF THE COURT OF APPEAL

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