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

Gunasiri Kithsiri Hemal Dias,
No. 9, 'M' Block,
Bambalapitiya Flats,
Colombo 4.
59th Defendant-Substituted Plaintiff-Appellant-Appellant

SC/APPEAL/174/2015
HCCA/GALLE/60/2004/F
DC GALLE 7040/P

Vs.

Trixie Dias Gunasinghe,
Wawlagoda,
Hikkaduwa,
And 86 Others.
Defendant-Respondent-Respondents

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Sobhitha Rajakaruna
Hon. Justice Sampath K.B. Wijeratne

Counsel: Manohara De Silva, P.C., with Hirosha Munasinghe for the Appellant.
Prince Perera for the 85th Defendant-Respondent-Respondent.

Argued on: 12.09.2025

Decided on: 10.10.2025

Samayawardhena, J.

The plaintiff instituted this action 47 years ago, by plaint dated 08.05.1978, in the District Court of Galle to partition the land known as *Bimpaluwewatta* situated in Hikkaduwa, in extent of 2 acres and 2 roods, among the plaintiff (2/3 share) and the 1st-8th defendants (jointly 1/3 share).

Following the institution of the action, a large number of parties intervened as defendants so much so, even before the case was fixed for trial, the number of defendants had increased to 88.

Preliminary Plan No. 1048 was prepared in 1979. That plan revealed that the actual extent of the land was 3 roods and 36.5 perches, and not 2 acres and 2 roods as pleaded. The plan also shows that the land in question is a valuable property bounding the Colombo-Galle main road in Hikkaduwa, consisting of a large number of business/residential premises.

Upon a commission issued by the District Court, Plan No. 1062 was prepared in 1997, that is, 18 years after the preparation of the Preliminary Plan, in order to superimpose certain plans on the Preliminary Plan. According to the surveyor's report, the plaintiff did not participate in that survey. At the second survey, further 21 new claimants lodged claims to the surveyor.

The foregoing facts alone are sufficient to demonstrate that the plaintiff filed this partition action without taking the statutory procedure seriously, thereby placing in difficulty numerous persons in possession of these business/residential premises. This type of conduct on the part of the plaintiff must not be encouraged, for it amounts to an abuse of the Partition Law.

There are several sections in the Partition Law that compel the plaintiff to bring all the parties who have some claim to the land. For instance, section 5 of the Partition Law enacts that the plaintiff in a partition action shall include in his plaint as parties to the action all persons who, whether in actual possession or not, to his knowledge are entitled or claim to be entitled to any right, share or interest to, of, or in the land to which the action relates, whether vested or contingent, and whether by way of mortgage, lease, usufruct, servitude, trust, life interest, or otherwise, or to any improvements made or effected on or to the land. It is significant to note that the duty of the plaintiff is not limited to including those who are in fact entitled to rights, but extends also to those who claim to be entitled or who have effected improvements. The plaintiff in the present case manifestly disregarded this statutory obligation.

Since the second survey in 1997, 28 years have lapsed. The *status quo* must inevitably have changed since the institution of the action in 1978.

The appellant before this Court is the 59th defendant, who was added as a party on 08.09.1994, as per Journal Entry No. 102 in the District Court case record. According to that Journal Entry, the 59th defendant was added on the basis that he had acquired the rights of the plaintiff during the pendency of the case. However, neither a copy of the alleged deed nor particulars thereof were produced to ascertain the nature of that transaction. This kind of voluntary alienations are contrary to section 66 of the Partition Law, and in my view the 59th defendant ought not to have been added as a party. The 59th defendant filed no statement of claim.

By Journal Entry No. 111 dated 25.05.1995, the 59th defendant was substituted as plaintiff on the basis that the original plaintiff had sold his rights in the land to him. Even at that stage, a copy of the alleged deed was not produced for the court to understand the nature of his claim and to decide the legality of the claim.

The trial was postponed on four occasions. On the 5th date of trial, namely 31.10.2001, the case was dismissed by the District Judge for want of appearance of any party.

Thereafter, the 59th defendant–substituted plaintiff applied to purge the default on the ground that he had been ill on the date in question. At the inquiry into that application, however, he failed to adduce sufficient evidence, and accordingly the District Court, by order dated 28.04.2004, refused the application.

Being dissatisfied with that order, the 59th defendant–substituted plaintiff preferred a final appeal to the High Court of Civil Appeal. By judgment dated 18.02.2014, the High Court dismissed the appeal, holding that the refusal to purge default by the District Court was correct and the 59th defendant-substituted plaintiff, if he so wished, could file a fresh action.

The 59th defendant-substituted plaintiff thereafter appealed to this Court. Leave to appeal was granted on the following questions of law:

(a) Are the judgments of the District Court and High Court valid in law or made according to law?
(b) Could the trial court dismiss the plaint in the absence of the plaintiff without first having notified the other parties concerned and endeavoured to compel them to bring the action to an end?
(c) As the stage of *litis contestatio* has been reached in this case, could the court reject the said application on the grounds stated in the order?

On the unique facts and circumstances of this case, I answer the above questions against the 59th defendant–substituted plaintiff. As noted earlier, his very *locus standi* to prosecute this action is in doubt. Forty-seven years have elapsed since the filing of this action. Even in the District Court, points of contest were never raised. A large number of parties intervened from time

to time. The original plaintiff did not institute this action with seriousness, and failed to implead all necessary parties.

Accordingly, I dismiss the appeal without costs.

Judge of the Supreme Court

Sobhitha Rajakaruna, J.
I agree.

Judge of the Supreme Court

Sampath K.B. Wijeratne, J.
I agree.

Judge of the Supreme Court