

SUMANADEWA AND ANOTHER
v.
SEDIRIS AND ANOTHER

COURT OF APPEAL

P. R. P. PERERA, J. AND WIJAYARATNE, J.

C. A. APPLICATION No. 233/84– D. C. AVISSAWELLA 13670/P
NOVEMBER 7, 1989.

Civil Procedure – Civil Procedure Code, ss. 839 and 189– Accidental slip or omission.
Evidence (in a partition suit) was led at the District Court during a re-trial that 7th and 8th defendants are the children of Anjina. In an interlocutory appeal in the same case the Court of Appeal had said the 3rd to 13th defendants are the children of Emina. An application was made to correct this on the ground that this was an accidental slip or omission.

Held :

Court has ample power under section 189 read with section 839 of the Civil Procedure Code to correct the error in question as it was an accidental slip or omission.

Case referred to :

(1) *Thambipillai vs. Muthucumaraswamy* (57 N. L. R. 97)

APPLICATION for revision of order of the District Judge of Avissawella.

Dr. H. W. Jayewardene, Q. C. with D. R. P. Gunatilake and Harsha Cabraal for the 7th and 8th Defendants – Petitioners.

1st and 2nd Plaintiffs-Respondents absent and unrepresented.

cur. adv. vult.

November 13, 1989.

WIJEYARATNE, J.

Case No. 13670/P was filed in the District Court of Avissawella on 23.6.1973 by the plaintiffs for the partition of the land called "Alubogahawatta" situated at Kalatuwa Kanda in Ratnapura District. On 25.9.1975 the 1st to 13th defendants filed their amended statement of claim.

On 25.11.1975 the case was taken up for trial after issues were framed. The trial was continued thereafter.

On 12.12.1975 the learned District Judge gave judgment answering the issues in favour of the plaintiffs and the 1st and 2nd defendants and declaring them entitled to the said land.

Being dissatisfied, the 3rd to 13th defendants appealed therefrom to this court.

Thereafter the said appeal under No. C. A. (S. C.) 823/75 (F) came up for hearing on 21.9.82 before Hon. Justice Abdul Cader and Hon. Justice H. A. G. de Silva and judgment was delivered on the said date setting

aside the said interlocutory decree and giving the 3rd to 13th defendants-appellants a 1/4th share and further ordering the learned District Judge to investigate and decide on the devolution of rights to another 1/4th share.

For the purpose of this appeal a certified copy of this judgment was filed marked "D".

Thereafter, on 14.2.1984 the case came up for trial again in the District Court of Avissawella and the learned District Judge commenced the inquiry into the 1/4th share on the following two issues raised by the parties :-

- (1) Have the 1st and 2nd plaintiffs and the 1st and 2nd defendants acquired title to the said 1/4th share by prescriptive possession?
- (2) Has the 1/4th share of Sootiya devolved on the 3rd to 13th defendants ?

When the evidence of the 1st defendant Hewainne Sopia was led, the witness stated that the 7th and 8th defendants are the children of Anjina, the wife of Sootiya, whose 1/4th share was under investigation. However, the attorney-at-law for the plaintiffs/ respondents objected to this evidence on the basis that the above/ mentioned judgment of this court dated 21.9.1982 stated that the 3rd to 13th defendants are the children of Emina.

Actually on a perusal of the judgment of this court, it is stated as follows:-

"Therefore there can be no controversy that Emina's 1/4th share devolved on 3rd to 13th defendants who are the children of Emina."

Actually the 3rd to 13th defendants are not the children of Emina and this is an obvious mistake. Therefore the 7th and 8th defendants-petitioners have filed this application under section 189 of the Civil Procedure Code to correct the judgment of this court dated 21.9.1982 by the deletion of the words "who are the children of Emina" immediately after the words "devolved on 3rd to 13th defendants".

To this application objections dated 17.5.1984 were filed by the 1st and 2nd plaintiffs-respondents. However, at the hearing of this application they were not represented.

Dr. H. W. Jayewardene appeared for the 7th and 8th defendants petitioners and submitted that this is a clear case of an error arising from an accidental slip or omission. He cited the decision of the Supreme Court in *Thambipillai v. Muthucumaraswamy* (57 N. L. R. 97). That judgment sets out the history of this section. In that case Gratiaen, J., corrected the decree entered by the Supreme Court in appeal on the ground that there was an accidental slip.

Dr. H. W. Jayewardene submitted that in the case before us, this court has ample power under section 189 read with section 839 of the Civil Procedure Code.

I agree with his submission. It would appear that Sootiya was married to Anjina and the 7th and 8th defendants are their children. Therefore, when the judgment of this court dated 21.9.1982 stated that the 3rd and 13th defendants are the children of Emina, it was an accidental slip or omission.

Acting under section 189 the Civil Procedure Code, I correct this judgment by deleting the words "who are the children of Emina" immediately after the words "devoiced on 3rd to 13th defendants".

I have considered the question of costs in this case. The 1st and 2nd plaintiffs-respondents have filed objections to this application stating that this correction is outside the scope of section 189 of the Civil Procedure Code and that the statement of the facts of the judgment is clear and plain, when it is not so.

When this case was taken up for further trial on 14.12.1984 in the District Court of Avissawella in accordance with the judgment of this court, learned counsel for the plaintiffs-respondents took up this objection based on this obvious error in the judgment of this court.

Therefore I allow this application and make the correction in the judgment of this court dated 21.9.1982 by deleting the words "who are the children of Emina" as indicated above.

In the circumstances I order the 1st and 2nd plaintiffs-respondents to pay the 7th and 8th defendants-petitioners the cost of this application.

P. R. P. PERERA, J. – I agree.

Application allowed.
