WANASUNDARA
v
PIYADASA AND OTHERS

SUPREME COURT
S.N. SILVA,CJ.
EDUSSURIYA J, AND
J.A.N.DE SILVA, J.
SC APPEAL No. 61/2002
WITH SC APPEAL No.66/2002
C.A.No. 112/89(F)
DC RATNAPURA NO. 2129/L
13 FEBRUARY, 2003

Declaratory Action – Shortcomings in the judgment of the District Court and the Court of Appeal – Power of Supreme Court to finally decide the matter where the shortcomings are not material particularly in view of the inordinate length of the litigation.

The original plaintiff instituted action against the defendant for a declaration of title to and ejectment from the land in dispute on the ground that the defendants were licensees on the land and that the plaintiff owned an undivided 1/3 thereof. The defendants claimed that the 2nd defendant has acquired a prescriptive title to the land. The District Judge rejected this claim and gave judgment for the plaintiff but in answering the relevant issue as regards the relief (viz., issue No 7 which referred to both declaration and ejectment) said "As prayed for in the plaint, a declaration of title only to an undivided 1/3"

The defendants appealed. Notwithstanding the vagueness of the District Judge's answer as to the relief especially as regards ejectment, the Court of Appeal held that the plaintiff was entitled to institute an action for declaration of title and ejectment and dismissed the appeal.

Thereafter the defendant's counsel appearing before an Administrative Tribunal urged that in terms of the Court of Appeal judgment the planintiff had to file a separate action for a declaration of title and ejectment. On a joint application by the parties the Court of Appeal gave a "clarification" and also deleted the answer to issue 7 as it stood and proceeded to answer the entire issue

in the affirmative . No appeal was lodged from that judgment of the Court of Appeal; but both parties sought leave to appeal from the order of the Court of Appeal in "clarification". The defendant, in appeal No. 61/2002 has complained that whilst the parties sought a "clarification" the court had proceeded to amend the judgment.

Held:

1. The Court of Appeal has stepped into an area they ought not to have (by deleting the District Judge's answer to issue 7) since only a "clarification" was sought.
2. In view of the fact that the litigation was 20 years old the Supreme Court should consider the matter on its merits and set aside the order of the Court of Appeal by way of clarfication.
3. The appeals are decided on the basis that the District Judge held that the plaintiff was entitled to a declaration of title to the undivded 1/3 share of the land and ejectment of the defedants and costs; and that judgment was affirmed by the Court of Appeal.

APPEAL from certain orders made by the Court of Appeal by way of "clarification".

R.C. Gunaratne with *J.A. Salwature* and *A.J.M. Thahir* for defendant appellants in SC 61/2002 and 3rd defendant respondent in SC 66/2002.

Gamini Marapana, P.C. with *Champaka Ladduwahetty* and *Navin Marapana* for plaintiff-respondent in SC 61/2002 and plaintiff-appellant in SC 66/2002.

Cur.adv.vult.

March 28,2003

J.A.N.DE SILVA, J.

The original Plaintiff-Respondent (who died during the pendency of this action) by his amended plaint dated 24th February 1983 sought (1) a declaration of title to an undivided 1/3 of the land described in the schedule thereto depicted in Plan No. 388 dated 16th October 1978 made by D.W. Ranatunge, Licensed Surveyor in extent 7A - 2R - 30P, (2) ejectment of the Defendants, their agents and servants therefrom and damages.

The original Plaintiff had pleaded his title to an undivided 1/3 share which had devolved on him on his parents' death, stating that the original owner his father, derived title from a Crown Grant to an extent of 6 Acres - 1 Rood - 30 Perches. The original Plaintiff had also pleaded that the 2nd Defendant had come on the land under his predecessor in title.

The Defendants by their amended answer filed in May 1983 denied that they came on the land as licensees and claimed that the 2nd Defendant had acquired prescriptive title to lots 1,2,3 and 4 in extent 7 Acres - 2 Roods - 30 Perches depicted in Plan No. 388.

After trial the claim of prescriptive title was rejected by the learned District Judge and the Defendants had lodged an appeal.

At the hearing of the appeal the attention of the Court had been drawn amongst other things to the fact that issues Nos. 11 and 12 had not been answered.

The failure to answer issue No.11 was immaterial since it was a follow up on issue No. 10. In the judgment of the Court of Appeal the learned Judge had dealt with and answered issue No. 12 in favour of the Plaintiff-Respondent. Thereafter, the Court of Appeal in its judgment had dismissed the appeal of the Defendants stating that "since the Defendants - Appellants have repudiated the tenancy under the Plaintiff-Respondent, the Plaintiff-Respondent has a right to institute an action for declaration of title to eject the Defendants-Appellants and for restoration of possession of the Plaintiff-Respondent".

The Plaintiff-Respondent thereafter had sought a clarification of the above mentioned passage in the Court of Appeal judgment, because the Counsel appearing for the Defendants-Appellants at an inquiry before the National Gem and Jewellery Authority had taken up the position that according to the Court of Appeal judgment the Plaintiff-Respondent had to institute another action to obtain a declaration of title and ejectment of the Defendants-Appellants and restoration of possession.

Thereafter the Court of Appeal had expressed a "clarification and deleted the answer to issue No. 7 as it stood and answered it

in the affirmative. Thereafter, both parties filed applications for special leave to appeal from the order made in "clarification".

The Defendants-Appellants in appeal No. 61/2002 have taken up the position that what was sought by the Plaintiff-Respondent was only a clarification but that the Court of Appeal had in effect amended its judgment. This Court granted special leave in both appeals in order to arrive at a finality in this matter which has been pending for the past twenty years.

It is unfathomable as to how any serious submission could be made, that what the Court of Appeal meant by the passage in question was that the Substituted Plaintiff-Respondent had to file another action for declaration of title to a 1/3 share of the land described in the schedule to the Amended Plaint of 24th February 1983 and ejectment in the face of the following facts, namely:

1. that the Plaintiff-Respondent had already filed such an action namely, the present action, and that even if as contended by the Counsel for the Defendants-Appellants one were to infer that the relief sought by the Plaintiff-Respondent relating to ejectment and restoration to possession had not been granted by the learned District Judge, the Substituted Plaintiff-Respondent had already obtained a declaration of title to 1/3 of the land in dispute. If in fact the Court of Appeal had stated that the Substituted Plaintiff-Respondent had to institute another action for ejectment only, this position may have been different, and
2. the passage in the judgment of the Court of Appeal which sets out as follows:

   "It is of relevance to note that in view of the averments 6, 7 and 8 of the plaint and prayer (3) of the plaint which are based on the contractual relationship of the Plaintiff-Respondent and the 2nd Defendant-Appellant and in view of the aforementioned rule of estoppel, that *this action* is not only an action for declaration of title but also takes the face of an action that is based on the contractual relationship of the Plaintiff-Respondent and the Defendants-Appellants, *by which the Plaintiff-Respondent is seeking his right to restoration of ownership and possession of the corpus.*

Plaintiff-Respondent who was also lawfully in possession of the corpus was seeking to eject the Defendants-Appellants as they were disturbing his possession."

It is as a follow up on this that the learned Judge of the Court of Appeal stated that the Plaintiff-Respondent has a right to institute an action for declaration of title to eject the Defendants-Appellants and for restoration of possession of the Plaintiff-Respondent, thereby referring to the present action, and as such it is clear the Court of Appeal held that the Plaintiff-Respondent was entitled to ejectment and restoration to possession. There is no appeal filed from that judgment.

It was also contended by the Counsel for the Defendants-Appellants that on a reading of the answer to issue No. 7 that it was clear that the Plaintiff-Respondent had only been granted declaration of title and not ejectment of the Defendants-Appellants.

Issue No. 7 reads as follows:

"If the above mentioned issues are answered in favour of the Plaintiff, is the Plaintiff entitled to the reliefs prayed for in the Plaint"?

The reliefs prayed for in the amended plaint of 24th February 1983 on which the trial proceeded are as follows:

1. That the Plaintiff be declared entitled to an undivided 1/3 share of the land described in the schedule to the plaint,
2. damages
3. for ejectment of the Defendants, their agents, servants or all others from the land and the Plaintiff be placed in possession
4. costs.

The Answer to issue No. 7 reads as follows:

"As prayed for in the plaint, a declaration of title limited only to an undivided 1/3"

Following the answer to issue No. 10 the judgment states as follows:

"Judgment is entered in favour of the Plaintiff."

It was argued that the prayer for ejectment had not been granted.

In examining this question it is important to refer to section 187 of the Civil Procedure Code which states that "The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and reasons for such decision".

The answers to issues are almost always monosyllabic and follow up the matters in issue discussed and decided in the body of the judgment. When one examines the body of the judgment it is seen that although damages have not been awarded in as much as no evidence has been led on the same, there is not a single word in the body of the judgment for disallowing the prayer for ejectment and further the claim of prescriptive title by the Defendants-Appellants has been rejected by the learned District Judge in the body of the judgment, and accordingly the Defendants-Appellants have no right to remain in possession any longer.

Therefore on a reading of the body of the judgment it is clear that though not included in the answer to issue No. 7, the Plaintiff-Respondent was entitled to ejectment of the Defendants-Appellants from the land in question. The Plaintiff-Respondent is therefore entitled to ejectment of the Defendants-Appellants on the basis of the reasoning in both the District Court judgment as well as the judgment of the Court of Appeal dated 10th May 2002. Besides the sole purpose behind the institution of this action was to recover possession following upon a declaration of title.

It was also contended that by the answer to issue No. 2 the learned District Judge had held that the Plaintiff-Respondent was only entitled to lot 2 in plan No. 388.

It is obvious that the learned District Judge referred to lot 2 of the superimposed plan which was made up of an extent of 6A-1R-10P which the Plaintiff-Respondent's father got on the Crown Grant, because issue No. 1 had been framed on the Crown Grant and also because he has stated in the judgment that "for the reasons set out above issues, 1,2,3 and 4 have to be answered in the affirmative", and lot 2 of the superimposed plan is 6 Acres - 1 Rood - 10 Perches in extent. However the Plaintiff-Respondent and the other co-owners had possessed and prescribed to an extent of 7A-

2R-30P and this is obvious from the fact that there is a waterway (Ela) both on the Northern and Eastern boundaries,a Ridge on the South East, a Bank on the South separating the land in dispute from Palm Garden Estate and a wire fence on the West enclosing an extent of 7A-2R-30P, which said extent the 2nd Defendant had been placed in possession of by the Plaintiff's mother according to the Plaintiff. Though the Defendants-Appellants denied having come into possession of the land with the leave and license of the Plaintiff-Respondent's mother, both Courts have rejected this position. Further, the Defendants-Appellants have not taken up the position that the extent of 6A-1R-30P was another land to which they had also prescribed. Besides, the Defendants by their amended answer of 18th May 1983 state quite categorically that the 2nd Defendant conveyed the land referred to in lots 1, 2, 3 and 4 in Plan 388 of 23rd November 1978 to the 3rd Defendant, thereby admitting that they treated lots 1, 2, 3 and 4 as one land. In any event, the learned District Judge has held that the Plaintiff-Respondent is entitled to an undivided 1/3 of the land described in the schedule to the plaint which is in extent 7A-2R-30P.

So that it is clear in the end, that there has been much ado over nothing and that it was the Defendants-Appellants' Counsel at the Gem and Jewellery Authority who caused confusion by trying to give a wrong interpretation to the judgments of the District Court as well as the Court of Appeal who has been responsible for causing the Substituted-Plaintiff-Respondent to panic and seek a clarification.The Court of Appeal Judges have thereafter stepped into an area they ought not to have, since only a clarification was sought.

Therefore I set aside the order made in clarification by the Court of Appeal. Now, that this matter has been brought to our notice it is our bounden duty as the highest Court not only to ensure that we leave no room for anyone to cause confusion by making frivolous submissions but also to see an end to litigation that has been pending for the past twenty years and therefore I repeat that the District Court of Ratnapura has held that the Plaintiff-Respondent was entitled to a (1) declaration of title to an undivided 1/3 share of the land described in the schedule to the amended plaint of 24th February 1983 and (2) ejectment of the Defendants-Appellants, their agents, servants, and all those holding under them

from the land described in the schedule to the said amended plaint and costs and that, that judgment was affirmed by the Court of Appeal and further, that the Court of Appeal has also held that the Plaintiff was entitled to maintain this action for declaration of title and ejectment.

For the aforementioned reasons it is not necessary for this Court to deal with appeal No. 66/2002 and the said appeal is dismissed.

Parties will bear their costs in both appeals.

S.N. SILVA, C.J. - I agree.

EDUSSURIYA, J. - I agree.

Appeal dismissed.