ABEYRATNE AND ANOTHER
v.
MANCHANAYAKE

COURT OF APPEAL
WIJEYARATNE, J. AND
WEERASEKERA, J.
C.A. 566/85 (F)
D.C. RATNAPURA CASE NO. 5368/P
5 OCTOBER, 1992.

Partition – Order for delivery of possession – Partition Law, section 52(1) – Application of 10 year bar in s. 337 of Civil Procedure Code in relation to payment of owelty and compensation under s. 52(1) of the Partition Law – Interpretation – Generalia specialibus non-derogant.

By a final partition decree dated 24.10.71 a party was declared entitled to certain lots and also ordered to pay owelty and compensation to certain other parties, which amounts were paid only on 9.11.83.

He thereafter made an application for an order for delivery of possession under section 52(1) of the Partition Law, when objections were taken based on section 337 of the Civil Procedure Code which prohibits an application for execution of decree after 10 years from the date of decree (subject to certain exceptions which were not relevant).

Held:

The proviso to section 52(1) of the Partition Law, which provides that a party who is liable to pay compensation or owelty, shall not be entitled to obtain an order for delivery of possession until such amount is paid, is applicable in the matter and the 10 year period in section 337 of the Civil Procedure Code begins to run from the date when compensation or owelty is paid.

When the Legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests its intention very clearly. This is expressed by the Latin maxim *generalia specialibus non-derogant* (general words do not derogate from very special provisions).

Neither section 77 of the Partition Law which states that the provisions of the Civil Procedure Code relating to the execution or service of writs etc. shall apply in relation to the execution of service of writs etc. in a partition action, nor section 79 of the Partition Law which lays down that in any matter or question of procedure not provided for in the Partition Law the procedure laid down in the Civil Procedure Code in a like matter or question is to be followed by the court governs the matter because special provision has been made by the Legislature under section 52(1) of the Partition Law and the proviso thereto in respect of partition decrees.

Cases referred to:

1. *Corporation of Blackpool v. Starr Estate Company Limited* [1922] 1AC27, 34.
2. *Seward v. Vera Cruz* (1884) 10AC 59, 68.

APPEAL from judgment of the District Court of Ratnapura.

G. S. Marapana, P.C. with *Raja Peiris* for plaintiff-respondent.

R. K. W. Gunasekera with *Wijaya Tennekooon* for 14th *defendant-appellant.*

18th defendant-appellant unrepresented.

Cur adv vult.

30th October, 1992.
WIJEYARATNE, J.

In this case the plaintiff-respondent filed this action on 21.6.63 to partition a land called Paluwatta situated at Nivitigala. The final decree for partition of the land was entered on 24.10.71 in terms of Partition Plan No. 864 dated 7.12.69 made by Surveyor M. W. Ratnayake.

According to this scheme of partition the plaintiff-respondent was allotted lots 8 and 9 in the said plan. The plaintiff-respondent had to pay certain amounts of money to various defendants including the appellants as compensation and owelty, while they in turn had to pay certain sums of money to the plaintiff-respondent (very probably as *pro rata* costs). After setting off these amounts the plaintiff-respondent had to pay to the 1st to 4th, 6th and 13th to 18th defendants a sum of Rs. 96.05 as compensation and owelty which was deposited in court on 5.11.83.

Thereafter the plaintiff-respondent on 3.2.84 had made an application for an order for the delivery of possession of the said lots 8 and 9 (under section 52(1) of Partition Law, No. 21 of 1977).

Objections were filed by the 14th and 18th defendants-appellants. Thereafter an inquiry was held and after hearing submissions the learned District Judge by his order dated 19.8.85 overruled the objections and allowed the application for delivery of possession of the said lots.

The objections were based on section 337 of the Civil Procedure Code (as amended by Act No. 53 of 1980) which prohibits an application for an execution of decree after the expiration of 10 years from the date of decree (subject to certain exceptions set out in section 337(1)(b), which are not relevant for this appeal).

The learned District Judge relied on the proviso to section 52(1) of the Partition Law which provides that a party who is liable to pay any amount as owelty and compensation for improvements shall not be entitled to obtain an order for delivery of possession until such amount is paid. Since owelty and compensation had been paid only

on 9.11.83, he held that the plaintiff-respondent was entitled to obtain an order for delivery of possession.

From this order the 14th and 18th defendants-appellants have filed this appeal and at the hearing only the 14th defendant-appellant was represented by Mr. R. K. W. Gunasekera.

Mr. R. K. W. Gunasekera submitted that section 337 of the Civil Procedure Code (as amended) operates as a bar to this application as more than 10 years have elapsed from the date of final decree. He relied on Section 77 of the Partition Law which reads as follows:–

> "The provisions of the Civil Procedure Code relating to the execution or service of writs, warrants and other processes of court shall apply in relation to the execution or service of writs, warrants and other processes of court in a partition action."

He also relied on section 79 of the Partition Law which provides as follows for a *casus omissus*:–

> "In any matter or question of procedure not provided for in this Law, the procedure laid down in the Civil Procedure Code in a like matter or question shall be followed by the court, if such procedure is not inconsistent with the provision of this Law."

Therefore he submitted that section 337 of the civil Procedure Code (as amended) governs the matter.

However, it should be kept in mind that when the Legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. This is expressed by the Latin maxim *Generalia specialibus non-derogant* (general words do not derogate from very special provisions, or, special provisions will control general provisions).

In the case of *Corporation of Blackpool v. Starr Estate Company Limited*,[1] Viscount Haldane stated–

> "We are bound . . . to apply a rule of construction which has been repeatedly laid down and is firmly established. It is that

> wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to."

Again in the well-known case of *Seward v. Vera Cruz,*[2] the Earl of Selborne, L.C., stated as follows:–

> "Now if anything be certain it is this that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so."

This Latin phrase has further been illustrated by the following passage in the book "Statutory Interpretation" by F. A. R. Bennion (1984 Edn.) at pages 378 and 379:–

> *"Clausula generalis non-referta ad expressa* (General words are taken not to be intended to disturb express stipulations).
>
> *Generalia verba sunt generaliter intelligenda* (General words are to be understood generally. It is not to be supposed that the draftsman could have had in mind every possible combination of circumstances which may chance to fall within the literal meaning of general words).
>
> *Generalis clausula non porrigitur ad ea quae antea specialiter sunt comprehensa.* (A general clause does not extend to things previously dealt with by special provision)."

In short where the literal meaning of a general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. Accordingly the earlier specific provision is not treated as impliedly repealed.

Therefore section 337 of the Civil Procedure Code (as amended) does not in any way repeal, override or affect the provisions of section 52(1) of the Partition Law and the proviso thereto, because the latter is a special provision enacted by the Legislature in respect of partition decrees.

For the same reason, sections 77 and 79 of the Partition Law do not make the provisions of the Civil Procedure Code applicable in the matter as special provision is made in section 52(1) of the Partition Law and the proviso thereto.

Therefore on a consideration of the matter, section 337 of the Civil Procedure Code (as amended by Act No. 53 of 1980) does not override the provisions of section 52(1) of the Partition Law which by its proviso states that a party liable to pay any amount as owelty or compensation for improvements shall not be entitled to obtain such order until that amount is paid.

The amount due as owelty and compensation from the plaintiff-respondent was paid only on 9.11.83. Therefore the plaintiff-respondent is entitled to obtain an order for delivery of possession only after that date. If the period of 10 years referred to in section 337 of the Civil Procedure Code applies to applications under section 52(1) of the Partition Law for delivery of possession, such period only begins to run from the date when owelty or compensation as ordered has been paid. As this owelty or compensation had been paid on 9.11.83, the period of 10 years had not elapsed when the application was made for an order for delivery of possession.

Therefore I hold that the plaintiff-respondent is entitled to obtain an order for delivery of possession of the said lots 8 and 9 and the order of the learned District Judge dated 19.8.85 is affirmed.

The appeal is dismissed with costs payable by the 14th defendant-appellant to the plaintiff-respondent.

WEERASEKERA, J. – *I agree.*
Appeal dismissed.