

LAFIR  
V.  
GUNAPATHY

COURT OF APPEAL.  
DR. GUNAWARDANE, J(P/CA)  
DE SILVA, J.  
C.A. 736/95  
D.C. COLOMBO 14441/P  
MARCH 29,1996.

*Partition - Partition Law 21 of 1977 - S.43,47,409,415 of the Civil Procedure Code - Sale by Public Auction - Money deposited in Bank Account - Vacant Possession taken over - who is entitled to the Interest upto date of taking over of Possession?*

The Plaintiff Petitioner was declared entitled to undivided 3/4 share and the Defendant-Respondent to the balance 1/4 share. Court made order for the sale by Public Auction of the Corpus first between the Petitioner and the Respondent. At the Public Auction, the Petitioners' bid was accepted and he on 22.2.93 deposited the said sum in Court in a Savings Account. The Possession of the Corpus, was obtained by the Petitioner on 16.12.94. The Petitioner thereafter on 19.1.95 moved Court without notice to the Respondent, that interest lying to the Credit of the case which had accrued in the Savings Account upto 31.12.94 be paid to him. The District Court without inquiry allowed this application and as a result Rs. 380,082.15 was withdrawn by the Petitioner. However the Respondent moved Court on 19.5.95 praying that the Petitioner be directed to bring into Court the amount of interest so withdrawn. The Court after inquiry directed the Plaintiff Petitioner to bring into Court the said amount. The Plaintiff Petitioner seeks to revise this order.

**Held:**

(1) It is to be noted that no sooner that Petitioner had deposited the sale proceeds into Court he fulfils his obligations and it is the duty of Court to hold that money on behalf of the beneficiary-the Respondent.

(2) S.47 of the Partition law has no application, because S.47 deals with claim of several parties.

(3) S409-415 of the Civil Procedure Code are also not applicable. These sections apply to actions filed by a Plaintiff against a Defendant arising out of money claims on account of a debt or damage. The present action is not an action filed by the Respondent to recover a debt or damage.

**Per De Silva, J.**

"The order permitting the withdrawal of interest was made on 1.3.95 by an ex parte application which had caused grave prejudice to the Respondent, the Respondent had correctly invoked the jurisdiction of the District Court which made the said order to obtain relief".

**APPLICATION** in revision from the order of the District Court of Colombo.

*R. Manikkavasagar* for Petitioner.

*S. Mahenthiran* for Respondent.

*Cur. adv. vult.*

May 20, 1996.

**J.A.N. DE SILVA, J.**

This is an application for revision against the order of the learned District Judge dated 10.10.95 wherein she has directed the Plaintiff Respondent Petitioner (hereinafter referred to as Petitioner) to deposit a sum of Rs. 380, 082./15 in Court. The said sum was the accrued interest of the purchase price deposited in Court of the 1/4 th share purchased by the Petitioner.

The Counsel for both Parties agreed that this matter be decided on the written submissions. The facts relevant to the application are as follows.

In the Partition action No: 14441/P the Plaintiff Petitioner was declared entitled to an undivided three-fourth (3/4 th) share and the Defendant-Respondent the balance one fourth (1/4 th) share of the land and premises which was the subject matter of the action.

On the 26th of November 1992 the District Court of Colombo made order for the sale by Public Auction of the Corpus first between Petitioner and the Respondent at the upset price of Rs. 300,00/- per perch. The Court also made order that if the corpus could not be sold at or above the upset price then the auction should take place in Public.

The Public Auction took place on the 19th of January 1993 and the Petitioner made his bid for the 1/4th share of the Respondent at a price

of Rs. 1,556,250.00 at which price the auction was concluded. One of the conditions of sale was that the purchase money should be deposited in Court to the credit of the case. Accordingly, the petitioner on 22.02.93 deposited the said sum of Rs.1.556,250.00 in Court and the same was held by Court in the Savings Account 502652 at the Pettah Branch of the National Savings Bank.

On 26.02.93 the Petitioner filed an application in Court for delivery of possession of the portion of the corpus belonging to the Respondent which was in the possession of persons claiming to be tenants under the Respondent. The inquiry into these matters took place on several dates and finally possession of the entire corpus was obtained by the Petitioner in December 1994.

After the Plaintiff-Petitioner obtained vacant possession of the Corpus, on 19.01.1995, the petitioner filed a motion without notice to the Respondent, alleging that he had obtained vacant possession of the corpus on 16.12.94 and moved that the interest lying to the credit of this case which had accrued in the savings account upto 31.12.94 be paid to the Petitioner.

The Court without inquiry allowed this application and as a result Rs. 380,082.15 was withdrawn by the Petitioner on 07.03.95 by payment order No: D 147432 (Journal Entry No: 133).

When the Respondent became aware of this he filed Petition and Application and moved the District Court on 19.05.95 praying that the petitioner be directed to bring into Court the amount of interest so withdrawn.

The District Court inquired into this matter inter partes. Petitioner filed objections and after written submissions were tendered by the counsel for the parties the Trial Judge on 10.10.95 made order directing the plaintiff petitioner to bring into Court the amount of interest so withdrawn.

Present revision application is against this order. The counsel for the Petitioner submitted that the Respondent is entitled to claim only the purchase price and not the interest as the money was deposited

under section 43 of the Partition Law No: 21 of 1977 Section 43 reads thus:

"The purchaser of the land or, where the land was sold in lots, the purchaser of each lot shall pay into Court the money realized by the sale of the land or of that lot in conformity with the conditions prescribed and the orders issued by the Court under section 39"

In the instant case the plaintiff purchased the 1/4th share of the Respondent at the auction sale on 19.01.93 for a sum of Rs. 1,556,250.00 and paid the purchase price into Court in satisfaction of the Respondents claim as provided for in section 43 of the Partition Law No:21 of 1977.

It is to be observed that under the Partition Law No:21 of 1977 when a decree for the sale of the common property is given it shall be lawful for the Court to issue a commission for the sale of such property by public auction to the highest bidder. The purchaser should pay into Court the amount of the purchased money according to the conditions of sale.

Upon the confirmation of the sale the purchaser is entitled to a certificate under the hand of the Judge of such Court and this certificate will be evidence in any Court of the purchaser's title without any deed of transfer from the owners.

It is to be noted that no sooner the petitioner had deposited the sale proceeds into Court he fulfils his obligations and it is the duty of the Court to hold that money on behalf of the beneficiary. In this case it was the Respondent who was the beneficiary of the proceeds of sale.

Counsel for the Petitioner also sought to bring his case under section 47 of the Partition Law No:21 of 1977. Section 47 reads thus:

"(1)The Court shall cause to be prepared by a party named by the Court a schedule of distribution showing the amount which each party is entitled to withdraw out of the money deposited in Court.

(2) No money shall be withdrawn from Court by any party until the schedule of distribution has been approved by the Court.

- (3) A party entitled to compensation in respect of a plantation or a building or otherwise shall share proportionately with the other parties in any gain or loss, as the case may be, resulting from the sale of the land at a figure above or below the value determined by the Court under section 38."

It is my view that section 47 of the Partition Law No:21 of 1977 has no application to the instant case because section 47 deals with claim of several parties. Counsel for the Petitioner also has submitted that when money is paid into Court it is done under Chapter XXVII of the Civil Procedure Code. He drew the attention of Court to section 409-415 of the Civil Procedure Code.

Section 409 reads as follows "The defendant in any action brought to recover a debt or damage may, at any stage of the action deposit in Court such sum of money as he considers a satisfaction in full the plaintiffs claim. Section 411 states that "no interest shall be allowed to the plaintiff of any sum deposited by the defendant from the date of the receipt of such notice. Whether the sum deposited be in full sum of the claim or fall short thereof.

Section 415 reads thus "the enactment, of this Chapter shall apply mutatis mutandis to the case of payment of money into Court made by any party to the other, in satisfaction of the claim of any other party."

It is my view that these sections of the Civil Procedure Code apply to actions filed by a plaintiff against a defendant arising out of "money claim on account of a **debt or damage**." The present action is not an action filed by the Respondent to recover a debt or damage, Therefore these provisions have no application to this case which has been instituted under the Partition Law, which is a special Law.

The order permitting the withdrawal of interest made on 01.03.1995 was an ex parte application which had caused grave injustice to the Respondent. The Respondent has correctly invoked the jurisdiction of the District Court which made the said order to obtain relief.

In the circumstances we see no reason to interfere with said Order of the learned District Judge. Accordingly the said dated 10.10.1995 is hereby upheld and this application of the Petitioner is dismissed

with costs fixed at Rs. 2500/-. The order in this application will be applicable to the leave to appeal application No:224/95 and the said application is dismissed without costs.

**DR. GUNAWARDANA, J. (P/CA)** – I agree.

*Application dismissed.*