

RATNAYAKE
v.
DE SILVA

COURT OF APPEAL.

EDUSSURIYA, J.,

JAYASINGHE, J.

C.A. NO. 15/93 (F)

D.C. ANURADHAPURA NO. 14087/L.

JUNE 22, 1998.

JULY 21, 1998.

AUGUST 24, 1998.

Lease – Lease of land by North-Central Provincial Council – Validity – Should it be notarially attested? – Prevention of Frauds Ordinance S. 2, 17 – Provincial Councils (Consequential Provisions) Act S. 2 (1) – State land – Provincial Council List.

Plaintiff-appellant instituted action seeking a declaration that the plaintiff is the lessee of the corpus. The defendant-respondent filed answer seeking a dismissal of the action on the basis that, the document (P1) upon which the plaintiff is claiming title is of no force in law. The plaintiff-appellant's action was dismissed.

Held:

1. Document (P1) does not purport to be made by or under the hand of the President as required by section 1 (3) of the Appendix II of the Constitution and therefore, is not a valid conveyance.

APPEAL from the judgment of the District Court of Anuradhapura.

Faiz Musthapha, PC with *Sanjeewa Jayawardena* for the plaintiff-petitioner.

N. R. M. Daluwatte, PC with *S. C. B. Walgampaya* for defendant-respondent.

Cur. adv. vult.

November 04, 1998.

JAYASINGHE, J.

The plaintiff instituted action in the District Court of Anuradhapura for a declaration that the plaintiff is the lessee of the allotment described in the schedule to the plaint; for the ejectment of the defendant and his agents from the said allotment; a permanent or an interim injunction restraining the defendant from proceeding with the building construction until the disposal of the action before Court and for costs. The defendant filed answer seeking the dismissal of the plaintiff's action on the basis that P1 upon which the plaintiff is claiming title is of no force in law; for damages in a sum of Rs. 100,000 consequent upon the restraining order and for costs.

After trial the learned District Judge dismissed the plaintiff's action on 20.01.1993. This appeal is from the judgment of the said learned District Judge.

It was the contention of the defendant that P1 upon which the plaintiff was granted the lease by the North-Central Provincial Council was a nullity or had no force in law in that it had not been notarially attested as required by section 2 of the Prevention of Frauds Ordinance. Mr. Daluwatte submitted that whatever the rights the plaintiff derived to the land was upon P1 and if P1 is held to be of no force in law then the plaintiff's action must necessarily fail. He stated that the plaintiff in order to succeed should establish that the land belongs to the North-Central Provincial Council; that the officer who purported to execute P1 had the power and authority to do so; that all the formalities prescribed by law for the due execution of the instrument affecting land had been followed. It would at this stage suffice to consider the validity of the document P1 for the determination of the appeal presently before this Court.

Mr. Jayawardena submitted that no such notarial execution is necessary in respect of P1 in view of section 17 of the Prevention of Frauds Ordinance. He argued that Provincial Councils are caught

up in the expression "Government" and therefore if P1 granted to the appellant had been issued by or under the authority of the North-Central Provincial Council, then section 2 of the Prevention of Frauds Ordinance has no application in view of the operation of section 17. Mr. Jayawardena submitted that a perusal of the Provincial Council List of the Thirteenth Amendment to the Constitution will demonstrate that a very extensive list of subjects have been devolved on the Provincial Councils and that the Government in respect of any province will be the collective authority which effects all aspects of governance and that the Central Government and the Provincial Government is a cumulative and collective entity that represents government. This argument though for the purposes of the present case is academic, to my mind negates the concept of devolution. However, according to the 9th schedule, i.e. the Provincial Council List, Provincial Councils have been vested with the authority to deal with land. According to item 18 land under the said schedule has been described as:

Land, i.e. to say rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement to the extent set out in appendix II.

Appendix II is as follows:

State land shall continue to vest in the Republic and may be disposed of in accordance with Article 33 (d) and written law governing the matter.

Subject as aforesaid, land shall be a Provincial Council subject, subject to the following special provisions:

1. State Land:

1 : 1 State Land required for the purposes of the Government in a province, in respect of a reserved or concurrent subject may be utilised by the Government in accordance with the laws governing the matter. The Government shall consult the relevant Provincial Council with regard to the utilisation of such land in respect of such subject.

1 : 2 Government shall make available to every Provincial Council State land within the province required by such council for a Provincial Council subject. The Provincial Council shall administer, control and utilise such State land, in accordance with the laws and statutes governing the matter.

1 : 3 Alienation or disposition of the State land within a province to any citizen or to any organisation shall be by the President, on the advice of the relevant Provincial Council, in accordance with the laws governing the matter.

Mr. Daluwatte conceded that section 2 of the Prevention of Frauds Ordinance does not apply to sales, grants, etc. of land belonging to the State; various enactments dealing with land have prescribed procedure for disposition of State lands. For eg. State Land Ordinance, Land Development Ordinance, etc. State land can be alienated by the relevant authority in accordance with the procedure laid down in each statute. Mr. Daluwatte argued that P1 does not on the face of it state under what statute the alienation or disposition is made. Hence, he attacked the validity of P5.

Mr. Daluwatte also submitted that Rajaneththi who purported to sign P1 had no authority to do so. Section 2 (1) of the Provincial Councils (Consequential Provisions) Act provides that:

Where any power or function is conferred on, or assigned to a Minister or to a public officer, as the case may be, by any written law made prior to November 14, 1987, on any matter set out in List 1 of the Ninth Schedule, such power or function may, . . .

- (a) if such power or function is conferred on, or assigned to a Minister, be exercised or discharged, in relation to a province and unless the context otherwise requires, by the Governor of that province or the Minister of the Board of Ministers of that province to whom the subject has been assigned; and accordingly, references in every such written

law to a Minister shall be deemed to include references to a Governor of a province or the Minister of the Board of Ministers of such province to whom the function has been assigned; and

- (b) if such power or function is conferred on, or assigned to, a public officer, be exercised or discharged, in relation to a province and unless the context otherwise requires, by the officer of the provincial public service holding an office corresponding to the office held by such public officer; and accordingly, references in every such written law to a public officer shall be deemed to include a reference to the officer of the provincial public service who holds an office corresponding to the office held by such public officer.

There was no evidence placed before Court that Rajaneththi was conferred with the powers he had sought to exercise.

Mr. Daluwatte, submitted that P1 does not purport to be made by or under the hand of the President as required by section 1 : 3 of the appendix II of the Constitution and therefore is not a valid conveyance and is of no force or avail in law. This submission cannot be assailed.

The defendant in his answer took up the position that the defendant had entered into an agreement with the Anuradhapura Urban Council for the restoration of a canal and produced marked D1 the said agreement. The defendant raised an issue as regards damages he is entitled to as a result of the plaintiff obtaining a restraining order. However, no evidence was placed before Court regarding the quantum of damages and he has not preferred an appeal on the failure of the trial Judge to go into the question of damages and it is unnecessary to consider this aspect. For the reasons stated above the appeal is dismissed with costs fixed at Rs. 2,100.

EDUSSURIYA, J. – I agree.

Appeal dismissed.