

## DHARMALATHA

v.

## DAVID DE SILVA

COURT OF APPEAL.

DR. RANARAJA, J.

C. A. NO. 201/95

D.C. ANURADHAPURA CASE NO. 846/T

AUGUST 28, 1995.

*Land Development Ordinance – S. 170 – Succession – Improvements.*

Under section 170 of the Land Development Ordinance no written law other than this Ordinance which provides for succession to land upon an intestacy (and no other law relating to succession to land upon an intestacy) shall have any application in respect of any land alienated under the Land Development Ordinance.

Since the land granted on a permit continues to be Crown land any building put up by the deceased on the land granted on the permit cannot be included in the inventory of the testamentary case.

**APPLICATION** for revision of the order of the District Judge of Anuradhapura.*Mahinda Relapanawe with Wasantha Goonasekera* for petitioner.*Nimal Muthukumarana* for respondent.*Cur. adv. vult.*

August 28, 1995

**DR. RANARAJA J.**

This is an application in revision from the order of the learned District Judge dated 20/2/95. By that order learned District Judge directed that the building constructed on the land, on a permit issued under the provisions of the Land Development Ordinance to the deceased, should be included in the inventory filed in the testamentary action.

Learned counsel for the petitioner submits that under section 170 of the Land Development Ordinance no written law (other than this

Ordinance) which provides for succession to land upon an intestacy and no other law relating to succession to land upon an intestacy shall have any application in respect of any land alienated under the Land Development Ordinance.

It is conceded that the deceased died intestate leaving his widow and his brother and two sisters as heirs. The petitioner in this case, who originally sought letters of administration, moved to have the building and the land included in the inventory. Learned District Judge after inquiry excluded the land given on the permit but held that the building should be included in the inventory.

Learned counsel drew the attention of Court to the conditions under which the permit under the Land Development Ordinance is issued wherein it is stated that the Crown land granted on a permit cannot be fragmented.

It is also to be noted that one of the conditions in the permit is that in the event of the permit being cancelled for breach of any other conditions the permit holder shall not be entitled to compensation. I am of the view that since the land granted on a permit continues to be Crown land any building put up by the deceased on the land granted on the permit cannot be included in the inventory of the testamentary case. Accordingly I set aside the order of the learned District Judge dated 22.9.95 in respect of the building and direct that the said building should be excluded from the inventory filed in the case. The application is allowed without costs.

*Application allowed.*