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**BASNAYAKE  
VS  
PETER AND OTHERS**

COURT OF APPEAL.  
SOMAWANSA, J. (P/CA).  
EKANAYAKE, J.  
CA 883/94 (F).  
DC TANGALLE 2338/P.  
AUGUST 24, 2004.  
NOVEMBER 25, 2004.

*Partition Law, No. 2 of 1977, section 25 - Investigation of Title—Answering of points of contest - Mandatory - Bare answers to issues - Does it suffice? - Settlement? – Civil Procedure Code - section 187.*

The trial Judge in his judgment while ordering the partition of the land has stated that although there was a contest at the commencement, later as the case had been concluded only with the plaintiff's evidence and since no evidence had been led by the defendant, he was accepting the evidence given by the plaintiff and accordingly it was concluded that parties should be entitled to undivided shares in the judgment.

On appeal it was contended that there had not been a settlement and the trial judge has failed to investigate title and to even answer the points of contest.

**HELD:**

1. It is to be observed that there is nothing in the record to infer that a settlement was arrived upon.
2. In such circumstances firstly, the trial judge should have answered the points of contest after due evaluation of the available evidence.
3. The trial judge has totally failed to answer any of the points of contest admitted to trial.

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*Held further :*

- 4 Bare answers without reasons to issues or points of contest raised at a trial are not in compliance with the requirements of section 187 of the Civil Procedure Code.

**APPEAL** from the judgment of the District Court of Tangalle.

**Cases referred to :**

1. *Cooray vs. Wijesuriya* 62 NLR 158
2. *Dona Lucy Hamy vs. Cicillianahamy* 59 NLR 214
3. *Warnakula vs. Ramani Jayawardena* 1990 1 Sri LR 207

*M. B. Morais* with *P. Wijetilake* for 8th defendant - appellant.

*W. Dayaratne* for plaintiff–respondent.

*Cur. adv. vult.*

June 15, 2005.

**CHANDRA EKANAYAKE, J.**

This is an appeal preferred by the 8th Defendant - Appellant (hereinafter sometimes referred to as the 8th Defendant) against the judgment of the learned District Judge of Tangalle dated 15.03.1994 moving to set aside the same and for judgment as prayed by the 8th Defendant in her statement of claim.

The Plaintiff - Respondent (hereinafter sometimes referred to as the Plaintiff) by amended plaint dated 25.03.1991 sought to partition lot 6 of land called and known as “Bahinamankadahena” situated in Galagama, Dedduwawala and moved for an undivided 12/48 share from the *corpus* together with the improvements and plantation as prayed in sub paragraph (ii) of the prayer to the amended plaint. The devolution of title relied upon was averred and the shares were shown in paragraph 10 of the said amended plaint.

The 8th defendant by her statement of claim dated 09.12.1991 whilst only admitting that the *corpus* described in paragraph 2 of the amended plaint comprises of lots 1, 2 and 3 depicted in preliminary plan No.2664 and averments in paragraph 3 of the said amended plaint pleaded *inter alia*

that she be granted undivided 1/9th share as shown in paragraph 9 of the said statement of claim.

As seen by the proceedings of 15.02.1993 a trial *de novo* had commenced on that day. The plaintiff, 7th defendant and the 8th defendant had been represented by Counsel on that date. Points of contest 1 to 8 had been raised on behalf of the plaintiff. 9 to 12 and 13-14 had been raised on behalf of the 7th and 8th defendants respectively. When the plaintiff was testifying he had been even cross examined by the respective Counsel who had represented 7th and 8th defendants. At the conclusion of the cross examination it is recorded that the plaintiff has closed his case reading in evidence documents marked P1 to P14 and thereafter a date had been moved for tendering of plaintiff's documents. Accordingly, 22.03.1993 had been given for the plaintiff's documents. After obtaining several dates by plaintiff, on 14.02.1994 Samarasekera Kankanamge Caralina (substituted plaintiff) the widow of the deceased original plaintiff had been called to give evidence with regard to document marked P1 being the final decree in Case No. 840/P. However, evidence of this witness had been to the effect that although every attempt was made to obtain P1 she was unsuccessful. She had stated in her evidence (at page 125 of the brief) to the following effect.

“පැ 1 දරන ලේඛනය ලබා ගැනීමට සෑම උත්සාහයක්ම ගත්තා. නමුත් එම ලේඛනය ලබා ගැනීමට නොහැකි වූතා. එම නිසා මෙම නඩුවට අදාළ ඉඩමේ මුල් අයිතිකරු සේවා පත්තිනියේ සේමීස් අප්පු වශයෙන් පිළිගන්නා ලෙස මා ඉල්ලා සිටිනවා”

It is to be observed from the proceedings of 14.02.1994 that this witness had not been cross examined either by the 7th defendant or 8th defendant. However, after conclusion of examination-in-chief of that witness, case had been fixed for judgment on 15.03.1994.

On a perusal of the impugned judgment it is found that the learned Judge has stated (at page 128 of the brief) as follows :-

“සාරඉවකරුවන් අතර මුලදී හබයක් පැවතුන ද, පසුව පැමිණිල්ලේ සාක්ෂි පමණක් මෙහෙයවීමෙන් නඩුව අවසන් කර ඇත. විත්තිකරුවන්ගේ සාක්ෂි මෙහෙයවීමක් සිදුවී නැත. එබැවින් පැමිණිලිකරු මෙම නඩුවේදී දී ඇති සාක්ෂි පිලිගනිමි”.

As seen above, it has become crystal clear that the learned Judge had totally failed to investigate the title to the *corpus*. He has stated that although there was a contest at the commencement, later as the case had been concluded only with the plaintiff's evidence and since no evidence had been led by the defendant, he was accepting the evidence given by the plaintiff and accordingly it was concluded that parties should be entitled to undivided shares as in the judgment. (as appearing at page 128 of the brief).

As evidenced by the proceedings before the learned District Judge after raising points of contest, nowhere has it been recorded that the aforesaid contest was settled and/or that there was no contest among the parties. It has to be further observed that there is nothing in the record to infer that a settlement was arrived upon. In those circumstances firstly the learned District Judge should have answered the points of contest after due evaluation of the evidence available before Court. In this regard it would be pertinent to consider the decision in *Cooray vs. Wijesuriya*<sup>(1)</sup> where the Court held thus :

**“Section 25 of the Partition Act imposes on the Court the obligation to examine morefully the title of each party to the action.”**

In the instant case I conclude that the learned Judge has committed a cardinal error by not investigating the title to the *corpus*. It is to be further noted that the learned Judge also has failed to answer the points of contest which had been admitted to trial. In the case of *Dona Lucyhamy vs Cicillinahamy*<sup>(2)</sup> it was held by the Supreme Court to the following effect :

“Bare answers, without reasons to issues or points of contest raised in a trial are not in compliance with the requirements of section 187 of the Civil Procedure Code”

The above principle of law was followed by the Court of Appeal in *Warnakula vs. Ramani Jayawardena*<sup>3</sup> wherein it was held :

“Bare answers to issues without reasons are not in compliance with the requirements of section 187 of the Civil Procedure Code. The evidence germane to each issue must be reviewed

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or examined. The Judge must evaluate and consider the totality of the evidence. Giving a short summary of the evidence of the parties and witnesses and stating that he prefers to accept the evidence of one party without giving reasons are insufficient.”

In the instant case the learned Judge has totally failed to answer any of the points of contest admitted to trial.

For the aforesaid reasons I conclude that the impugned judgment cannot be allowed to stand and the judgment dated 15.03.1994 is hereby set aside. Although I am quite mindful of the inconveniences that would be caused to the parties by a trial *de novo*, I conclude that this Court is left with no alternative but to order a trial *de novo*. Accordingly the case is remitted to the District Court for a trial *de novo* and the learned District Judge is hereby directed to conclude the same as expeditiously as possible. Parties to bear their own costs incurred in the lower court and here.

The Registrar of this Court is directed to forward the record in case No. 2338/P to the respective District Court forthwith.

**SOMAWANSA, J(P/CA).** – *I agree.*

*Appeal Allowed.*

*Trial de Novo Ordered.*

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