

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an Appeal

Benedict Raja Philip De Silva
4970, Lansing Drive, North Olmsted, Ohio
44070, United States of America and
Presently at
No.7, Station Road, Pinwatta, Panadura.
Plaintiff

SC/CHC/Appeal 12/2012
SC(HC)LA No. 68/2011
HC (Civil) 17/2006(1)

Vs

Chris Peiris
No. 518, Gale Road Colombo 3.

Chamalee Deepthika Jayawardena
No. 518, Gale Road Colombo 3.

Haritha Munasinghe
No. 58B, Salmulla, Kollonawa.

Anthony Joseph Mahinda De Silva
No.27/3, Chandralekha Mawatha,
Colombo 8.

Defendants

In the matter of an Application under Section 218,
343 and 349 of the Civil Procedure Code.

Anthony Joseph Mahinda De Silva
No. 27/3, Chandralekha Mawatha,
Colombo 8

4th Defendant-Petitioner-

Vs

Benedict Raja Philip De Silva
4970, Lansing Drive, North Olmsted, Ohio
44070, United States of America

Plaintiff-Respondent

AND NOW

In the matter of an Application for Leave to Appeal
Under and in terms of Section 5(2) of the High
Court of the Provinces (Special Provinces) Act
No.10 of 1996 read together with Chapter LVIII of
The Civil Procedure Code.

Benedict Raja Philip De Silva
4970, Lansing Drive, North Olmsted, Ohio
44070, United States of America and
Presently at
No.7, Station Road, Pinwatta, Panadura.

**Plaintiff-Respondent –
Petitioner-Appellant.**

Vs

Anthony Joseph Mahinda De Silva
No. 27/3, Chandralekha Mawatha,

Colombo 8

**4th Defendant-Petitioner-
Respondent-Respondent.**

Before: Sisira J. de Abrew J
L.T.B. Dehideniya &
S. Thurairaja PC J

Counsel: Romesh de Silva PC with Manjuka Fernandopulle for the
Plaintiff-Respondent-Petitioner-Appellant.
Harsha Soza PC with R. Weerasinghe
4th Defendant-Petitioner- Respondent-Respondent.

Written submission

tendered on : 9.3.2012 by the Plaintiff-Respondent-Petitioner-Appellant.
10.3.2012 by the 4th Defendant-Petitioner- Respondent-
Respondent.

Argued on : 16.6.2020

Decided on: 9.9.2020

Sisira J. de Abrew, J

The 4th Defendant-Petitioner-Respondent-Respondent (hereinafter referred to as the 4th Defendant-Respondent) filed petition and affidavit in the Commercial High Court stating that his one and only residential house at 27/03, Chandralekha Mawatha, Colombo 8 had been seized in execution of the decree in this case and moved to release the said house from the seizure on the basis that the said house could not be seized in terms of Section 218 of the Civil Procedure Code. The learned High Court Judge by his order dated 1.7.2011,

released the said house from the seizure on the basis that the said house is the one and only residential house of the 4th Defendant-Respondent. Being aggrieved by the said order of the learned High Court Judge, the Plaintiff-Respondent-Petitioner-Appellant (hereinafter referred to as the Plaintiff-Appellant) filed the present Petition of Appeal in this court and this court by its order dated 30.1.2012 granted leave to appeal.

The 4th Defendant-Respondent maintains the position that the house in question is one house and it is his one and only residential house. Learned counsel for the Plaintiff-Appellant contended that the house in question consists of two condominium units and that they are Unit No.3 and 4 and that each unit could be used as a separate house. He further contended that condominium units 3 and 4 are two separate apartments and that therefore one unit could be seized. Learned President's Counsel for the 4th Defendant-Respondent contended that the house in question has a ground floor and an upper floor (upstairs and downstairs) and that it is one house. The 4th Defendant-Respondent has, in his evidence, stated the above facts. Therefore the most important question that must be considered in this case is whether the two units are used as the residential house of the 4th Defendant-Respondent. I now advert to this question. The 4th Defendant-Respondent, in his evidence, has stated the following matters.

1. This house has only one assessment number which is 27/3.
2. This house has only one electricity meter.
3. This house has only one water meter.
4. If one enters this house from the ground floor, he cannot go out from upstairs.

5. The upstairs does not have separate entrance.
6. This house has downstairs and upstairs.
7. Downstairs of this house does not have a bed room.
8. Upstairs of this house does not have a kitchen.
9. Downstairs of this house has a kitchen.

Rohini Gintota Manawadu Technical officer of the Municipal Council Colombo who was called by the Plaintiff-Appellant has, referring to the building plan of the house in question, stated in her evidence that combination of unit No. 3 and Unit No.4 of the building plan is the house bearing assessment No. 27/3, Chandralekha Mawatha, Colombo 8 which is the house in question. She has further stated in her evidence that upstairs of this house does not have an entry door and that if a person in upstairs wants to go out of this house, he has to use the entry door in downstairs. It is therefore seen that the fact that the house at No. 27/03, Chandralekha Mawatha, Colombo 8 has been one house is corroborated by this witness.

The argument of the Plaintiff-Appellant is that this house has two condominium units and each unit could be used as a separate house. If this argument is correct, how can there be one electricity meter and one water meter for the entire house? When I consider all the above matters, the argument of Plaintiff-Appellant cannot be accepted.

The learned High Court Judge has observed that the Plaintiff-Appellant had not contradicted the above evidence.

When I consider the above evidence, I hold that the house at No.27/3, Chandralekha Mawatha, Colombo 8 which is the house in question is only one house and the two units (upstairs and downstairs) are used as one house. The 4th Defendant-Respondent says, in his evidence, that the house in question is his one and only residential house. Considering all the above matters, I hold that the learned High Court Judge is correct when he decided that the house in question is one house and it is the one and only residential house of the 4th Defendant-Respondent. Section 218 (n) of the Civil Procedure Code reads as follows.

“218. When the decree falls under head (a) and is unsatisfied, the judgment-creditor has the power to seize, and to sell or realize in money by the hands of the Fiscal, except as hereinafter mentioned, all saleable property, movable or immovable, belonging to the judgment-debtor, or over which or the profits of which the judgment-debtor has a disposing power, which he may exercise for his own benefit, and whether the same be held by or in the name of the judgment-debtor or by another person in trust for him or on his behalf;

Provided that the following shall not be liable to such seizure or sale, namely-

(n) any house which is not mortgaged as security for the payment of the whole or part of the sum referred to in such decree and which is the actual residence of the judgment-debtor at the time of the execution of such decree and has been such residence from the time of the institution of the action in which such decree has been entered together with such extent of land appurtenant thereto as the court may consider necessary for its enjoyment;”

I have earlier decided that the learned High Court Judge was correct when he decided that the house in question is the one and only residential house of the 4th Defendant-Respondent. Section 218 (n) of the Civil Procedure Code says that the residential house of the judgment-debtor cannot be seized in execution of a decree of court.

For the above reasons, I hold that the house at 27/3, Chandralekha Mawatha, Colombo 8 cannot be seized in execution of the decree in this case. For the above reasons, I hold that the learned High Court Judge was correct when he decided that the said house cannot be seized in the execution of the decree in this case. For the above reasons, I affirm the order the learned High Court Judge dated 1.7.2011 and dismiss this appeal.

Appeal dismissed.

Judge of the Supreme Court.

L.T.B.Dehideniya J

I agree.

Judge of the Supreme Court.

S. Thuraiaraja PC J

I agree.

Judge of the Supreme Court.

