IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC

OF SRI LANKA

SC/ Appeal No. 48/2016

Civil Appeal Kurunegala No.
NWP/HCCA/KUR/26/2013(LA)

D.C, Kuliyapitiya No. 12483/L

In the matter of an application for leave to appeal under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) (Amendment) Act, No. 54 of 2006, to be read with Article 128 of the Constitution.

Disanayakage Lional Rajapaksha
No 2/324, Asswedduma,
Kuliayapitiya.

Plaintiff

Vs.

1. W.A Prema Swarnamali Bandara,
No 324/A,Kurunegala Road,
Kuliyapitiya.

2. Hettiarachchi Mudiyanselage Cyril Bandara,
No 324/A,Kurunegala Road,
Kuliyapitiya.

3. Singhage Nandawathi Podimanike,
No 2/324, Asswedduma,
Kuliayapitiya.

4. Disanayakage Harshani Trishila Rajapaksha,
No 2/324, Asswedduma,
Kuliayapitiya.

Defendant

AND

1. W.A Prema Swarnamali Bandara,
No 324/A, Kurunegala Road,
Kuliyapitiya.

2. Hettiarachchi Mudiyanselage Cyril Bandara,
No 324/A, Kurunegala Road,
Kuliyapitiya.

1st and 2nd Defendant Petitioner

Vs.

Disanayakage Lional Rajapaksha,
No 2/324, Asswedduma,
Kuliayapitiya.

Plaintiff- Respondent

3. Singhage Nandawathi
Podimanike, No 2/324,
Asswedduma, Kallayapitiya

4. Disanayakage Harshani Trishila
Rajapaksha,
No 2/324, Asswedduma,
Kuliayapitiya.

Defendant- Respondents

AND NOW

Disanayakage Lional Rajapaksha,
No 2/324, Asswedduma,
Kuliyapitiya

Plaintiff- Respondent-Petitioner

Vs.

1. W.A Prema Swarnamali Bandara,
No 324/A,Kurunegala Road,
Kuliyapitiya

2. Hettiarachchi Mudiyanselage Cyril
Bandara,
No 324/A, Kurunegala Road,
Kuliyapitiya.

1st and 2nd Defendant
Petitioner- Respondents

3. Singhage Nandawathi
Podimanike, No 2/324,
Asswedduma,
Kuliayapitiya.

4. Disanayakage Harshani Trishila
Rajapaksha
No 2/324, Asswedduma,
Kuliayapitiya.

3rd and 4th Defendant-
Respondent- Respondents

Before: L.T.B. Dehideniya, J.
E.A.G.R. Amarasekara, J.
Yasantha Kodagoda, PC, J.

Counsels: Rasika Dissanayake with Nilantha Kumarage for the Plaintiff- Respondent-Appellant.

M.C. Jayeratne PC, with H.A. Nishani, H. Hettiarachchi and M.D.J. Bandara for the 1st and 2nd Defendant-Petitioner-Respondents.

Yasas de Silva for the 3rd and 4th Defendant- Respondent- Respondents.

Argued on: 18.09.2020
Decided on: 08.11.2022

L.T.B. Dehideniya, J.

The Plaintiff- Respondent- Petitioner (hereinafter called as the Petitioner) instituted action in the District Court of Kuliyapitiya claiming a right of way on prescription and necessity against the 1st and 2nd Defendant- Petitioner- Respondent (hereinafter called as the 1st and 2nd Respondent) and two others. Plaintiff's claim was that lot No.5 of the plan bearing No. 507 dated 10th October 1982 surveyed by G.S. Galagedara Licensed surveyor was belonged to him and he used the right of way to access to his land over the lot 7 of the said plan. 1st and 2nd Respondents obstructed said right of way by erecting a gate and by other means. After trial, the Learned District Judge delivered the Judgement in Appellant's favour granting all the reliefs prayed for by the Appellant. The Respondent appealed to the Civil Appellate High Court of North Western Province where the appeal was dismissed and leave to appeal there from to the Supreme Court was also dismissed.

On the application of the Appellant a writ was issued to remove all the obstructions and the fiscal has executed writ on 21.07.2010 and reported to court that it has been properly executed. Thereafter the Respondent made an application of District Court informing that the writ had not

been executed properly by not removing the electricity posts and telephone posts which were on the right of way and moved court that the writ be reissued. The District Court ordered that only the obstructions that the Petitioner claims to be an obstruction to his right of way can be removed. The 1st and 2nd Respondents appealed to the Civil Appellate High Court challenging the said order. The learned judges of High Court ordered to reissue the writ on the application of Respondent who is the judgement debtor. Being aggrieved by the said order the Appellant tendered this appeal to this court. The Supreme Court granted leave to appeal on the following questions of law;

1) Whether the learned Judges of the Civil Appellate High Court of Kurunegala and/or Learned Additional District Judge of Kuliyapitiya have erred in law by making an order to execute the writ once again despite the fact that the decree of the case bearing No. 12483/L of the District Court of Kuliyapitiya has already been executed as far back on 21 July 2010?

2) Whether the learned Judges of the Civil Appellate High Court of Kurunegala have erred in law by disregarding the fact that non other than a judgement creditor can make an application to execute the writ?

3) Whether the learned Judges of the Civil Appellate High Court of Kurunegala have erred in law by arriving at a conclusion that the judgement debtor is entitle to make an application to execute the writ when in fact the decree has already being executed at the request of the judgement creditor?

4) Whether the learned Judges of the Civil Appellate High Court of Kurunegala have erred in law by making an order to remove the Telephone Posts and trees ect. purportedly on the basis that they are obstructions to the said right of way?

5) Whether the learned Judges of the Civil Appellate High Court of Kurunegala have erred in law by coming to an erroneous conclusion that the purported obstructions as claimed by the judgment debtor should also be removed?

6) Whether the learned Judges of the Civil Appellate High Court of Kurunegala have erred in law due to their failure to consider that due to the purported directions and/or orders made in the said impugned judgement of the Civil Appellate High Court, the Judgement and/or decree is invariably altered and or changed?

The main issue of this case is whether the judgement debtor can make an application to reissue a writ after the writ had been properly executed on the application of the judgement creditor. On the other hand if the judgment creditor is satisfied with the execution of the decree can the judgment debtor move to reissue the writ on the basis that it was not properly executed?

In this case, the Learned District Judge delivered the judgement as prayed for in the plaint. As per the answer given to the issue No. 19 in the judgment dated 12/07/2007, the Learned District Judge dismissed the claims of the 1st and 2nd Respondents prayed for in the answer. Under these circumstances the Appellant became the judgement creditor who was granted all the reliefs claimed and Respondents became judgement debtors whose claims were dismissed.

Under **Section 323** of **Civil Procedure Code** any *"...application to the court for execution of the decree may be made by the judgment-creditor in the manner, and according to the rules..."* The Civil Procedure Code has made it a policy that only the judgement creditor can make and application to execute a decree. The reason behind is that the judgement creditor is the person who was granted relief not the judgement debtor.

In the case of ***W. Sirinivasa Thero v. Sudassi Thero*** (1960) 63 NLR 31 it was held that by invoking inherent jurisdiction on certain occasions, a judgement debtor or the party who lost the case may be able to ask for a writ of execution, if the original execution was done without a right to get a writ of execution or the execution of the writ has given more than the entitlement of the judgement creditor causing injury to the judgement debtor through an erroneous act or by a mistake of court.

However, case at hand does not fall within the ambit of an error or mistake of the court.

As per Section 4(e) of Civil Procedure code the plaint shall contain a demand of the relief which the Plaintiff claim. If the Defendant claims anything in reconvention under Section 75(e), he has to claim it in the answer and that will have the effect as plaint in a cross action.

The court cannot grant any relief not prayed for by the plaint or the claim in reconvention. It has been held on the case ***Surangi Vs Rodrigo 2003 Sri L.R 35*** that no court is entitle to or has jurisdiction to grant relief to a party which are not prayed for in the prayer to the plaint. Further in ***Danapala Vs Baby Nona 77 NLR 95*** it was held that even a Magistrate cannot award any sum in excess of quantum claimed by the applicant in a maintenance action. In the case of ***Weragama Vs Bandara 77 NLR 289*** it has been held that the Learned District Judge erred in granting the first plaintiff relief not prayed for and not claimed in the action by him.

It appears, the Respondents had some claims in reconventions which were refused to be granted (vide answers to issue number 19). The 1st Defendant has referred to these Telephone Posts in her answer dated 19.09.2000 (document marked as **X-1** in the brief- averments 13-15 of the answer). No issue has been raised by the 1st and 2nd Defendants over that (vide issues in the judgment of the District Court).It appears that the Respondents are now trying to get what they were not given or refused to be given through the judgement.

If the court cannot grant any relief, which is not prayed for in the action, I am of the view that, the Respondent who loss his case cannot claim to reissue the writ on the basis that it was not properly executed.

The relief granted to the Appellant in the District Court is a right of way. Plaintiff is satisfied with the way of execution of the writ. No relief granted to the Respondent. He may or may not use this right of way. But there is no pronouncement by the court that the Respondents are entitle to use the questionable road. Therefore court has no jurisdiction to issue writ of execution on the application of the Respondents.

The Respondent argument is that they are also using the right of way depicted as lot 7 of the said plan to gain access to their land depicted as lot 6 of their plan. The Learned District Judge in his judgement noted that this right of way is used for lot 5 and lot 6 in the page 34 of the judgement. But the Learned District Judge has not made any determination or granted any relief in favour of the Respondents. Therefore 1st and 2nd Respondents will not get a right to execute the writ.

Another argument of the 1st and 2nd Respondents was that the writ had not been properly executed. This case was filed by the Appellant, the judgement was in favour of the Appellant and the writ was issued in favour of the Appellant. In these circumstances if the Appellant was satisfied that the decree was executed properly, any other person including the Respondent has no right to say that writ was not properly executed. The judgment is of a declaration of a right of way. The party who claimed the said right of way is satisfied that the writ was executed properly and now he can use the path, the judgment debtor has no right to say that there are some more obstructions which need to be removed. In the instant case the Respondents are trying to remove the telephone and electricity lines that are leading to the Appellant's house on the pretext of the judgment where the Appellants were given the right to use the road. Court cannot allow that type of mischievous applications.

Respondents in their Written Submission argued that the judgement of the District Court is per incuriam. After the judgement was affirmed by Civil Appellate High Court and leave to appeal to the Supreme Court being refused, the Respondent cannot argue that the judgement of District Court is per incuriam. If so, the Respondents should have preferred such application when leave to appeal was refused by this Court in 2009.

I answer the questions of law as follows;

1) Yes
2) Yes
3) Yes

4) Yes

5) Yes

6) Yes

I set aside the judgment of the Civil Appellate High Court of North Western Province holden at Kurunegala, dated 03.09.2014.

Appeal allowed. The Appellant is entitled to costs of this court and the courts below.

Judge of the Supreme Court

E.A.G.R. Amarasekara, J.

I agree

Judge of the Supreme Court

Yasantha Kodagoda, PC, J.

I agree

Judge of the Supreme Court