

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

In the matter of an application for Special Leave to appeal from the judgement of the Court of Appeal of the Democratic Socialist Republic of Sri Lanka under and in terms of Article 128(2) of the Constitution.

SC Appeal 156/2010
S.C. (Spl) LA
Application No: 83/10

The People's Bank,
No. 75, Sir Chittampalam A. Gardiner
Mawatha, Colombo 02

**Petitioner-Respondent-Petitioner-
Appellant**

Vs.

C.A.Rev App 204/2006
D.C. Matara No. 382/SPL

Rosy Jayasuriya
No. 39B, Delkada Road
Matara

Respondent-Petitioner-Respondent

1. Ajith Ranasinghe Kodituwakku
Layland Florists
Station Road
Matara
2. Ekman Dalugoda
No. 39B, Delkada Road
Matara

Respondents-Respondents-Respondents

4. H.M. Ariyapala
No. 76, Rahula Road
Matara
- 4A. H.H. Shiromani Mala
No. 76, Rahula Road
Matara

Substituted –Respondent-Respondent

Before : Marsoof, PC. J.
Hettige, PC. J.
Dep, PC. J.

Counsel : Manohara de Silva, PC for Petitioner-Respondent-Appellant.
Somapala Gunadheera for Respondent-Petitioner – Respondent

Argued on : 18.06.2012

Decided on : 20.03.2014

Priyasath Dep, P.C., J.

The Peoples Bank which is the Petitioner- Respondent- Petitioner- Appellant (herein after referred to as the Appellant) filed a summary action under section 72 of the Finance Act No 11 of 1963 against the 2nd Respondent -Respondent- Respondent (herein after referred to as 2nd Respondent) and the 3rd Respondent-Petitioner-Respondent (herein after referred to as the 3rd Respondent) in the District Court of Matara in DC Case No.382/Spl to evict the said 2nd and 3rd Respondents from the premises more fully described in the schedule to the Petition.

The learned District Judge by its order dated 6-9-2001 ordered the eviction of the 2nd and 3rd Respondents from the premises. The 3rd Respondent filed a Revision Application against the order of the District Judge in the Court of Appeal bearing Case No CA Revision Application No. 204/2006 . The Court of Appeal by its judgment dated 31-3-2010 set aside the judgment of the District Court of Matara in DC Case No.382/Spl. The Appellant- Bank filed a Special Leave to Appeal Application against the Judgment of the Court of Appeal and obtained leave

It will be necessary to examine the background to this case. H.M. Ariyapala who was the original owner of these premises, by Deed No. 669 dated 26.03.1968 attested by D. Weerathunga, Notary Public, mortgaged the property in suit to one Sarath Ranasinghe Kodithuwakku for a sum of Rs. 4500/= with 12% interest per annum. On the same day by deed No. 6694 attested by the same Notary Public, a secondary mortgage was effected for a sum of Rs. 4500/= with 12% interest per annum to one Chathura Kamalawathi Liyanage.

The said H.M. Ariyapala defaulted in paying the amount due under the mortgage and the mortgagee Chathura Kamalawathi Liyanage instituted action in the District Court of Matara bearing Case No. 2201/MB and obtained a decree. The said property was auctioned on 11.02.1980 and one H.M. Sumanasiri purchased the property. The Court Commissioner, by deed No. 1518 dated 09.06.1980 attested by A.Sapukotana, conveyed

the property to the said H.M. Sumanasiri. The said H.M. Sumanasiri by Deed No. 1814 attested by D.C.Dahanayake, Notary Public, transferred the property to Ajith Ranasinghe Kodithuwakku, who is the 1st Respondent –Respondent-Respondent.(hereinafter referred to as 1st Respondent) It is to be noted that H.M. Ariyapala who was the original owner was not in possession of the property and H.M. Sumanasiri who purchased the property at the public auction was not placed in possession. The 2nd Respondent and the 3rd Respondent-Petitioner were in occupation of the premises as tenants.

The original owner H.M.Ariyapala (Debtor) made an application on 4th April 1984 under section 71 of the Finance act No. 11 of 1963 to redeem his property. The Bank had conducted an inquiry and after noticing H.M. Ariyapala, the Applicant and H.M. Sumanasiri who is the present owner of the property . The 2nd Respondent and the 3rd Respondent were not given any notice of the inquiry. The People's Bank made a determination under section 72 (1) of the Finance Act No.11 of 1963.The Hon. Minister of Finance, by his order dated 30th June 1993, vested the premises with the People's Bank with effect from the said date. The said order was published in the Gazette (Extra Ordinary) No.774/11 dated July, 7th 1993. By its letter dated 9th June 1994 sent by registered post, the Bank informed the Respondent that it will take over the possession of the premises. On 09.06.1994 authorized officer of the Bank visited the premises to take over the possession. The 2nd Respondent and the 3rd Respondent who were present objected and refused to hand over the premises. The authorized officer made a complaint to the police .

The Peoples Bank, the Appellant filed a Petition in the District Court of Matara 382/Spl under section 72(7) and (8) of the Finance Act No 29 of 1961 as amended by Law No. 16 of 1973 and Act No 19 of 1984 under summary procedure to obtain delivery of the property. The bank sought and obtained an order nisi under section 387(a) of the Civil Procedure Code.

The 3rd Respondent filed objections stating that she is a lawful tenant of the original owner and she could not be evicted from the premises other than under the provisions of the Rent Act. The learned District Judge referring to the section 72 (3) as amended by Finance (Amendment) Act No. 19 of 1984 rejected the objections of the Respondents and made order nisi absolute and thereby ordered the eviction of 2nd and 3rd Respondents. The section 72(3) states thus:

‘ Where a vesting order under subsection (2) in regard to any premises is published in the Gazette, such premises shall, with effect from the date specified in the Order under that subsection, vest absolutely with the Bank free from all encumbrances’

The Finance (Amendment) Act No. 19 of 1984 added a paragraph to this subsection which reads thus :

‘ for the removal of doubts it is hereby declared that any right conferred on the tenant of any premises by the Rent Act No. 7 of 1982 and Protection of Tenants (Special Provisions) Act No. 28 of 1970 is an encumbrance within the meaning of this sub section’.

Aggrieved by the judgment of learned District Judge the 3rd Respondent filed a Revision Application in the Court of Appeal in CA(Revision) 204/2006. It transpired that H.M. Ariyapala, the original owner on whose behalf the property was acquired by the People's Bank did not disclose the fact that 2nd and 3rd Respondents were occupying the premises as tenants under him before the property was sold in the execution of the decree under the mortgage bond. The Hon. judges of the Court of Appeal drew a distinction between the tenants of the original owner and the tenants of the new owner who purchased the property sold in execution of the decree or in whose favour the property was transferred by the original owner in settlement of a debt secured by a mortgage. According to the judgment of the Court of Appeal, Section 72(3) applies only to persons who have acquired rights after the execution of the decree or after the transfer of the property in settlement of a decree secured by a mortgage. Otherwise in justice will be caused to the long standing tenants of the original owner.

The purpose of these proceedings is for the Bank to assist persons who were forced to part with their immovable property due to indebtedness or financial difficulty. It is to redeem the property which the debtor had and he will be restored to the original position. It is the submission of the learned Counsel for the 3rd Respondent that if the property was subject to a lease or tenancy those rights should not be wiped out. The Counsel for the 3rd Respondent further submits that if section 72 (3) applies to the original owner's tenants he could get more rights than he had and could use or abuse this procedure to get rid of the tenants.

The Court of Appeal held that if a literal interpretation is given to section 72(3) grave injustice will be caused to the innocent parties and it will lead to absurdity. The Court of Appeal quoted the following rule of interpretation referred to in Maxwell on Interpretation of Statutes 11th Edition at page 221

“Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence’ .

The Court of Appeal held that literal interpretation given to section 72(3) by the trial judge will enable the original owner to get rid of tenants who are in lawful occupation and grave injustice will be caused to the tenants. The Court of Appeal set aside the order of the District Judge who made the order nisi absolute in the summary procedure adopted by the Bank to evict the 3rd Respondent-Petitioner.

Being aggrieved by the Judgment of the Court of Appeal dated 31.03.2010, the Petitioner -Bank filed a Special leave to Appeal Application and obtained leave. Among the substantial questions of law raised by the bank, following substantial questions of law are relevant for the determination of this case:

1. The Court of Appeal erred by not correctly applying provisions of 72(3) of Finance Act.
2. The Court of Appeal misdirected itself in wrongly applying the principles of interpretation in construing aforementioned provisions of the Finance Act.
3. The Court of Appeal failed to consider the settlement entered into in the District Court Case No. L 6953 between the parties, (which is also confirmed by the Court of Appeal in CA 757/94) by which the 3rd Respondent agreed to vacate the premises within a period of one year. Therefore, even if any tenancy rights remain with the 3rd Respondent, the same ceased to exist after the lapse of one year from the date of decree entered in L 6953 based on the aforementioned settlement.
4. The Court of Appeal erred in failing to take into consideration and/or correctly interpret section 72(7) and (8) of the Finance Act which does not give any discretion to the District Court to refuse an Application made under section 72 (7) and (8) seeking possession on the ground of tenancy.
5. The Court of Appeal erred in holding that there were exceptional circumstances to invoke the revisionary jurisdiction of the Court of Appeal.
6. The Court of Appeal erred by not dismissing the application of the 3rd Respondent in limine on the grounds of laches as the present Revision Application was filed seeking a revision of the judgment delivered on 06.09.2001 after a delay of almost 5 years and want of exceptional circumstances.

The learned Counsel for Appellant submits that the Court of Appeal should have dismissed the Revision Application due to the delay and lack of exceptional circumstances. The judgment in District Court of Matara in Case No 382/Spl was delivered on 06.09.2001. The present Revision Application to the Court of Appeal was filed in 2006 and there was a delay of almost 5 years. The learned Counsel for the 3rd Respondent submits that the 3rd Respondent appealed against the Judgment and it was dismissed by the Court of Appeal in 2005 as the appeal was filed out of time. After the dismissal of the action within 6 months, as submitted by the counsel within a reasonable time filed the Revision Application. He submits that the appeal was held up for five years and till it is disposed of, the 3rd Respondent could not have filed the Revision Application. He submits that “ If any one had to be faulted for delay , it would be the legal system in which the appeal had been held up for five years”. Therefore 3rd Respondent should not be penalized for the delay. When considering the circumstances in this case and the fact that there is a substantial question of law involved in the application ,the Court of Appeal was correct in not dismissing the application in limine due to the delay. The Court of Appeal has a wide discretion in revision applications and it could also act ex mero motu to correct the errors committed by inferior courts.

The learned President's Counsel for the Appellant Bank submits that the Court of Appeal did not consider the fact that 2nd and 3rd Respondents surrendered their tenancy rights in the District Court of Matara Case No 6953/L.

In the District Court of Matara, A.R. Kodituwakku the 1st Respondent – Respondent(present owner) filed a rei vindicatio action on 4-8-1984 against the 2nd and the 3rd Respondent to declare him as the owner of the premises and to evict the 2nd and 3rd Respondents on the basis that they are in unlawful occupation. The 2nd and 3rd Respondents who are the defendants in the action defaulted in filing the answer and an ex-parte judgment was entered. Their application to set aside the ex-parte judgment was unsuccessful. However, parties entered into an agreement and a consent judgment was entered into on 25-2-1992 and the 2nd and 3rd Respondents agreed to vacate the premises and hand over the premises to the Plaintiffs (1st Respondent) within one year. As the 2nd and 3rd Respondents did not vacate the premises the 1st Respondent who is the Plaintiff in that case obtained a writ of execution on 14-10-94. A Revision Application was filed against the consent judgment in CA(Revision) 757/94 and the said application was dismissed. While dismissing the Application Justice Sarath Silva (as he then was) stated that: “the documents appear to state that the premises in suit is vested in the People's Bank in terms of the order dated 07.07.93 in which event the Plaintiff no longer has title to the premises in suit and would not be entitled to proceed to execute the decree. The defendant Petitioner may urge this matter before the District Court’ The Plaintiff A.R. Kodithuwakku who is the first Respondent-Respondent to this Application did not proceed with the District Court case. As the 2nd and 3rd Respondents challenged the consent judgment it cannot be said unequivocally that the 2nd and 3rd Respondents surrendered their tenancy rights.

In one of the a substantial questions of Law raised by the Bank it has taken up the position that the Court of Appeal erred in law by not correctly applying provisions of 72(3) of the Finance Act No 11 of 1963. The learned President's Counsel submits that the learned District Judge correctly allowed the application for a writ of possession filed under section 72(7) and (8) of the Finance Act No. 11 of 1963. The learned President's Counsel submits that with the publication of the vesting order in the gazette the property absolutely vested with the Bank and the Bank is entitled to take possession of the premises. He relies on section 72(3) which states:

“where a vesting order under sub section 2 in regard to any premises is published in the gazette, such premises shall, with effect from the date specified in the order under that sub section vest absolutely in the bank free from all encumbrances.

It is the submission of the counsel that the property vested with the bank free from all encumbrances and the bank has a right to take possession under section 72(7) and(8) of the Finance Act No. 11 of 1963. He further states that the vesting order was never challenged in any court of law and continue to be valid and in force.

In the most important substantial questions of Law raised by the Bank is that the Court of Appeal misdirected itself in wrongly applying the principles of interpretation in construing 72(3) of the Finance Act.

The Hon judges of the Court of Appeal did not apply the literal rule and applied the beneficial rule of interpretation to avoid injustice been caused to a particular category of persons. It drew a distinction between the rights of tenants of the original owner and the rights of the new owner, who purchased the property sold in execution of the decree or in whose favour the property was transferred or their his tenants, lessee and others who acquired rights or interest in the property. According to the judgment of the Court of Appeal section 73(3) applies only to persons who have acquired rights after the execution of the decree in an action based on a mortgage bond or after the transfer of the property in settlement of a debt secured by a mortgage. Otherwise there will be injustice caused to the long standing tenants of the original owner. However it should be observed that persons who purchase property in the execution of a decree are bona fide purchases for consideration and they acquire title and could enter into transactions affecting the property with third parties who could legally acquire rights and interest in the property. When a vesting order is made the property vests with the Bank free from all encumbrances. The vesting order would affect their rights too. Therefore there is no rational basis to draw a distinction between the tenants of the original owner and others who acquire rights subsequent to the sale or transfer of the mortgaged property. The remedy available to the parties affected by the vesting order is compensation under section 76 of the Finance Act. In an appropriate case the Bank could recommend to the Minister in charge of the subject of Finance to revoke the vesting order. This could be done under section 72 A of the Finance Act. The Respondent did not challenge the vesting order in the appropriate Court and therefore it is valid in law.

I am of the view that the Court of Appeal erred in Law when it excluded the tenants of the original owner when there is no rational basis to exclude them from effects of the vesting order. The words used in section 72 (2) and (3) are clear and unambiguous, therefore the Court is required to give effect to intention of the legislature as expressed in unequivocal language.

The Court of Appeal had referred to certain legislation which excluded certain category of persons including tenants being evicted under writs of execution. The Court referred to the Debt Recovery (Special Provisions) Act No. 2 of 1990[Section 13 (1)], the Mortgage (Amendment) Act No 3 of 1990 [Section 62G (B) (1)] and The Recovery of Loans by Banks (Special Provisions) Act No.4 of 1990[Section 16 (4)]

These Acts expressly exclude certain categories of persons including tenants from being evicted. There are no vesting orders under those Acts unlike in the Finance Act No 11 of 1963 as amended by Act No 19 of 1984 which has the effect of wiping out all encumbrances including tenancy rights.

I am therefore of the view that the Court of Appeal erred when it excluded the tenants of the original owner from the effect of the vesting order issued under section 72 (2) of the Finance Act.

For the reasons stated above, I set aside the Judgment of the Court of Appeal dated 31-03-2010 and affirmed the judgment of the District Court dated 6-9-2001.

Appeal allowed. No Costs.

Judge of the Supreme Court

Saleem Marsoof, P.C. J.
I agree.

Judge of the Supreme Court

Satyaa Hettige, P.C. J.
I agree.

Judge of the Supreme Court