

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

1. J.P.C. Peiris,
81/1, Balagalla Road,
Hendala, Wattala.
2. H.A. Vinitha Maheshwari Peiris,
81/1, Balagalla Road,
Hendala, Wattala.

Claimant Petitioners

Vs.

C.A. No. 953 / 2000 F

D.C. Negombo No. 83 / 95 /Claim

Williams Confectioneries Limited,

22, Athurs Place,

Dehiwala.

Plaintiff Respondent

AND NOW BETWEEN

1. J.P.C. Peiris,
81/1, Balagalla Road,
Hendala, Wattala.
2. H.A. Vinitha Maheshwari Peiris,
81/1, Balagalla Road,
Hendala, Wattala.

Claimant Petitioner Appellants

Vs.

Williams Confectioneries Limited,

22, Athurs Place,

Dehiwala.

Plaintiff Respondent-Respondent

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Sujeewa Senanayake for the Claimant
Petitioner Appellants.
The Plaintiff Respondent-Respondent absent
and unrepresented.

ARGUED ON : 17.11.2011

DECIDED ON : 15.12.2011

UPALY ABEYRATHNE, J.

The Plaintiff Respondent-Respondent (hereinafter referred to as the Respondent) who being the judgement creditor of Mount Lavinia District Court case No 36 / 92 / M had taken out a writ of execution of the decree entered in favour of him in the said case. Accordingly the Fiscal of the District Court of Negombo who entered in to the premises bearing No 81 / 1 of Balagala Road, Hendala, Wattala which was owned by the 1st Claimant Petitioner Appellant (hereinafter referred to as the Appellant) had seized the movable property in the said premises. The 1st and 2nd Appellants thereafter had preferred a claim application against the said seizure of the property. The learned District Judge of Negombo after hearing the evidence of the Claimants has released some of the seized property and has rejected the claim against the other property under seizure.

It appears from the order of the learned District Judge dated 16.08.2000 that he was of the view that the Appellants were unable to establish their title to the said property under seizure.

The Appellants contended that the Fiscal had entered in to a wrong house and had seized the property in the said house. They submitted that the Fiscal had entered into the 1st Appellant's premises No 81/1 at Balagala Road and had seized the Appellants' property. But the Fiscal in his report had stated that he had seized the property in premises No 84, Balagala Road. At the inquiry, the Fiscal's report had been produced marked X 11.

It appears from the evidence led at the inquiry that the Respondent had failed to adduce any evidence to clarify the said contradictory position. The certified copies of the electoral register which had been produced marked X 14, X 15 and X 16 clearly establish the fact that the premises No 84 and 81/1 at Balagala Road are two different premises.

In the said circumstances I set-aside the order of the learned Additional District Judge dated 20.10.2000 and allow the Appeal of the Appellant without costs.

Appeal allowed.

Judge of the Court of Appeal