

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

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

Plaintiff

Vs

CA. 901/97 (F)

DC. Kandy 11941/X

1. Wijesundara Mudiyansele Gnanathilake
Wijesundara,
Walpolapitiya,
Poojapitiya.
2. Herath Mudiyansele Anula Kumarihamy,
Walpolapitiya,
Poojapitiya.

Defendants

AND

1. Wijesundara Mudiyansele Gnanathilake
Wijesundara,
Walpolapitiya,
Poojapitiya.
2. Herath Mudiyansele Anula Kumarihamy,
Walpolapitiya,
Poojapitiya.

Defendant - Appellants

VS

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

CA 901/97

Counsel:Lakshman Perera for the Defendants/Appellants.

Sunil Abyratne for the Respondent.

Written Submissions:10-10-27 (Appellants)

24-1-2010 (Respondents)

Before:Rohini Marasinghe J.

Judgment: 29-03-2011.

The previous owner of the premises in question had applied to the People's bank for redemption of his land under the provisions of the Finance Act 11 Of 1963 as amended. After inquiry the People's Bank determined that the premises should be acquired, and upon a vesting order made by the Finance Minister under section 32 of the said Act the premises vested absolutely in the Bank free from all encumbrances. The gazette notification bearing No 774/11 dated 7th July 1993 was marked as P1. The persons who claimed the property as the present owners were namely, Wijesundera Mudiyansele Gunatillake and Wijesundera Anula Kumary. They had attended the inquiry. The inquiry proceedings have been marked as P3.

After the inquiry the respondent Bank being unable obtains possession of the premises in suit made an application to the District Court in terms of section 72(7) of the said Act. . Under section 72(7) authorized officer of the bank, "is entitled upon production of the vesting order for delivery of possession of such premises."

The Section 72(8) provides that every such application made to the District Court “shall be made, and shall be disposed of, by way of summary procedure in accordance with the provisions of Chapter 24 of the Civil Procedure Code.” Accordingly, the District Court entered an order nisi on 14-8-1995. The said order nisi was served on the appellants. The appellants had filed objections. Written submissions also had been filed by the parties. Despite the objections and the written submissions raised by the appellants the District Court made the order absolute on the 18-9-97.

The appellant have filed this appeal against that order. The notice of appeal had been filed on 7-10-97. The petition of appeal had been filed on 19-11-97.

The issue is whether the appellant has a right of appeal under this Statute.

The principle that the courts have no right to entertain an appeal unless it is expressly given by statute; and that it is not ^aright that can be implied or _✓inferred has been affirmed by many authorities. In the case of A.G. Sillam 11 ER 1200, Lord Westbury expressed himself in the following manner;

“The creation of a new right of appeal is plainly an act which requires legislative authority. The court from which the appeal is given, and the court to which it is given, must both be bound, and that must be the act of some higher power. It is not competent to either tribunal, or to both collectively, to create any such right.....an appeal is the right

of entering a superior court, and invoking its aid and interposition to redress the error of the Court below...”

This dictum indicates the reason why a statute should expressly confer the right of appeal. And further, in the case of King v Joseph Abbot CJ sated that;

“.....although a certiorari lies, unless expressly taken away, yet an appeal does not lie, unless expressly given by statute.” (King v Joseph 106 ER 1027)

Therefore, the principle that a right of appeal cannot be implied, but must be given by express words has been re-affirmed in many decisions.

The Finance Act No 11 of 1963 as amended had not conferred a right of appeal.

I therefore, hold that there is no right of appeal from the order of the District Court dated 18-9-1997 making the decree nisi absolute and allowing the application for an order of delivery of possession of the premises. The appeal is dismissed.

The appeal is dismissed subject to taxed cost.

Rohini Marasinghe J.

Judge of the Court of Appeal.