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

C.A.1108/99 (F)

D.C.Marawila 3/R

Warnakulasuriya Maria Francisca

Girtrude Fernando,of Bolawatte

3rd Defendant-Appellant

Vs

1) Rev Sr. Marie Bernard
2) Rev Sr. Maria Vorgione
Both of Nainamadama West,
Nainamadama.

Substituted Plaintiff-

Respondents

and,

1) W. Mary Elizabeth Fernando
2) W. Theresa Fernando both of Bolawatte

2nd & 3rd Substituted-Defendants

Respondents

Before : H.N.J.Perera, J.

Counsel : Nalini Jayatilleke for the substituted Plaintiff-Respondent

H.C.Jayaratne for the 3rd Defendant-Appellant.

Argued on: 27.06.2013

Written Submissions: 14.06.2013 & 17.06.2-013

Decided on: 02.08.2013

H.N.J.Perera, J.

This appeal has been filed against the order made by the District Judge of Marawila on 09.12.1999.

The original plaintiff filed this action for the ejectment of the original defendants from the premises described in the schedule to the plaint. The judgment was delivered on 21.12.1973 in favour of the plaintiffs as prayed for, and the defendants opted to appeal from the said judgment and judgment dismissing the appeal was made on 08.05.1978.

The original plaintiff died, and the substituted 2nd plaintiff-respondent made an application for writ of execution on 11.06.1998.The 3rd defendant appellant resisted the said application on the grounds that the application for writ had been made after ten years from the date of the decree. It was the position of the 3rd defendant-appellant that the application for writ dated 11.06.1998 was time barred and directly against the provisions of section 337 (1) as amended by Act No 53 of 1980.

The Learned District Judge after considering the written submissions filed by both parties by his order dated 09.12.1999 allowed the

application for writ made by the substituted 2nd plaintiff-respondent. Aggrieved by the said order the 3rd defendant-appellant has filed this appeal.

The position of the substituted plaintiff-respondents is that the amendment law by Act No 53 of 1980 do not apply to this case.

The 3rd defendant-appellant has filed this appeal to this court from the order of the Learned District Judge made on 09.12.1999.The question arises whether the 3rd defendant-appellant has a right of appeal from the order made by the Learned District Judge on 09.12.1999.

In Gunarathna v Thambinayagam (1993) 2 SLR 355 it was held that:

"The right of appeal is a statutory right and must be expressely created and granted by statute."

In Martin v Wijewardena 1989 (2) S.L.R. 410 it was held that:

(1)A right of appeal is a statutory right and must be expressly created and granted by statute. It cannot be implied. Article 138 is only an enabling Article and it confers the jurisdiction to hear and determine appeals to the court of appeal. The right to avail of or take advantage of that jurisdiction is governed by the several statutory provisions in various Legislative Enactments.

Further it was held in Tillakewardena v Obeysekera 33 NLR 193 that the right of appeal must be expressly stated. I am of the view that there is no right of appeal from the order of the Learned District Judge dated 06.12.1999 to this court.

The Counsel for the 3rd defendant-appellant in his written submissions filed to this court has conceded the fact that the 3rd

defendant-appellant has no right of appeal from the order made by the Learned District Judge on 09.12.1999 but urged this court to exercise the Revisionary Jurisdiction of this court to set aside the order dated 09.12.1999 of the Learned District Judge of Marawila.

In Mariam Beebee v Seyed Mohamed (1995) 68 NLR 36 it was held that:

"The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this court. **Its object is the due administration of justice and the correction of errors, sometimes committed by this court itself, in order to avoid a miscarriage of justice.** It is exercised in some cases by a judge of his own motion when an aggrieved person who may not be a party to the action brings to his notice the fact that unless the power is exercised injustice will result"

It is trite law that the purpose of revisionary jurisdiction is supervisory in nature, and that the object is the proper administration of justice.

In Attorney General v Gunawardena (1996) 2 SLR 149 it was held that:

"Revision, like an appeal, is directed towards the correction of errors, but it is supervisory in nature and its object is the due administration of justice and not, primarily or solely, the relieving of grievances of a party. An appeal is a remedy, which a party who is entitled to it, may claim to have as of right, and its object is the grant of relief to a party aggrieved by an order of court which is tainted by error..."

In Bank of Ceylon v Kaleel and Others (2004) 1 SLR 284 it was held that:

"...to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which is beyond an error or defect or irregularity that an ordinary person would instantly react to it...the order complained of is of such a nature which would have shocked the conscience of the court."

The position with regard to the exceptional circumstances that ' shock the conscience of court' was clarified in recent case of Podimenike v Dingiri Mahattaya 2008 (`1) Appellate Law Recorder 23 where it was held that:

"...where the entire proceedings are clothed in a garb of illegality, there is no more demanding or profound an exceptional circumstance to catalyse and galvanize into action the wheels of revisionary discretionary powers to remedy the catastrophe which otherwise would occasion a failure of justice. It is simply a question that unless the power is exercised, injustice will result."

Further it was held in Ranasinghe v Henry 1 NLR 303 that a superior court would exercise its revisionary jurisdiction and quash an order of the lower court where the order is ex facie wrong.

This appeal relates to an application for execution of a decree made on 11.06.1998 by the 2nd plaintiff-respondent against the 3rd defendant-appellant for the recovery of premises described in the schedule to the plaint. The first application was filed on 17.01.1979 where it was not duly prosecuted. The plaintiff-respondents filed another writ application on 20. 01.1988, it was dismissed as there was no proper application for a writ of possession. Thereafter the third application was made by the 2nd plaintiff-respondent which was resisted by the 3rd defendant-appellant on the ground that in terms of the Amended Section 337 (1) which came into operation on 11.12.1980, it cannot be issued after laps of 10 yrs from the date of

the decree in the case. The District judge after inquiry delivered his order on 09.12.1999 granting the writ of possession against the 3rd defendant-appellant relying upon the dictum in case of Rajadurai v Emerson (1995) 2 SLR 30. In that case following the dictum in Haji Omar v M.H.Bodidasa S.C.Minutes 6.12.94 it was held that the ten year limitation period does not apply in relation to a decree for immovable property, prior to the passing of Act 53 of 1980 on 11.12.1980 and that the amendment brought in by Act No 53 of 1980 cannot be regarded as purely procedural legislation in so far as it purports to affect the vested right of the judgment-creditor.

The 3rd defendant–appellant has failed to show any exceptional ground for this court to interfere with the order of the learned District Judge delivered on 09.12.1999. This court is also of the view that the order complained of does not warrant the exercise of the revisionary jurisdiction of this court. Therefore I dismiss this appeal with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL