

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

Piyasena Hapuaratchi

4th Respondent – Petitioner

Vs.

C.A. Rev. 1518/2006

1. Bulathsinghala

**Plaintiff – Petitioner –
Respondent**

2. Baldsingho and 2 others.

Respondents – Respondents

Before : P.R. Walgama, J

**Council : Navin Marapana for the 4th Respondent –
Petitioner.**

**: Rohan Sahabandu PC with Surekha Vithanage
Plaintiff – Petitioner – Respondent.**

Argued on : 12.01.2016

Decided on: 28.10.2016

P.R. Walgama, J

The facts germane to the instant application arose thus;

The Plaintiff – Petitioner instituted action in the District Court of Colombo in the case bearing No. 5037/ZL and moved for the reliefs inter alia;

For a declaration that he is entitled to the land described in the schedule thereto;

For an order of an ejectment of the Defendant and everybody holding under him.

After the trial the Learned District Judge, by his judgment dated 03.07.1990, has dismissed the Plaintiff's action without costs.

Being aggrieved by the above judgment, the Plaintiff lodged a appeal to the Court of Appeal, and the Court of Appeal by the judgment dated 21.06.2000 had allowed the appeal and entered the judgment in favour of the Plaintiff – Appellant.

Being dissatisfied with the said judgement of the Court of Appeal the Defendant – Respondent, an application of Special Leave to Appeal was made to the Supreme Court, and Supreme Court has rejected the same.

Thereupon the Plaintiff made an application to have decree executed in terms of Section 325 of the Civil Procedure Code to get the possession of the subject land. In pursuant to the said application the fiscal has gone to execute the writ and the Defendant – Respondent and 2nd and 4th Respondents had obstructed the fiscal to perform the said duty.

The instant application in Revision arises out of an order of the Learned District Judge dated 05.10.2006. The said impugned order was made pursuant to an inquiry held in terms of Section 325 of the Civil Procedure Code.

The Plaintiff – Petitioner was the Judgment – Creditor in Case bearing No. 5037/ZL ,and made an application for the execution of a writ of possession and for the restoration of the Plaintiff in peaceful possession of the subject land.

It is averred in the petition, when the fiscal went to hand over the possession of the subject land to the Plaintiff – Petitioner on 28.12.2001, the Defendant in the said case and 2nd and 4th Respondents had obstructed the Fiscal for handing over the possession of the land, to the Plaintiff – Judgment Creditor.

The 4th Respondent had opposed the above application of the Plaintiff – Petitioner and stated the following;

That the fiscal, has tried to hand over the possession of a land by executing the writ, which the 4th Respondent possessed.

That 4th Respondent became entitled to the subject land by virtue of deed bearing No. 263 dated .6.12.1920 and on prescriptive title.

It is the categorical position of the 4th Respondent that he was in possession of the said land from 06.09.1987, and had gain prescriptive title to the above land.

In addition to the afore said as per plan 641 the surveyor has mentioned the fact that the 4th Respondent is in possession in lot No.2 of the said plan.

In the above setting the 4th Respondent urged that he should not be dispossessed by the execution of the said writ, as he has not gained title under the judgment debtor.

The Learned District Judge after the inquiry in to the Plaintiff – Petitioner's application under Section 325 has held in favour of the Plaintiff and ordered an ejection of the other Defendant- Respondents and the 4th Respondent – Petitioner accordingly.

Being aggrieved by the said order the 4th Respondent – Petitioner has come by way of Revision to have the said order vacated or set aside.

The 4th Respondent – Petitioner, in addition to what has been said above has in his petition stated the following;

That basically the facts averred above merits the intervention by this court exercising its revisionary powers to set aside the impugned order of the Learned District Judge.

The threshold issue for determination by this court is whether the 4th Respondent – Petitioner is entitled to seek the Revisionary jurisdiction of this Court. But it is contended by the Plaintiff – Respondent that the proper course of action is to institute action under the regular procedure.

The said contention of the Plaintiff – Respondent is based on Section 329 of the Civil Procedure Code.

Section 329

“ No appeal shall lie from any order made under Section 326 or 327 or Section 328 against any party other than the judgment debtor. Any such order shall not bar the right of such party to institute an action to establish his right or title to such property”.

In considering the above section our Superior Court has given a wide interpretation by recognizing the

power of the Court of Appeal to exercise the Revisionary power to overcome any miscarriage of justice to a party who was not bound by the decree.

In the case of **DAMMALOKA THERO .VS. DR. CYRIL ANTON BALASURIYA -SC. (APPEAL) NO. 9/2002-**
decided on 02.03.2010

Their Lordships had followed many decisions of the Supreme Court and held that the Court of Appeal could exercise its Revisionary powers when a substantive miscarriage of justice has been caused by executing a writ to dispossess the Petitioner.

The linchpin of the argument of the Plaintiff – Respondent is that there is an alternate remedy available to the petitioner viz a viz that the petitioner could institute action to vindicate his title, in the appropriate Court.

In invoking the Revisionary Jurisdiction of this Court the Petitioner has asserted the following;

That he and his sister is in possession of this land and if they are to be ejected by the execution of the writ an irreparable loss will be caused to them and more fully the Learned District Judge has failed to consider their title and possession of the land in issue. Further it is salient to note that the Plaintiff did admit in the above inquiry that the 4th

Respondent – Petitioner is in possession of the land in issue.

Hence this court is persuaded by the said judgment and the above circumstances which warrant the exercise of the Revisionary jurisdiction of this court.

Therefore in the said backdrop we set aside the order of the Learned District Judge dated 05/10/2006 and allow the 4th Respondent – Petitioner’s application accordingly.

JUDGE OF THE COURT OF APPEAL