

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

Karunawathie Wanniarachchi  
1<sup>st</sup> Lane, Kolawatte, udammita,  
Weyangoda.

C.A.L.A.No. 156/2004

**Plaintiff- Appellant**

D.C.Gampaha No.449/L.

Vs

1. Madawita Withanage Sirisena,  
92/43, 4<sup>th</sup> Lane, Aluthgamawatte,  
Yakkala.

2. Vihangulage Lal Perera  
376/280, Samagi Mawatha,  
Gampaha Road,  
Yakkala.

3. Batakuta Pathrennehalage  
Sylvia Pathirana,

“Subasiri Niwasa”

Rafel Watte, Yakkala.

4. State Mortgage and Investment  
Bank..

269, Galle Road, Colombo 3.

**Defendants- Respondents**

BEFORE : Deepali Wijesundera J.,  
M.M.A.Gaffoor,J.

COUNSEL : W.R.J.Peiris with A. Amaratunga for the  
Appellant.

Milinda Gunthilaka D,S.G. for 4<sup>th</sup> Defendant-  
Respondent.

ARGUED ON : 24.07.2015

DECIDED ON : 14/01/2016

**M.M.A. Gaffoor J.**

This application is filed in this Court to have set aside the Order of the learned District Judge Gampaha dated 21.04.2004 where she has held that the action filed by the plaintiff- petitioner cannot be maintained against the defendant 4<sup>th</sup> respondent on the simple reason that, there is an ouster clause in SEC 50 of Act No.13 of 1975 as amended.

Counsel for the appellant submitted that whether the plaintiff can maintain the action in the District Court against the 4<sup>th</sup> respondent or not, if yes should the Order (p-5) dated April 21,2004 of the learned District Judge be reversed. The plaintiff by her plaint sought among other things to invalidate Mortgage Bond Nos. 22929 (P-1E) and 24128 (P-1F) respectively dated October 6, 1998 and September 18, 2000 and held by the 4<sup>th</sup> Respondent over two Lots' Nos. 12 & 7 . The Pleading in paragraphs Nos.7,8 & 15 of the plaint (P-1) read with ( ¶ ) ( § ) did and does support this seeking and or application. The 4<sup>th</sup> respondent was accordingly, made a party to the action in the District Court both as a

likely party to be an affected and a necessary party to adjudicate upon the declaratory judgment sought.

The 4<sup>th</sup> respondent among other but primarily, relies on Perera Vs Peoples Bank (1975) 78 NLR 329 which is a three bench judgment. The said case has no force of law anymore and has been superseded by Ranasinghe Vs The Ceylon State Mortgage Bank 1981 SLR Vol. 1 121 a five judge bench Ranasinge's case was an appeal from the District Court to the Court of Appeal and then to the Supreme Court . Their Lordships has reviewed all noteworthy judgments up to that time including Perera Vs People Bank and arrive at their decision. It was not a writ application neither did their Lordships hold that the application should not be by way of an appeal nor even hint anything in obiter. Their lordships have duly held that Section 217 (d) & (g) of Civil procedure Code has conferred adequate powers / jurisdiction to the District Court to grant the declaratory relief sought surely and manifestly including those in the nature of what is being asked in the instant case.

The counsel for the appellant further submitted that the plaintiff alleges fraud. The main matter in this case relates to unraveling of a fraud. In this connection the judgment of Lord Denning LJ & Lord Packer LJ in *Lazaru Estates Ltd. Vs. Beasley* (1956) 1QB 702(1956) 1 All ER 341 is cited which is self-explanatory. It is urged that the approach therein being considered as persuasive to the matter of the instant case. Non compliance with section 76 of the CPC by the 4<sup>th</sup> respondent is fatal: The resolution of the 4<sup>th</sup> respondent has been issued by the time plaintiff was filed if the jurisdiction of the District Court has been ousted by it the 4<sup>th</sup> respondent in compliance with Section 76 of CPC should have in its answer averred traversing Jurisdiction of the Court unambiguously and by a separate averment. It was not done so and therefore the 4<sup>th</sup> respondent is barred by law to raise this issue later. Counsel for the appellant stated that the contested order dated April 21<sup>st</sup> 2004 is not founded on the vacation of interim relief; it was orally urged by the counsel for the 4<sup>th</sup> respondent in the Court of Appeal that the contested order dated April 21, 2004 was made on the basis of and connected to the vacation of the stay order granted. The reading of both these orders well manifest that there is no such order connection. The

learned District Judge made no such between the order P3 and P5 . He purely relied on an interpretation of Section 50 above referred to.

To consider this position I would like to look in to the basic facts of this case. The plaintiff-petitioner has filed the case bearing No/449/L seeking the plaintiff –petitioner to declare inter alia as the lawful owner as to say the title of the allotments of lands more fully described in the schedules to the plaint. The claim of the plaintiff- petitioner is that the 1<sup>st</sup> defendant-respondent has registered a forged deed in respect of 4 lots of the land. Thereafter, the 1<sup>st</sup> respondent had two lots to the 2<sup>nd</sup> and 3<sup>rd</sup> defendant-respondent. Moreover, the 1<sup>st</sup> and the 3<sup>rd</sup> respondents had mortgaged two lots to the 4<sup>th</sup> defendant-respondent by a mortgage bound.

The Plaintiff-petitioner sought, in the said District Court case an interim injunction against all respondents including the 4<sup>th</sup>. Following the vacation of the enjoining order and at the next stage of the proceedings of the case, the 4<sup>th</sup> Defendant-respondent has taken a

preliminary objection that the plaintiff-petitioner cannot maintain this action against the 4<sup>th</sup> Defendant-Respondent.

Their point of law is that the District Court has no jurisdiction to proceed against the 4th Defendant-respondent in terms of Section 50 of the State Mortgage and Investment Bank Law No.13 of 1975. It is my duty to consider whether the learned District Judge has given her full consideration to the basic principles of the law in construction of the said provision and also to the ratio of the judgment *Hewawasam Vs. Peoples Bank*.

Whether the plaintiff can maintain the action in the District Court against the 4<sup>th</sup> Respondent or not, if yes should the order (P-5) dated April 21, 2004 of the learned District Judge be reversed.

The 4<sup>th</sup> respondent advances two arguments (a) the District Court has no jurisdiction and or declaratory power over the purported resolution. Therefore the order made is corrected. (b) The plaintiff if aggrieved, should have come by way of a writ and not by way of an appeal as she in effect challenges the validity of a resolution issued by the 4<sup>th</sup> respondent exercising statutorily granted power. The 4<sup>th</sup> respondent among other but primarily, relies on *Perera Vs. People Bank (1975) 78 NLR 329* which is a three bench judgment. The said case has no force of law anymore and has been superseded by *Ranasinghe vs The Ceylon State Mortgage Bank 1981 SLR Vol.1 121 a five judge Bench*.

The main matter in this case relates to unraveling of a fraud. In this connection the judgment of Lord Denning LJ & lord Parker LJ in *lazarus Estates Ltd. Vs. Beasley (1956) I QB 702, (1956) I All ER 341*. Is cited which is self-explanatory.

I have to; though reluctantly answer the above questions in the negative. I perused *Hewawasam Vs. People Bank*. I am also in full agreement with



their Lordships findings. The learned District Judge has failed to read the Section 50 of the said Act No.13 of 1975 as mended in its true sense. Moreover, she has failed to understand the rationale of the said judgment. Therefore it is the duty of this Court to place it in its proper track.

This Section goes as follows.....

..... it shall not be competent for the borrower or any person claiming through or under any disposition whatsoever of the right, title or interest of the borrower to and in the property made or registered subsequent to the date of the mortgage to the bank, in any Court to move to invalidate the said resolution for any cause whatsoever, and no Court shall entertain any such application.

To apply this section it should pertain to

A. The borrower

B. Or any person claiming through or under any disposition..... right, title, interest of the Borrower...

I hold that the plaintiff-petitioner in this case does not fall into the above categories. He is not the borrower nor claiming through or under any disposition..... right, title, interest of the borrower. Moreover, the intention of the legislature is crystal clear that it has intended to prevent endless civil litigation by a borrower after a resolution to public auction of a mortgaged property by the Bank. Therefore, I hold that this case does not fall within the purview of Section 50 of Act No.13 of 1975 as amended.

Therefore, the ouster clause has no application to this case, hence I proceed to set aside the order of the learned District Judge Gampaha dated 21.04.2004 and hold that the plaintiff-petitioner can maintain this case against the 4<sup>th</sup> defendant-respondent.

Having ordered that I would like to place on record the following:

I have carefully perused this case record and found that the cause of action has arisen out of several deeds of transfer executed by one Gamini Dissanayake.

He is not a respondent in this case. I can't perceive how the plaintiff is going to succeed his case without bringing this Gamini Dissanayake into the picture, who is the best person to answer about these conflicting deeds.

Considering the above fact and circumstances of this appeal, the appeal is allowed and the objection of the 4<sup>th</sup> respondent is refused with costs.

**JUDGE OF THE COURT OF APPEAL.**

**Deepali Wijesundrara,J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**