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

In the matter of an Appeal under Section 755(3) of the Civil Procedure Code.

Jayasundera Mudiyansele Ariyadasa

of Dambulle (deceased)

C.A. Case No. 955/2000 (F)

D.C. Matale Case No. 2149/L

Don Kithsiri Ranjith Athukorale,

No.418, Anuradhapura Road,

Kurunegala Junction, Dambulle.

Substituted - Plaintiff

-Vs-

Sankapala Arachchilage Siriwardena,

No.508/A, Kurunegala Junction,

Dambulle.

Defendant

AND

Sankapala Arachchilage Siriwardena,

No.508/A, Kurunegala Junction,

Dambulle.

Defendant - Petitioner

-Vs-

Don Kithsiri Ranjith Athukorale,

No.418, Anuradhapura Road,

Kurunegala Junction, Dambulle.

Substituted – Plaintiff - Respondent

AND NOW

Sankapala Arachchilage Siriwardena,

No.508/A, Kurunegala Junction,

Dambulle.

Defendant - Petitioner - Appellant

-Vs-

Don Kithsiri Ranjith Athukorale,

No.418, Anuradhapura Road,

Kurunegala Junction, Dambulle.

Substituted - Plaintiff - Respondent

BEFORE : **A.H.M.D. Nawaz, J.**

COUNSEL : Janaka Kroon for the Substituted-Defendant-Appellant.

Athula Perera with Chathurani De Silva for the Plaintiff-Respondent.

Argued on : 26.06.2015

Decided on : 24.03.2016

A.H.M.D. Nawaz, J.

This is an unusual Revision Application where the Defendant-Petitioner-Appellant (hereinafter referred to as "the Defendant"), having exhausted all procedures available to him under the Civil Procedure Code, seeks an order from this Court to have this matter gone into by the District Court of Matale afresh. Among the reliefs that the Defendant has prayed for in his petition of appeal dated 28th October2000, he prays that this matter be sent back to the District Court for a fresh inquiry to be conducted in terms of Section 839 of the Civil Procedure Code.

The Facts in Brief

The original plaintiff, (since deceased), who was the father of the present Substituted Plaintiff-Respondent instituted this action against the Defendant-Petitioner-Appellant by his Plaint dated 30th July 1975, in the District Court of Matale for the recovery of arrears of rent, ejectment of the Defendant from the premises in suit and restoration.

The Defendant (the Appellant) filed answer stating that he was in possession of a land called "Varagaman Yaya" from a portion of which the Plaintiff was seeking to have him ejected but it belonged to one Arumugam Kandiah, and subsequent to a litigation one W.G.Wijesinghe had been awarded the said portion and that the Defendant had been a lessee from the latter, and therefore, the action, in any event, should be instituted against the said Wigesinghe or Kandiah, and in the premise she prayed for a dismissal of the action.

However, on 10th January 1980 when the case was taken up for trial, the Defendant agreed to make a payment of Rs. 73.10 before 10 a.m. on the next day and he

further agreed that judgment could be agreed in favour of the Plaintiff in the event he defaulted in the payment. On the next date namely 23rd May 1980, the Defendant did default and the learned District Judge entered judgment in favour of the Plaintiff-vide pages 324 and 325 of the appeal brief.

The Plaintiff, thereafter, moved for execution proceedings and the defendant filed objection to the notice of execution of the writ of execution.

At the inquiry into this objection, the Court ordered the stay of execution till 31st August 1987 and thereafter writ was to be issued for ejectment of the Defendant and all those claiming under him. Since the Defendant again defaulted, the Court issued writ of execution against the Defendant. When the Fiscal went to execute the writ, some 14 persons, who were in possession of 14 boutiques objected and the Defendant's boutique was found to be padlocked.

Thereafter, the Plaintiff took steps under Section 325 of the Civil Procedure Code against the Defendant, his servants/agents including the 14 persons for ejectment. The 14 persons and the defendant filed objections. After considering the application of the Plaintiff and the objections of the Defendant and the 14 persons, the learned District Judge by his Order dated 12th February 1999 allowed the Plaintiff's application for ejectment-vide page 371 of the appeal brief.

The Defendant appealed against this order to the Court of Appeal by way of Revision in Case No. CA/Rev/262/99, which revision application was dismissed by this Court by its Order dated 27th June 2000. His Lordship Edussuriya (P/CA) held that,

> *"As hereinbefore mentioned, the Petitioner to this application is the Judgment-debtor and he is bound by the decree and therefore, he, the petitioner, cannot succeed in this application. This application is, therefore, dismissed with costs fixed at Rs.3150/=."*

Invocation of Section 839 of the Civil Procedure Code

Having failed in his revision application before this Court on 27th June 2000, the Defendant thereafter proceeded to seek relief under Section 839 of the Civil Procedure Code in the District Court of Matale seeking *inter alia*:-

(a) to suspend the writ of execution against him;

(b) to order that the order made on 12.02.1999 was a nullity;

It has to be remembered that the abortive revision application before this court had challenged the order of the learned District Judge dated 12the February 1999 and despite the failure of that challenge before this Court, the Defendant was again seeking to impugn the order dated 12the February 1999 – a course of action he advisedly thought was available to him due to the flexibility of the inherent jurisdiction bestowed in Section 839 of the Civil Procedure Code.

The learned District Judge, however, by his order dated 31st August 2000, dismissed the Defendant's application to invoke his inherent powers under Section 839 of the Civil Procedure Code. Having failed in his invocation of Section 839 jurisdiction, the Defendant has thereafter filed the present appeal to this Court seeking the following relief namely:-

(a) to set aside the order dated 31.08.2000 of the District Court of Matale;

(b) to send the case back for a fresh inquiry in terms of the application made under Section 839 of the Civil Procedure Code;

(c) to make Order that the defendant-appellant is the lawful holder of the premises in question under the State.

I venture to state that this appeal is totally a misconception of the law and more particularly the provisions of Section 839 of the Civil Procedure Code which refer to inherent powers of Court. It is needless to repeat the facts of this case as this Court

has only to look at the remedies sought by the defendant to ascertain whether inherent jurisdiction of the District Court should be exercised to adjudicate on a matter which has already been gone into.

It would appear that in every sense the Petitioner in this appeal has no legs to stand as the matter cannot be re-adjudicated or inquired into once again under Section 839 of the Civil Procedure Code. The provisions of the law cannot be used at the whims and fancy of a litigant to abuse the process of court. In this case, it appears to me clearly that the Defendant is on a voyage of discovery of some legal loophole of the provisions of the law to abuse the process of Court. Inherent powers of courts cannot be elastic and our Court have set its limits.

Certainly the statement of "inherent powers" abound, but they are usually phrased rather broadly to cover powers thought to be essential to the existence, dignity, and functions of the Court, because it is only a Court that can maintain an orderly, efficient, and effective administration of justice, and not to the destruction of proper administration of justice.

Section 839 of the Civil Procedure Code, which saves the inherent power of Courts, reads as follows:

> *"Nothing in this Ordinance shall be deemed to limit or otherwise affect the inherent power of the Court to make* ***such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court".*** (emphasis added).

In the present appeal, the Defendant-Petitioner-Appellant impugned the order of the District Court of Matale dated 12th February 1999 in the revision application before this Court. He sought the inherent jurisdiction of the District Court to re-agitate the same matter. The learned District Judge quite correctly declined jurisdiction under

Section 839 of the Civil Procedure Code and this appeal from the order declining jurisdiction would amount is nothing but an abuse of process of court.

I wish, however, to make some comments on the reliefs sought for in this Appeal.

a) The defendant's plea to set aside the order dated 31.08.2000 made by the learned District Judge against him cannot be granted because it is a correct order made against him, as the judgment-debtor in the case, ha has no right to object to the execution of the decree, but to abide by the decree of Court, and therefore inherent jurisdiction would not lie to thwart
b) Section 839 of the Civil Procedure Code cannot be used to send back this case to the District Court for an inquiry as the matter was already inquired into earlier and an order was made by the Court against which order he filed a Revision Application to this Court and it was dismissed by this Court as stated above.
c) This Court cannot make an order to the effect that the Defendant-Appellant is the lawful holder of the premises in question under the State as the Defendant by a settlement entered into on 10.01.1980 agreed to accept the plaintiff as his landlord and therefore he is now estopped from claiming ownership to the premises.

It is apparent that in this case all the procedures under the Civil Procedure Code have been utilized by the Plaintiff to vindicate his rights and against every such procedure the Defendant has also taken steps to obtain relief but failed. The history of the case shows that the Defendant, being a defaulter at the very beginning knocks at the wrong door of the law to obtain some relief in his favour but the law cannot help him when he has exhausted all available remedies under the law but is attempting to invoke a jurisdiction which operates within limits.

Having failed in all his attempts, the Defendant prays that the case be sent back for a fresh inquiry under Section 839 of the CPC.

Inherent powers can be availed of to regulate practice and procedure where it is essential owing to the absence of express statutory procedures. But if the statutory procedure are correctly and properly followed in a case, inherent powers cannot be used to set aside orders which were made following statutory procedures. In this case, it is clear that the process of court has not been misused or abused for the defendant to seek the remedies he has asked for.

When there are specific provisions in the Civil Procedure Code that provide a conduit to impugn and impeach an order made in the exercise of ordinary jurisdiction of a District Court and a litigant has made use of those provisions, an unsuccessful outcome in the impeachment of the order cannot give rise to the availability of inherent powers to re-agitate this *lis*. In other words inherent powers will not be used for the benefit of a person who has a specific remedy or has made use of such a remedy under the Civil Procedure Code. In this case, the Defendant had sought all those remedies but could not succeed because he has acted against the provisions of the law as has been found by both the District Court and the Court of Appeal. This is not a case of a lacuna in the law that has occasioned a denial of justice for the defendant.

In the case of ***Leechman & Co. Ltd. vs. Rangalla Conslidated Ltd***. 1981 (2) Sri L.R. 373, this Court held that Section 839 merely saves the inherent powers to make such orders as may be necessary to meet the ends of justice or to prevent the abuse of Court. Where no provisions exist, it is the duty of the Judge and lies within the inherent power to make such order as the justice of the case requires.

Sripavan, J (as he then was) [with Saleem Marsoof, P.C. J and S.I. Imam, J agreeing] quite poignantly held in ***Wakachiku Construction Co Ltd vs. Road Development Authority***[1]:

> *"The legislature enacts provisions to meet the circumstances that can be foreseen and once provision has been made in the Statute the occasion to invoke inherent power in that circumstance practically vanishes. Thus, when the Statute provides a method so as to meet a contingency in a particular manner any other method thought of by the Court cannot then be said to be a method which would advance the interest of justice. It is in this sense, that no occasion for the exercise of any inherent power arises when the statute expressly provides for what is to be done in that situation. The remedy provided by the Statute may not be an efficacious one. It may even lack the necessities to grant quick relief. However, it is well settled and accepted as axiomatic that justice be administered in accordance with the law of the land."*

In the circumstances, I do not see any grounds upon which the provisions of the inherent powers under Section 839 can be invoked to grant the reliefs prayed for by the Appellant. I therefore dismiss the appeal with costs.

JUDGE OF THE COURT OF APPEAL

[1] SC Misc 01/2011 decided on 6.02.2013