

RAJADURAI
v.
EMERSON

COURT OF APPEAL.
S. N. SILVA, J. P/JCA;
DR. RANARAJA, J.
C.A. APPLICATION NO. 1215/90
WITH CALA 192/90
D.C. MT. LAVINIA 954/L
JANUARY 23, FEBRUARY 10, 1995.

Rei Vindicatio – Settlement – Applicability of Civil Procedure Code (Amendment) S 337(1) of Act, 53 of 1980 – Retrospective effect – Doctrine of Binding precedent – S 6(3) Interpretation Ordinance.

The plaintiff-respondent who was the wife of the Defendant-petitioner and the owner of the premises in suit, instituted action for declaration of title and ejection. Settlement was arrived at with the defendant agreeing to vacate the premises on or before 15.7.1978 with writ to issue without notice on failure.

Plaintiff died on 3.10.1979 without making an application for execution. The respondent, the administrator and sister of the plaintiff was substituted on 12.6.1986 in terms of Section 395 of the Civil Procedure Code and obtained writ. The Court of Appeal set aside the Order and observed that the application should have been under Section 339(1) and not under 395.

Another application for Writ under Section 339(1) was made by the administrator, which was resisted on the basis that in terms of Section 337(1) of Act 53 of 1980, since a period of ten years have elapsed after the decree, writ could not issue. The District Court allowed the application for writ.

Held:

(1) The Decree was entered on 15.6.1976 and the Application for writ was finally made after 10 years.

(2) 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 11.12.80.

(3) By amended S 337(1) of Act 53 of 1980, the ten year bar became applicable to all Decrees, other than a Decree granting an Injunction, subject to the exceptions that are provided.

(4) The Consent Decree was entered on 15.6.1976, the Decree being one for immovable property and possession, the 10 year bar would not have applied in relation to its execution in terms of S. 337(1) as it stood then.

(5) The amendment to S 337(1) in Act 53 of 1980 would not apply retrospectively to Decrees for immovable property entered prior to the date of coming into operation of Act 53 of 1980.

(6) The amendment brought in by Act 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.

(7) On the principle of judicial precedent, the Court of Appeal is bound by a decision of the Supreme Court in a case directly in point.

Cases referred to:

1. *Charles Singho v. Jinadasa Appuhamy* 58 C.L.W. 83.
2. *Haji Omar v. M. H. Bodidasa* S.C. 48/93 – S.C. Minutes 6.12.94.

APPLICATION in Revision of the Order of the District Judge, Mt. Lavinia.

H. L. de Silva, P.C. with *S. Mahenthiran* for defendant-petitioner.

P. A. D. Samarasekera, P.C. with *G. L. Geethananda* for plaintiff-respondent.

Cur. adv. vult.

March 08, 1995.

SILVA, J. P/CA

This application has been filed by the Petitioner (judgment-debtor) in revision from the order dated 21.11.1990 made by the District Judge. By that order Learned District Judge allowed the application of the Respondent (substituted judgment creditor) for execution of decree.

The plaintiff was the wife of the petitioner and the owner of the premises in suit. Parties were divorced but the petitioner continued in occupation of the premises. The above action was filed for

declaration of title and ejectment. The action was settled on the basis of which writ was to issue for the ejectment of the petitioner without notice after 15.07.78. The plaintiff was taken ill and she died on 03.10.79 without making an application for execution of decree. Her mother was substituted as plaintiff, which order was set aside by this Court in Appeal (CALA 86/79). The respondent being the sister of the plaintiff obtained letters of administration in respect of the estate of the plaintiff. She was substituted as plaintiff on 12.6.86 in terms of section 395 of the Civil Procedure Code and after notice to the petitioner writ was issued against him. In appeal (CALA 154/87) this Court set aside the order for substitution and the subsequent order issuing writ on the basis that the application should have been made under section 339(1) and not under section 395 of the Civil Procedure Code. It appears that in the previous appeal it had been held that the application for substitution should have been made under section 395. Be that as it may, the respondent made a fresh application for execution of decree in terms of section 339(1) with notice to the petitioner which was objected to on the basis that execution cannot be granted in view of the provisions of section 337(1), as amended by Act No. 53 of 1980, since a period of more than ten years has elapsed after the date of decree. Learned District judge disallowed that objection and granted execution of decree by the impugned order. The operation of the order has been stayed by this Court in this application.

The ten year limitation as to the execution of a decree was applicable in terms of section 337(1) prior to the amendment of 1980 in respect of "a decree for the payment of money or for the delivery of other property." In the case of *Charles Singho v. Jinadasa Appuhamy*⁽¹⁾, it was held by the Supreme Court (Basnayake, CJ, with Sansoni, J. agreeing) that the phrase "other property" should be construed *ejusdem generis* with the word "money" and would therefore mean other movable property. Therefore the ten year limitation did not apply in relation to a decree for immovable property prior to the 1980 amendment which came into force on 11.12.1980. By the amendment of 1980 the words "a decree for the payment of money or for the delivery of other property" referred above were omitted and in terms of the provision as redrafted, the ten year bar applies in relation to all decrees other than a decree granting an injunction, subject to the exceptions that are provided.

The consent decree was entered in this case on 15.06.76. The decree being one for immovable property and possession, the ten year bar would not have applied in relation to its execution in terms of section 337(1) as it stood then, according to the decision in Charles Singho's case (*supra*). The question whether the ten year bar introduced in respect of all decrees by the amendment of 1980 which came into force on 11.12.80, will apply retrospectively to decrees entered prior to that day was considered by the Supreme Court in the case of *Haji Omar v. M. H. Bodidasa* ⁽²⁾. Upon an exhaustive analysis of the relevant provisions and the applicable case law, Dheeraratne, J. held that the amendment would not apply in relation to decrees for immovable property entered prior to 11.12.1980 being the date on which the amendment came into operation. It was held by Their Lordships that the judgment creditor's right to enforce the decree in his favour is a substantive right and is not a matter of procedure. On that basis it was held that the amendment of 1980 "cannot be regarded as purely procedural legislation insofar as it purports to affect (or rather to destroy) the vested right of the judgment creditor". This Court is necessarily bound by the decision of the Supreme Court given in relation to the interpretation of section 337(1) of the Civil Procedure Code, as amended in 1980, in the above case. The facts are broadly similar and there is no basis whatever to seek to distinguish the facts of this case from those in contemplation when the Supreme Court made the said decision.

Learned counsel for the petitioner has submitted that the decision of the Supreme Court referred above needs reconsideration. Such a submission cannot be considered by this Court considering the principle of binding precedent. He had also submitted that the Supreme Court made use of the provisions of section 6(3) of the Interpretation Ordinance for the purpose of arriving at its decision. On this basis it was submitted that section 6(3) "does not come into play" in relation to the matter of interpreting section 337 as amended. We note that it has been specifically observed by the Supreme Court that the "further question as to whether the judgment creditor's right was an 'acquired right' under the repealed law" within the meaning of section 6(3)(b) of the Interpretation Ordinance does not arise. Therefore we have to observe that the submission has been made without a proper appreciation of the basis of the decision of the Supreme Court. On a

consideration of the submissions of Learned Counsel we are of the view that the decision of the Supreme Court in the case of Haji Omar (*supra*) is directly in point in relation to the question that was decided by the Learned District Judge in the order dated 21.11.1990. Accordingly, we see no merit in this application. The application is dismissed. The petitioner will pay Rs. 5,000/- as costs to the respondent.

DR. RANARAJA, J. – I agree.

Application dismissed.
