

GHOUSE
V.
MERCANTILE CREDIT LIMITED

SUPREME COURT.

G. P. S. DE SILVA, C.J.,

DHEERARATNE, J. AND

RAMANATHAN, J.

S.C. APPEAL NO. 108/94.

C.A. REVISION NO. 870/91.

D.C. COLOMBO NO. 93243/M.

JUNE 23, 1995.

Civil Procedure Code – Money Decree – Writ of Execution – Seizure of exempt property – Claim by Judgment Debtor – Court having jurisdiction to investigate claim – Civil Procedure Code sections 218, 244, 245, 343 and 344.

The fiscal executing a decree of the District Court of Colombo seized certain premises situated at Yatiyantota within the local limits of the jurisdiction of the District Court of Avissawella. The judgment-debtor, relying on the proviso to section 241 of the Civil Procedure Code, claimed before the District Court of Avissawella that the premises seized was his actual residence and it was not liable to seizure.

Held:

The judgment-debtor was not entitled to prefer the claim in terms of section 241 of the Code and that the District Court of Avissawella has no jurisdiction to hold an inquiry and order the release of the property seized.

Case referred to:

1. *Karuppan Chetty v. Anthonayake Hamine*, 5 N.L.R. 300.

APPEAL from judgment of the Court of appeal.

E. S. Edirisinghe with *Luxman Amarasinghe* for claimant-respondent.

Geoffrey Alagaratnam with *Nazli Buhary* for plaintiff-respondent.

July 7, 1995.

G. P. S. DE SILVA, C.J.

The respondent instituted proceedings in the District Court of Colombo against the claimant for the recovery of certain sums of money and for the return of the vehicle in terms of the hire purchase agreement entered into between the respondent and the claimant. The claimant consented to judgment and agreed to make payment by instalments. He, however, failed to make the due payments as agreed upon, and the respondent took out writ of execution and seized certain premises at Yatiyantota, which according to the claimant, was his actual residence. These premises were situated within the local limits of the jurisdiction of the District Court of Avissawella.

The claimant filed a petition in the District Court of Avissawella seeking the release of the property from seizure on the ground that it was his actual residence, and therefore exempt from seizure under the provisions of section 218(n) of the Civil Procedure Code. The claimant purported to prefer his claim to the property seized under section 241 of the Civil Procedure Code. The District Court of Avissawella, after inquiry, held in favour of the claimant and released the property from seizure. Thereupon the respondent moved the Court of Appeal by way of revision and the Court of Appeal set aside the order of the District Court of Avissawella dated 6.9.91 releasing the property from seizure. Dissatisfied with the judgment of the Court of Appeal, the claimant has now preferred an appeal to this court.

The short point that arises for decision in this appeal is whether the claimant, who was himself the judgment-debtor, is entitled to prefer a claim to the property seized in terms of section 241 of the Civil Procedure Code. It was the contention of Mr. Edirisinghe for the claimant that the District Court of Avissawella had jurisdiction to investigate the claim in terms of the first proviso to section 241 of the Civil Procedure Code. On the other hand, Mr. Alagaratnam for the respondent submitted that the District Court of Avissawella had no jurisdiction to hold the inquiry as the judgment debtor is not a person

contemplated by the provisions of section 241 as one entitled to prefer a claim to property seized by the Fiscal.

Sections 227 to 240 of the Civil Procedure Code deal with the modes of seizure and matters connected with seizure. The seizure of particular property is the first overt act which would signify that a particular property would in due course be sold to satisfy the judgment debt. Section 218 enacts that the judgment-creditor has the power to "to seize, and to sell or realise in money by the hands of the Fiscal ... all saleable property ... belonging to the judgment-debtor, or over which or the profits of which or the profits of which the judgment-debtor has a disposing power, which he may exercise for his own benefit, and whether the same may be held by or in the name of the judgment-debtor or by another person in trust for him or on his behalf." Thus it is seen that it is necessary to safeguard the rights of a **third party** who owns the property or claims an interest in the property seized. It is section 241 which sets out the procedure for a third party to prefer a claim to the property and for the court to investigate such claim. As submitted by Mr. Alagaratnam the words "in section 241 ... and the Court shall thereupon proceed in a summary manner to investigate such claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, **as if he were a party to the action** ...," are indicative of the fact that the judgment-debtor is not a person contemplated by the section. The powers of the court upon an investigation of a claim preferred in terms of section 241 are set out in sections 244 and 245 of the Civil Procedure Code; these provisions lend further support to the view that a judgment-debtor is not entitled to have recourse to section 241. Mr. Alagaratnam also referred us to the case of *Karuppan Chetty v. Anthonayake Hamine*, wherein Bonser C.J, made the observation that the judgment-debtor is not a necessary party to an inquiry under section 241.

On a consideration of the matters set out above, I hold that the judgment-debtor is not a person who is entitled to prefer a claim to the property seized under the provisions of section 241 of the Civil Procedure Code. Consequently, the District Court of Avissawella had no jurisdiction to hold an inquiry and order the release of the property seized. It is the District Court of Colombo which passed the decree

that has jurisdiction in this matter—vide sections 343 and 344 of the Civil Procedure Code. The language of section 344 is wide enough to include a claim by the judgment-debtor that the property is exempt from seizure.

In the result, the judgment of the Court of Appeal is affirmed and the appeal is dismissed with costs fixed at Rs. 750/-.

DHEERARATNE, J. – I agree.

RAMANATHAN, J. – I agree.

Appeal dismissed.
