

URBAN COUNCIL, MORATUWA
AND SERASINGHE

v.

CEYLON PAINT INDUSTRIES

COURT OF APPEAL.
S. N. SILVA, J. P/CA.,
RANARAJA, J.
C.A. 675/88.
D.C. MT. LAVINIA 563/SPL.
DECEMBER 15, 1995.

Urban Councils – Urban Councils Ordinance S. 170 – Seizure Notice – Movable Property – S. 5, S. 217(g) S. 241 of Civil Procedure Code – Denial of a Right – Cause of Action – Residence – Territorial jurisdiction.

The Plaintiff-Respondent instituted proceedings against the Defendant challenging the legality of the seizure notice. By this Notice issued from the office of the Defendant at Moratuwa, the Plaintiff was informed that the 2nd Defendant would seize movable property lying at Kaldemulla in the event of the Plaintiff failing to pay up before a certain date a sum of Rs. 342,800/-. The position of the Defendant was that the District Court of Mt. Lavinia had no jurisdiction as both Defendants were resident and the cause of action arose outside the jurisdiction of that court.

Held:

(i) The cause of action is the threat to peaceful possession of the goods belonging to Plaintiff. The Plaintiff is entitled to seek a declaration that it has the right to enjoy peaceful possession of the movables at the factory without being liable to seizure.

(ii) Where a party seeks relief of a Declaratory Nature, in respect of movable property, the court that has territorial jurisdiction over the location of the subject matter in respect of which the declaration is sought, should have jurisdiction to try and determine the action.

Notice was served and the goods under threat of seizure were stored at Kaldemulla, within the jurisdiction of the District Court of Mt. Lavinia.

APPLICATION in Revision from the order of the District Court of Mt. Lavinia.

Cases referred to:

1. *Hewavitharane v. Chandrawathie* – 53 NLR 169.
2. *Naganather v. Velautham* – 55 NLR 319.

3. *Selvam v. Kuddipillai* – 55 NLR 426.

4. *Ranatte v. Sirimal* – 1 SCR 57.

N. R. M. Daluwatte, P.C., with *L. Fernando* and *Ms. S. Abeyjeewa* for Defendants-Petitioners.

D. S. Wijesinghe, P.C., for Plaintiff-Respondent.

Cur. adv. vult.

July 9, 1995.

RANARAJA, J.

This is an application in revision from the order of the District Judge dated 10.6.88 holding that the District Court of Mt. Lavinia had jurisdiction to hear and determine the action. The plaintiff-respondent (plaintiff) instituted action against the defendants-respondents (defendants) challenging the legality of the notice (P5), issued by the 2nd defendant on the plaintiff, purportedly under the provisions of section 170 of the Urban Councils Ordinance. By that notice the plaintiff was informed that the 2nd defendant, acting under the authority of a warrant issued to him, would seize the movable property lying at premises no. 19, Thelawala Road, Kaldemulla, in the event of the plaintiff falling to pay before 30.5.87, a sum of Rs. 3,42,800/- due to the 1st defendant by way of arrears of rates and penalty up to the 4th quarter of 1986. The plaintiff prayed *inter alia*;

(1) For a declaration that the seizure notice (P5) issued by the 2nd defendant is contrary to the provisions of the Urban Councils Ordinance, and is null and void and is of no force in law,

(2) For a declaration that the notice (P5) stating that an amount of Rs. 3,42,800/- is due by way of arrears of rates and penalty in respect of premises no. 19, Thelawala Road, Kaldemulla is bad in law, and

(3) For a permanent injunction restraining the defendants from seizing and selling the movable property lying at the said premises in satisfaction of the amount claimed in the notice.

The defendants filed answer praying for a dismissal of the plaintiff's action, on the ground, amongst others, that the District Court of Mt. Lavinia had no jurisdiction to entertain the action, as both defendants were resident and the cause of action arose outside the jurisdiction of that court. On the invitation of both parties the District Judge tried the question of jurisdiction as a preliminary issue on oral submissions. It was conceded by counsel for the defendants that notice (P5) was a seizure notice and that it was served on the plaintiff at its factory at premises no. 19, Maligawa Road, Kaldemulla, which is within the jurisdiction of the District Court of Mt. Lavinia. The learned District Judge held that it had jurisdiction to hear and determine the action. This application is to have that order revised.

Learned President's Counsel for the defendants submitted that (P5) is only a notice and no seizure of the plaintiff's property had taken place. Since the plaintiff's action was founded on the notice (P5), which was issued by the 2nd defendant from the office of the 1st defendant at Moratuwa, outside the jurisdiction of the District Court of Mt. Lavinia, it was submitted that court had no jurisdiction to entertain the action.

Learned President's Counsel for the plaintiff on the other hand submitted that the 2nd defendant had acted contrary to the provisions of the Urban Councils Ordinance in sending notice (P5) threatening to seize the said movables. Hence, he submitted, the plaintiff's action was primarily intended to seek relief of a declaratory nature in terms of section 5 read with section 217(g) of the Civil Procedure Code, consequent to the denial of a right, namely, the right to peaceful possession of the movables lying at premises no. 19, Maligawa Road, Kaldemulla, until the defendants held a proper inquiry into the plaintiff's appeal against the sharp increase from Rs. 4300/- to Rs. 75,000/- as rates payable per quarter for the premises. Since the movables sought to be seized lay within the jurisdiction of the District Court of Mt. Lavinia, Learned President's counsel submitted there was no error in the order of the District Judge.

The right of a plaintiff to the benefit of a declaratory decree under the provisions of the Civil Procedure Code in certain circumstances, for the purpose of settling concrete disputes with a defendant has been recognised. – *Hewavitharane v. Chandrawathie* ⁽¹⁾. Cases may

well occur in which such a decree would be justified to accomplish the ends of precautionary justice for the protection of future or contingent rights. – *Naganathar v. Velauthiam* ⁽²⁾. The law does not compel an owner to postpone his claim to relief until the dispute as to title has led to physical dispossession. – *Selvam v. Kuddipillai* ⁽³⁾.

In the light of the principles laid down in the authorities cited, where a party seeks relief of a declaratory nature in respect of movable property, the court that has territorial jurisdiction over the location of the subject matter in respect of which that declaration is sought should have jurisdiction to try and determine the action. This view finds support in the proviso to section 241 of the civil Procedure Code.

The 2nd defendant has by notice (P5) threatened to seize the movables lying at the plaintiff's factory at Maligawa Road, Kaldemulla, within the jurisdiction of the District Court of Mt. Lavinia. The cause of action is the threat to the peaceful possession of the goods belonging to the plaintiff. The plaintiff is entitled to seek a declaration that it has the right to enjoy peaceful possession of the movables at the factory without being liable to seizure until a proper inquiry is held into the validity of the increase in the rates payable for those premises.

Learned President's Counsel for the defendants cited the case of *Ranatte v. Sirimal* ⁽⁴⁾, which held that where a cause of action has arisen within the jurisdiction of more than one court, the court having jurisdiction to try the case must depend on where the defendant resides, or where the land in respect of which the action is brought is situate, or where the contract sought to be enforced is made. In the present case there is no doubt as to where the cause of action arose. Notice (P5) was served and the goods under threat of seizure were stored at no.19, Maligawa Road, Kaldemulla, admittedly within the jurisdiction of the District Court of Mt. Lavinia. Therefore that court has jurisdiction to hear and determine the action.

S. N. SILVA, J. – I agree.

Application dismissed.