

THE PEOPLE'S BANK
v
CAMILLUS PERERA

COURT OF APPEAL
AMARATUNGA, J.
C.A.L.A. 22/2001 (LG)
D. C. BALANGODA 902/L
JULY 3 AND 14, 2003

Civil Procedure Code, section 754 – Finance Act, No. 11 of 1963, section 72(2) – Ceylon State Mortgage Bank (Amendment) Law, No. 16 of 1973, sections 72(7) and 72(8) – Acquisition by Bank – Delivery of possession – Summary procedure – Refusal – No appeal lies even with leave.

The land was vested in the petitioner Bank by virtue of an order made by the Minister of Finance under section 72(2) of the Finance Act. Section 72(7) empowers the authorized officer of the Bank to make an application to the District Court to obtain an order for delivery of possession of such land. This application has to be made by way of summary procedure. The respondent refused to hand over possession. The application filed under section 72(7) under summary procedure, was refused by the trial court on the ground that it

was not just to remove the respondent under summary procedure. The petitioner Bank sought leave to appeal from the said order.

Held:

- (i) Jurisdiction conferred by section 72(7) is a speedy jurisdiction; the statute which conferred this jurisdiction in the District Court has not created or granted a right of appeal against an order made in the exercise of such special jurisdiction.
- (ii) When there is no right to appeal there cannot be a right to make an application for leave to appeal.

APPLICATION for leave to appeal from the Order of the District Court of Balangoda.

Cases referred to:

1. *Martin v Wijewardena* - (1989) 2 Sri LR 409
2. *Bakmeewewa, Authorized Officer of the People's Bank v Konarage Raji* - (1989) 1 Sri LR 321

Manohara de Silva for petitioner

Chandana Prematilake for respondent

Cur.adv.vult

30 October, 2003

GAMINI AMARATUNGA, J.

This appeal comes up with leave to appeal granted by this Court. The facts relevant to this appeal are as follows. The land called Edimon Estate, described in the schedule to the application filed by the petitioner Bank (hereinafter called the Bank) in the District Court of Balangoda was vested in the Bank by virtue of an Order made by the Minister of Finance under section 72 (2) of the Finance Act, No. 11 of 1963 as amended. The said order of the Minister has been published in the Gazette (Extraordinary) No. 1052/9 dated 4/11/1998. When a person in possession or occupation of such vested property refuses to allow the Authorized Officer of the Bank to take possession of such property, section 72 (7) of the Finance Act, as amended by Finance and Ceylon State

Mortgage Bank (Amendment) Law No. 16 of 1973, empowers the Authorized Officer of the Bank to make an application to the District Court having jurisdiction over the place where such land is situated to obtain an order for delivery of possession of such land.

Section 72 (8) of the Finance Act enacts that the application referred to in section 72 (7) shall be made and disposed of by way of summary procedure in accordance with the provisions of Chapter XXIV of the Civil Procedure Code. When the respondent who was in possession of the said Edimon Estate refused to hand-over possession of that land of the Authorized Officer of the Bank, he filed an application under section 72 (7) under Summary Procedure in the District Court of Balangoda. The learned District Judge refused and dismissed that application on the ground that it was not just to remove the respondent from the land under the summary procedure. As the law provided that the application should be made by way of summary procedure, the order of the learned Judge was palpably wrong. The Bank filed this leave to appeal application against that order.

This Court on 06/06/2002 has granted leave to appeal on the following question. "Whether the impugned order is final order or whether this appeal in fact is misconceived." Parties have filed their written submissions on this question. The learned counsel for the respondent has submitted that this leave to appeal application was misconceived in law. The learned counsel for the respondent has submitted that the jurisdiction conferred by the said section 72 (7) is a special jurisdiction; the statute which conferred this special jurisdiction in the District Court has not created or granted a right of appeal against the order made in the exercise of such special jurisdiction, a right of appeal must be specifically conferred by statute and that when there is no right of appeal conferred by statute, there is no right to make an application for leave to appeal, which if leave is granted, becomes an interlocutory appeal.

It has been held by the Supreme Court in the case of *Martin v Wijewardana* ⁽¹⁾ a right of appeal must be expressly created and granted by statute and such right cannot be implied. In this instance the Finance Act has not granted a right of appeal in respect of an order made upon an application made to the District Court under section 72(2) of the Finance Act. The right to appeal and the right to make an application for leave to appeal conferred by section

754 of the Civil Procedure Code are confined to judgements and orders made by original Courts in any civil action or proceeding. It has no application to proceedings taken under a special jurisdiction conferred on an original Court.

The identical question I have to decide in this appeal, namely whether there is a right of appeal in respect of an order made by the District Court upon an application made under section 72(7) of the Finance Act has been considered and decided by the Supreme Court. The learned Counsel for the respondent has cited the case of *Bakmeewewa, Authorized Officer of the People's Bank v Konarage Raja* ² where this question was decided. In that case the Supreme Court held that there was no right of appeal in respect of an order made by a District Court in an application made under section 72(7) of the Finance Act. In the course of his judgment G.P.S. de Silva, J. (as he then was) has stated that the jurisdiction exercised by the District Court under section 72(7) and 72(8) of the Finance Act is a special jurisdiction given to a Court of execution in respect of an extra judicial order and the right of appeal available in respect of judgments or orders of the District Court made in the exercise of its ordinary, general civil jurisdiction has no application to the special jurisdiction conferred on the District Court by section 72(7) and (8) of the Finance Act. When there is no right of appeal, there cannot be a right to make an application for leave to appeal. Accordingly the contention of the learned counsel for the respondent that this purported leave to appeal application was misconceived in law is entitled to succeed.

As pointed out by G.P.S. de Silva, J. in that case, the fact that there is no right of appeal does not mean that an aggrieved party is left without a remedy, for revision is available. The Bank should have therefore sought its appropriate remedy. My finding that there is no right to make an application for leave to appeal against the impugned order is sufficient to dispose of this appeal and accordingly the necessity to consider the other question namely whether the impugned order is final order, does not arise. Accordingly the appeal is dismissed with costs in a sum of Rs. 5000/-.

Appeal dismissed.