

**KAMALAWATHIE AND OTHERS
VS.
FERNANDO AND ANOTHER**

COURT OF APPEAL
SOMAWANSA J (P/CA),
WIMALACHNDRA, J.
CA 1297/04 (REV)
DC PANADURA 588/L,
MARCH 23, 2005.
MAY 04, 2005.

Civil Procedure Code - S.18, S.325-S.327- Exparte Judgment - writ resisted Intervention - is it possible? Third party invoking provisions of S.325 - validity?

The plaintiff - respondent instituted action for declaration of title to the premises in question and obtained exparte judgment. Application to vacate the said judgment was refused. Writ of execution was issued, and was resisted by the petitioner. They thereafter made an application under S.18 and S.325, which was refused by the trial Judge. The petitioner moved In Revision.

HELD

- (1) once Court enters decree, it is functus barring its right to enforce the decree or execute the decree.
- (2) No one can be added as a party to the action after judgment is entered.
- (3) According to the provisions of the Code relating to resistance to the execution of proprietary decrees, it is the judgment -creditor who should complain to Court and not the party resisting or obstructing whether that party be the judgment -debtor or a bona fide claimant.

Application in Revision against the order of the District Court of Panadura.

Cases referred to :

1. *Karunathilaka and another Vs. Dayananda Dissanayake, Commissioner of Elections* 1999 1 Sri LR 183.
2. *Fernando Vs. De Silva* - 2000 - 3 Sri LR 29
3. *Arif vs. Kandasamy Pillai* 1982 2SLR 741
4. *Rasheed Ali Vs. Mohamed Ali*- 1981 - 1Sri LR 262.

Gamini Prematilake with Ms. Punya Jayathilake and Chamila Dammalage for the petitioners - petitioners.

W. Prematilaka for the Plaintiff-Respondent

July 04, 2005

Wimalachandra, J.

This application in revision has been filed by the 1st to 3rd petitioners (petitioners) from the order dated 03.05.2004 made by the District Judge of Panadura. By that order the learned District Judge dismissed the application made by the petitioners for intervention under section 18 of the Civil Procedure Code, and permission to file answer in the above mentioned District Court action. The petitioners also sought an order to stay all proceedings in the District Court of Panadura in the aforesaid case No.588/L.

The plaintiff - respondent (the plaintiff) instituted the aforesaid action in the District Court of Panadura against the defendant - respondent (the defendant) for declaration of title to the premises described in the schedule to the plaint, arrears of rent, ejection and damages. On the day fixed for trial the defendant was absent and the Court fixed the case for *ex-parte* trial. Thereafter the Court held that the *ex-parte* trial and the *ex-parte* judgment was entered against the defendant. The application made by the defendant to vacate the *ex-parte* judgment was dismissed by the learned Judge. Thereafter a writ of execution was issued in terms of the decree to the Fiscal. When the Fiscal sought to execute the decree, he was resisted by the petitioners, who were not parties to the District Court action. Thereafter the petitioners made the aforesaid application that they be added as parties and be allowed to file answer. After inquiry, the Court dismissed their application by order dated 03.05.2004. It is against this order that the petitioners have filed this application in revision.

It is to be observed that once Court enters decree, it is *functus* barring its right to enforce the decree or execute its decree. This was the view held by Justice Mark Fernando in the case of *Karunathilaka and another Vs. Dayananda Dissanayake, Commissioner of Elections*⁽¹⁾.

In the case of *Fernando Vs. De Silva* Justice⁽²⁾ U. de Z. Gunawardana held that, no one can be added as a party to the action after judgment had been entered.

In the circumstances the petitioners are not entitled to the main relief claimed by them in that, they are not entitled to be added as parties to the action at this stage. Since the petitioners have no right to be added as parties, the permission sought by the petitioners to file answer does not arise.

In the caption of the petition filed by the petitioners in the District Court it is stated that their application has been made in terms of section 18 and section 327 of the Civil Procedure Code. Sections 325 to 327 are confined to the execution of proprietary decrees which a judgment - creditor may invoke when there is resistance or obstruction to the execution or the judgment -creditor is hindered from taking complete and effectual possession within a year and a day (see - **Arif, Vs. Kandasamy Pillai** ⁽³⁾).

For these reasons I am of the firm view that the application made by the petitioners in the District Court is misconceived in law and cannot be maintained.

It is to be observed that the entire procedure adopted by the petitioners is misconceived in law. There is no provision in the Civil Procedure Code for the petitioners to intervene after the pronouncement of the judgment and the entering of the decree. In terms of section 325 of the Code, if in the execution of a decree for the delivery of movable property or the possession of immovable property, the Fiscal's Officer is resisted or obstructed by any person, or after delivery of possession, the judgment creditor is hindered by any person in taking possession, the judgment creditor has the right to complain of it to the Court. Section 327 of the Code states that if resistance be made by *bona fide* claimant in possession on his own account or on account of some person other than the judgment-debtor, the Court shall make order dismissing the petition, if it finds that such right to interest has been established.

In the circumstances there is no basis for the petitioners to make this application to the District Court under sections 327 and 18 of the Civil Procedure Code.

As regards the powers of revision vested in this Court is concerned, it is only in a fit case this court invokes its revisionary jurisdiction. In the case of *Rasheed Ali Vs. Mohamed Ali and others*(4) Wanasundara, J. observed that, where the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances.

In the instant case it is to be noted that the petitioners have not pleaded exceptional circumstances in their petition. In their petition, the petitioners have not made out a case amounting to a miscarriage of justice.

What is of importance is, that according to the provisions of the Civil Procedure Code relating to resistance to the execution of proprietary decrees, it is the judgment - creditor who should complain to Court by a petition and not the party resisting or obstructing whether that party be the judgment - debtor or a *bona fide* claimant.

For the reasons stated above, there are no sufficient grounds for this Court to exercise its revisionary powers. Accordingly, the application in revision is dismissed with costs fixed at Rs.10,000.

Somawansa, J. (P/CA) — *I agree.*

Application dismissed.
