

THE
NEW LAW REPORTS
OF CEYLON

VOLUME LXX

1966 Present : H. N. G. Fernando, S.P.J., and G. P. A. Silva, J.

A. M. LAIRIS APPU, Petitioner, and D. PIERIS and others,
Respondents

S. C. 7/66—Application in Revision in D. C. Kurunegala, 403/L

Privy Council—Execution of decree pending appeal thereto—Application to District Court in the first instance—Permissibility—Civil Procedure Code, s. 777—Appeals (Privy Council) Ordinance, Schedule, Rule 7.

In an action for declaration of title to a land and ejection of the defendant therefrom, the plaintiffs obtained judgment and decree in their favour. After the decree was executed and the plaintiffs were put in possession of the land, the Supreme Court allowed the defendant's appeal against the judgment and dismissed the plaintiff's action. On the next day the plaintiffs gave notice of their intention to appeal to the Privy Council.

Held, that, while the application for leave to appeal to the Privy Council was still pending in the Supreme Court, the defendant was entitled to apply to the District Court under section 777 of the Civil Procedure Code that he be restored to possession of the land. The defendant was not bound by Rule 7 of the Rules in the Schedule to the Appeals (Privy Council) Ordinance to apply to the Supreme Court in the first instance.

APPLICATION to revise an order of the District Court, Kurunegala.

H. W. Jayewardene, Q.C., with *L. C. Seneviratne* and *S. Munasinghe*,
for the defendant-petitioner.

A. C. Gooneratne, Q.C., with *R. C. Gooneratne*, for the plaintiffs-respondents.

Our. adv. vult.

July 11, 1966. H. N. G. FERNANDO, S.P.J.—

This was an action for declaration of title to a land and ejectment of the defendant therefrom. The District Court in January 1962 upheld the claim of the plaintiffs, granted a declaration of title and ordered the ejectment of the defendant from the land. Thereafter, the plaintiffs applied for a writ of possession which was issued, and possession was delivered under the Writ to the plaintiffs on 30th March 1962. On 25th August 1965 the Supreme Court allowed the defendant's appeal against the decree, set aside the decree and dismissed the plaintiffs' action. On the next day the plaintiffs gave notice of their intention to appeal to the Privy Council against the judgment of the Supreme Court, and the application for leave to appeal is still pending in this court.

In September 1965, the defendant made an application under Section 777 of the Civil Procedure Code to the District Court asking that he be restored to possession of the land. After inquiry the District Judge made order on 5th October 1965 refusing the defendant's application for restoration of possession, on the ground that because an appeal to the Privy Council is pending the defendant had no right to apply to the District Court for execution of the decree of the Supreme Court.

The opinion of the learned District Judge is based upon a decision of this Court in *Silva v. King*¹. In that case decree had been entered in favour of the plaintiff for a certain sum of money and an appeal to the Supreme Court against that decree had been dismissed. The defendant thereupon applied for leave to appeal to the Privy Council against the judgment of the Supreme Court and while that application was pending, the plaintiffs sought and obtained from the District Court a writ of execution for the recovery of the decreed amounts. On appeal being taken from the refusal of the District Judge to stay execution of the writ, this court held that the power to direct that the judgment of the Supreme Court be carried into execution is vested in the Supreme Court under Rule 7 of the rules in schedule 1 of the Privy Council (Appeals) Ordinance, and that therefore a District Court had no power while an application for conditional leave is pending to grant execution of the decree.

I respectfully agree with the decision in *Silva v. King*. But the situation in the present case is not the same as was the situation dealt with in that decision. There what the plaintiffs sought from the District Court was an order which would enable him to recover the money decreed to him in a decree of the Supreme Court against which an appeal was pending or probable. In the present case however, the order which the defendant sought from the District Court was not an order to execute the Supreme Court decree. That decree did not direct the defendant to be placed in possession of the land. What the defendant in reality

¹ (1935) 37 N. L. R. 133.

sought from the District Court in this case was an order which would restore him to the *status quo* which had prevailed before the District Court on 30th March 1962, by virtue of its writ of possession, placed the plaintiffs in possession of the land. It does not at first sight appear that the Privy Council Appeal rules provide for such a situation, so that the making of an order by the District Court of the nature required in this case does not appear to be in conflict with the Privy Council Appeal rules. Accordingly, the ground on which it was held in *Silva v. King* that the execution could not be granted by the District Court does not affect the circumstances of this case.

It was held in *Asiriwathan v. Mudalihamy*¹ that Section 777 of our code like the corresponding Section 583 of the Indian code was in terms inadequate to meet all the cases where a party sought restitution of his rights after a decree had been passed in the Supreme Court. But following judgments in India construing Section 583, it was held that Section 777 authorised a District Court "to cause restitution to be made of all the benefits of which the successful party in the appeal was deprived by the enforcement of the erroneous decree of the court of first instance." It is precisely that restitution for which the defendant applied to the District Court, after he obtained from this court a decree dismissing the plaintiffs' action. For these reasons we made order on 21st June 1966 directing the issue by the District Judge of a writ of possession.

G. P. A. SILVA, J.—I agree.

Application allowed.
