

1972 *Present* : **H. N. G. Fernando, C.J., and Deheragoda, J.**

H. M. WICKREMANAYAKE, Appellant, and M. SIMON APPU,
Respondent

S. C. 114/69 (Inty.)—D. C. Matara, 2014/L

Appeal—Execution of decree passed in appeal—Section 777 of Civil Procedure Code—Scope.

Where a party has been placed in possession of a land in execution of a decree of a District Court which is subsequently set aside in appeal, section 777 of the Civil Procedure Code enables restoration of possession of the land to the successful appellant.

APP~~EAL~~ from an order of the District Court, Matara.

S. Sharvananda, with S. Mahendram, for the 3rd defendant-appellant.

C. Ranganathan, with T. B. Ekanayake and M. Sivarajasingham, for the plaintiff-respondent.

July 19, 1972. H. N. G. FERNANDO, C.J.—

The learned District Judge has not realised that although the judgment of the Supreme Court of 21.11.67 did not refer to the entry of a decree in the Supreme Court, such a decree was in fact entered, in terms of which the original judgment and decree of the District Court were set aside. That being so, the effect of the decree of the Supreme Court was that there was no longer in existence a valid decree in pursuance of which the plaintiff could properly be placed in possession of the land. Justice therefore requires that the plaintiff, who had been placed in possession in execution of a decree which had turned out to be invalid, should no longer be allowed to continue in possession of the land. In our opinion the present case is not distinguishable from that reported in 35 N. L. R. 28, the judgment in which declares that in a situation such as this Section 777 of the Code provides for restitution in favour of a successful appellant. The order of the learned District Judge is set aside and order is now entered for the delivery of possession of land to the defendants and for the ejection of the plaintiff therefrom.

The appellant will be entitled to his costs of appeal and of the inquiry in the District Court.

DEHERAGODA, J.—I agree.

Order set aside.

