JAYATILAKE
v
RATNAYAKE

COURT OF APPEAL
RANJIT SILVA, J.
SISIRA DE ABREW, J.
CA PHC 82/97
HC KANDY 61/96 (REV.)
MC HATTON 67572

State Land Recovery of Possession Act 7 of 1979 – amended by Act 58 of 1981, 29 of 1983 and 45 of 1992 – section 3 – Order of Magistrate's Court canvassed by way of Revision. Should exceptional circumstances be urged?

Held:

(1) There is no right of appeal against the order of the Magistrate's Court when an order is made under the provisions of the State Lands Recovery of Possession Act.
The party aggrieved could only move the High Court in Revision.

(2) In a Revision application when there is no alternative remedy available, the appellants need not show exceptional circumstances – but has to show illegality or some procedural impropriety in the impugned order.

(3) Breach of a procedural or formal rule should be treated as a mere irregularity if the departure from the terms of the Act is of trivial nature.

AN APPLICATION from an order of the Provincial High Court of Kandy.

Case Referred to:

(1) *Gunaratne* v *Abeysinghe* 1988 – 1 Sri LR 261

Vidura Gunaratne for respondent-petitioner-appellant.
Vikum de Abrew SSC for AG.

Cur.adv.vult.

October 24, 2007
RANJIT SILVA, J.

Mr. Vidura Gunaratne moves for a date stating to Court that he managed to obtain the brief only two days ago and therefore he is not ready in this case. We find that this matter was laid by at a particular time due to the fact that the appellant had died and it was later discovered that it was not the appellant who died but the registered Attorney-at-Law for the appellant late Mr. Rajanayake. An application was made to re-list the matter and that had been allowed by this Court on 24.09.2007 fixing the matter for argument for 24.10.2007. The appellant had nearly one month to get ready for this case and it appears that the appellant had not been diligent in moving in this matter in order to get ready to face the argument fixed for today. No valid reason was given as to why he is not ready. For that reason, we have refused to grant a date.

The petitioner-appellant who shall be referred to as 'the appellant' has appealed to this Court against the order made by the learned High Court Judge of Kandy dated 26.05.2007. The learned High Court Judge having gone into the matter held that the impugned order of the learned Magistrate of Hatton dated 17.05.1996 to be in order thus affirming the order of eviction made by the learned Magistrate of Hatton.

After hearing the learned Senior State Counsel for the respondents and having perused the necessary documents we find that the impugned order made by the learned Magistrate of Hatton dated 17.05.1996 to be in order. There isn't any illegality or impropriety in the said impugned order.

The petitioner-appellant had argued in the Magistrates' Court of Hatton that the application made to Court under section 5(1) of the State Land Recovery of Possession Act No. 7 of 1979 as amended

by Act No. 58 of 1981, 29 of 1983 and 45 of 1992 was defective in that it did not contain the correct information such as the name and address of the appellant and the particulars with regard to the premises sought to be recovered under the said Act and also that the Notice issued under section 3(i) of the said Act was defective in that it mentioned a wrong plan and a wrong District.

The learned Magistrate has stated in his order that the application to the Magistrates' Court was made according to schedule "B" of the Act with an affidavit and a copy of the Notice under section 3 (i) (A) attached. The learned Magistrate for very good reasons concluded that the defects mentioned above did not cause any prejudice to the appellant and held against the appellant. The Magistrate concluded that although by an over sight the name and address were not mentioned in the application made to the Magistrates' Court there was an endorsement in the said application to the effect, that 'the Notice to vacate was handed over to Titus Jayathilake' who is the appellant. (Vide application for eviction dated 06.02.1995 in paragraph (අ)(iii)). The said application mentioned the correct plan bearing No.මඩ 489. We have perused the Notice of Eviction and we find that the schedule contains the correct District and the correct plan number (to wit: මඩ 489.) We hold that the impugned order of the learned Magistrate to be a well reasoned out and well analyzed order. Dealing with the impugned order of the learned High Court Judge of Kandy dated 26.05.2007, we observed that the learned High Court Judge has made one error by making a wrong statement of law namely that the appellant has not shown exceptional circumstances. As this was a revision application to the High Court against the order of the learned Magistrate in a State Land Recovery of Possession matter under the State Land Recovery of Possession Act., it was not necessary for the appellant to show the existence of exceptional circumstances (Viz: as there is no remedy by way of appeal).

We find that since there is no right of appeal the appellant had to move the High Court in revision. In a revision application in the ordinary sense where there is no alternative remedy available, the appellant need not show exceptional circumstances, but has to show illegality or some procedural impropriety in the impugned order. We do not see any impropriety or any procedural defect or any illegality in the

impugned order dated 17.05.1996 and therefore we conclude that the wrong statement of law made by the learned High Court Judge does not vitiate his order dated 26.05.2007.

The appellant has urged three procedural defects, in the High Court. They are:

(i) That the appellant alleged that the application to the Magistrates' Court was defective as it contains the wrong district namely 'Kandy' instead of 'Nuwara-Eliya'.

(ii) That the name and address of the appellant were not mentioned.

(iii) That the application refers to a wrong plan.

With regard to the grounds urged before the learned High Court Judge that the application made under section 5 of the State Land Recovery of Possession Act No. 7 of 1979 was defective, the learned High Court Judge has concluded that it has not caused any prejudice to the appellant. It appears that the appellant in the High Court has not assigned any reasons to show that any prejudice was caused to him. Therefore the learned High Court Judge has quite correctly decided that it has not caused any prejudice to the appellant and dismissed the revision application.

Gunaratne v *Abeysinghe* 1988 (1)

"It was held that breach of a procedural or formal rule should be treated as a mere irregularity if the departure from the terms of the Act is of trivial nature or if no substantial prejudice has been suffered by those for whose benefit the requirements were introduced."

For the same reasons we have assigned in respect of the order made by the learned Magistrate dated 17.05.1996, we find no valid reason to interfere with the order made by the learned High Court Judge of Kandy dated 26.05.2007.

Accordingly we dismiss the appeal without costs.

SISIRA DE ABREW, J. - I agree.

Application dismissed.