

1971 *Present*: Samerawickrame J., and Wijayatilake. J.

P. C. S. FERNANDO, Appellant, *and* W. V. MAHANTILA (Government Agent, Colombo District) and another, Respondents

S. C. 98/69—Application in Revision in D. C. Colombo, 9995/MB

Mortgage—Hypothecary sale—Power of Court to order sale of mortgaged property in blocks.

Where the mortgaged property is ordered by Court to be sold in order to satisfy the amount due under a hypothecary decree, it is not necessary that the entire property should be sold. It is open to the Court to direct that the sale of the land should be in blocks, and that only such blocks be sold as would suffice to realize the amount due under the decree.

¹ *Ceylon Transport Board v. Thungadasa* (1970) 73 N. L. R. 211.

APPPLICATION to revise an order of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *K. N. Choksy*, for the 2nd defendant-petitioner.

P. N. Wikramanayake, for the 1st defendant-respondent.

D. S. Wijewardene, for the plaintiff-respondent.

February 15, 1971. SAMERAWICKRAME, J.—

The property mortgaged is a valuable property situated in a residential area in Colombo with a large bungalow. The learned District Judge has given directions that the property should be sold in blocks in the order stated by him until the amount decreed is realized.

Learned Counsel for the 2nd defendant-petitioner has submitted that it is not competent for the learned District Judge to make an order for the sale of certain blocks only, and that the entire mortgaged property should be sold.

We have considered the matter, and in view of the fact that the sale of a part of the land may realize the amount necessary to satisfy the mortgage debt, we hold that it is open to the Court to direct that the sale of the land should be in blocks, and that only such blocks be sold as would suffice to realize the amount due under the decree. It appears to us preferable that the back blocks be sold first.

Accordingly, we order that the decree be amended by the addition of the following paragraph immediately after paragraph 3 :—

“ It is further ordered and decreed that the mortgaged property be sold in blocks according to Plan No. 1602 of 26th September 1969 made by K. M. Samerasinghe, Licensed Surveyor, and approved by the Municipal Council, Colombo.

The sale to be in the first instance of lots 1, 2, and 3 each with a right of way over lot 4 ; and lot 8. And if the sale of these blocks does not fetch the amount necessary to satisfy the amount due under the decree, the sale of the other lots will be in such order as may be directed by Court and subject to such other directions as the Court may give. ”

Learned Counsel for the 2nd defendant-petitioner has produced Plan No. 1602 (X1) ; letter of approval of the Municipal Council, Colombo, dated 28.9.1969 (X2) ; and the letter of approval of the street lines along lot 4 (X3). These documents will be filed of record.

The plaintiff-respondent will be entitled to the costs of this application, payable by the 2nd defendant-petitioner and the 1st defendant-respondent.

WIJAYATILAKE, J.—I agree.

Application mainly dismissed.