

PETER ATAPATTU AND OTHERS  
v.  
PEOPLE'S BANK AND OTHERS

COURT OF APPEAL.

ISMAIL, J.

C.A. 539/92.

NOVEMBER 22, 1994

JANUARY 13, 1995

AUGUST 23, 1995

SEPTEMBER 25, 1995.

*Writ of Certiorari – Finance and Ceylon State Mortgage Bank (Amendment) Law No. 16 of 1973 – S. 71(1), S. 71(2), S. 71(2)(c), S. 91 – Conditional Transfer by Three Co-owners – Application for Redemption to People's Bank – Two died pending inquiry – Is substitution possible?*

The three co-owners Hendrick, Abraham and Rosalin conditionally transferred the land to one S, who transferred same to the 3rd Respondent. Rosalin died leaving behind her husband the 1st Petitioner and her two children. The other Co-owners along with the 1st Petitioner made an application for Redemption to the People's Bank. While the inquiry into the application was pending before the People's Bank, the other two Co-owners died.

An application was made to Substitute the 2nd and 3rd Petitioners as applicants in their place, which was refused by the Bank.

**Held:**

- (i) There is no provision in the Act for substitution in place of a deceased applicant in an application made to the Bank under S. 71(2) of Law No. 16 of 1973.
- (ii) The scheme of the Act does not envisage the affecting of the Substitution in place of the original applicant in a pending application as the Bank is obliged to process an application having regard to particulars only of the person making the application before it is entertained – S. 71(2) (a).

**APPLICATION** for Writ of Certiorari.

**Cases referred to:**

1. *Kanagasabapathy v. People's Bank* – S.C. 124/75 S.C. Minutes 27.8.76.
2. *Perera v. People's Bank Land Redemption Dept.* 1985 1 SLR 39 (CA) 1987 1 SLR 181 (S.C.).

*G. S. Marapone, P.C. with Raja Peeris and N. Ranamuka Aratchi for Petitioners.*

*N. R. M. Daluwatte, P.C. with Ms. Samantha Abeyjeewa for the 1st Respondent.*

*Manohara de Silva for 3rd Respondent.*

*Cur adv vult.*

November 13, 1995.

**ISMAIL, J.**

The facts relevant to this application are not in dispute. Don Hendrick, Don Abraham and Dona Rosalin all of Bambaranda, Ratmale being the owners of the land described in the Schedule to the Deed bearing No. 40 dated 11.01.72 (P1) sold the same subject to the conditions set out therein to W. K. Sisiliyana. The said Sisiliyana thereafter by Deed No. 9530 dated 30.06.83 (P2) sold and conveyed her rights to the above named 3rd respondent.

Dona Rosalin, one of the three original co-owners of the said land died leaving as her heirs, her husband Don Peter Atapattu, the 1st petitioner, and her two children.

The co-owners Don Hendrick and Don Abraham along with the 1st petitioner Don Peter Atapattu, the husband of the deceased third co-owner Dona Rosalin, made an application dated 30.6.83 to the 1st respondent People's Bank to have the said land acquired in terms of Section 71 of the Finance Act No. 11 of 1963, as amended by the Finance and Ceylon State Mortgage Bank (Amendment) Law, No. 16 of 1973 and the Finance (Amendment) Act No. 19 of 1984.

The 3rd respondent in the meanwhile had instituted a partition action bearing No. 11829/P in the District Court, Matara, to which the three applicants before the People's Bank for the redemption of the property were made the 3rd, 4th and 5th defendants. It was decided in this action that any rights accruing to the plaintiff, the 3rd respondent to this application, shall devolve on him without prejudice to the rights of the 3rd, 4th and 5th defendants who have made the aforesaid application to the People's Bank.

While the inquiry into the application was pending before the People's Bank, the two co-owners Don Hendrick and Don Abraham, who were two of the three joint applicants died and it was sought to have the 2nd and 3rd Petitioners substituted as applicants in their place.

By an order dated 25.6.92 (P7) the 2nd Respondent, the Inquiring Officer, refused the application made on behalf of the 2nd and 3rd petitioners to have themselves substituted. It was held that there was no provision in the relevant Act for substitution in place of the original applicants and that the original application made by the two deceased co-owners for redemption of the property is personal to them and is therefore deemed to have lapsed on their death. Consequently a decision was taken not to recommend the pending application of the surviving joint applicant, the 1st petitioner, as his claim was a right to an undivided one-third share of the land.

The petitioners have in the present application sought a writ of certiorari to quash the aforesaid order dated 24.6.92 (P7) and a writ of mandamus directing the 1st and 2nd respondents to permit the substitution of the 2nd and 3rd petitioners in place of the deceased applicants.

Section 71(2) of the Finance and Ceylon State Mortgage Bank (Amendment) Law, No. 16 of 1973 provides as follows:

“No premises shall be acquired under subsection (1)–  
(a) unless an application in that behalf has been made to the Bank by the original owner of such premises or, where such original owner is dead or is of unsound mind or otherwise incapable of acting, by the spouse or any descendant of such person, or if there is no surviving spouse or descendant of such person, by a parent, brother or sister of such person;...”

This section deals with the person on whose application the Bank is authorised to act. This section was considered by the Supreme Court in the case of *Kanagasabapathy v. The People's Bank* <sup>(1)</sup> and it was held that the Bank has no authority in terms of this section to

acquire property on the application made to it by a transferee or assignee, and that it could do so only on the application made by the original owner or such other person as is specified in this section.

Vythialingam, J. stated as follows:

"The prohibition is absolute. The word shall is imperative. No property shall be acquired by the Bank under the provisions of Section 71(1) unless an application is made in that behalf by the original owner or if he is dead or incapable of acting by one of the persons who stand in the specified relationship to him and in the order of preference set out in the section. The Bank cannot acquire the property on the application of any other person. The Bank can act only within the scope of the powers conferred on it by the Act."

There is no provision in the act for substitution in place of a deceased applicant in an application made to the Bank under Section 71(2) of Law No. 16 of 1973. The scheme of the Act does not envisage the effecting of a substitution in place of the original applicant in a pending application as the Bank is obliged to process an application having regard to particulars only of the person making the application before it is "entertained" – Section 71(2A). In terms of Section 71(2)(c), for example, the Bank has to satisfy itself that the average statutory income of "the person making the application" and his family for the three years preceding the date of the application did not exceed a sum of ten thousand rupees, computed under the provisions of the written law relating to the imposition of income tax. It is clear that a person to be substituted upon his death cannot in these circumstances be considered to be "the person making the application." The Bank can only act within the powers conferred on it by the Act and in the absence of any enabling provision the refusal by the 2nd respondent to permit the 2nd and 3rd petitioners to be substituted in place of the two deceased applicants is therefore justified.

Learned President's Counsel on behalf of the 1st respondent Bank has in his written submissions referred to Section 91 and has

submitted that it is possible to take the view that its provisions do not necessarily indicate that a pending application to redeem property lapses on the death of the applicant. Section 91 deals with the disposal of the premises after it has vested in the Bank "in consequence of an application made to the Bank for the acquisition of such premises by any person entitled to make such application." It further provides that the property vested in the Bank may be let to the applicant or where such person is dead to the surviving spouse or any descendant on the terms specified therein. This section relates to the stage after the inquiry into the application for the acquisition of the premises is entertained and is completed and the property is vested in the Bank. It provides for the disposal of the premises in the event of the death of the applicant at this stage. I do not see anything in this section which entitles the Bank to proceed to deal with the application for redemption of property after the death of the original applicant by substituting another person in his place.

A decision has been taken by the Bank to reject the application of the surviving applicant on the ground that his claim is to an undivided one-third of the property. This is an administrative decision which is not subject to review by way of certiorari and mandamus. In *Perera v. People's Bank Land Redemption Department & Others* <sup>(2)</sup> the People's Bank decided as a matter of policy not to proceed to acquisition where the interests to be acquired were undivided and the applicant was not in possession. It was held that such a decision was not subject to review and that the decision not to acquire was made within jurisdiction and in terms of Section 71(3) of the Finance Act, as amended, read with Section 22 of the Interpretation Ordinance that it is final and conclusive and cannot be questioned in any court. For these reasons the petitioner cannot succeed in this application to have the order dated 24.6.92 (P7) made by the 2nd respondent quashed.

The application is therefore dismissed with costs.

*Application dismissed.*