

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an appeal under and in
terms of Article 128 (2) of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

SC / APPEAL / 20 / 2018

HCCA / REV / COL / 34 / 2015

DC: DSP / 00260 / 12

People's Bank,

No. 75, Chiththampalam A.
Gardiner
Mawatha,
Colombo 02.

PETITIONER

-Vs-

1. Witharana Gamage

Siriwardane,
Mulakanhena, Bingiriya.

2. Meththasinghr Arachchilage

Kleshiya
Violet Siriwardane,

Mulakanhena, Bingiriya.

RESPONDENTS

AND THEN BETWEEN

1. Witharana Gamage

Siriwardane,

Mulakanhena, Bingiriya.

2. Meththasinghr Arachchilage

Kleshiya

Violet Siriwardane,

Mulakanhena, Bingiriya.

RESPONDENTS-

PETITIONERS

-Vs-

People's Bank,

No. 75, Chiththampalam A.

Gardiner Mawatha,

Colombo 02.

PETITIONER-RESPONDENT

AND NOW BETWEEN

People's Bank,
No. 75, Chiththampalam A.
Gardiner
Mawatha,
Colombo 02.

PETITIONER-RESPONDENT
-APPELLANT

-Vs-

1. Witharana Gamage

Siriwardane,
Mulakanhena, Bingiriya.

2. Meththasinghr Arachchilage

Kleshiya
Violet Siriwardane,
Mulakanhena, Bingiriya.

RESPONDENTS-PETITIONERS-
RESPONDENTS

Before: Murdu N.B. Fernando, PC, CJ.

A.H.M.D. Nawaz, J &

A.L. Shiran Gooneratne, J

Counsel: Kushan D' Alwis, PC with Kaushalya Nawaratne and Milinda Munidasa For the Petitioner – Respondent – Appellant.

M. Premachandra for the Respondents – Petitioners – Respondents.

Argued on: 17.11.2021

Decided on: 25.07.2025

A.H.M.D. Nawaz, J.

1. This matter arises from an appeal against the judgment dated 28th February 2017 of the Civil Appellate High Court of the Western Province, whereby the decision of the learned Additional District Judge of Colombo delivered on 8th August 2013 in Case No. DSP/260/2012 was set aside, and the application of the Petitioner Bank was dismissed.

2. The 1st and 2nd Respondents obtained loan facilities amounting to Rs. 400,000/- and Rs. 1,000,000/- respectively from the Petitioner Bank in 1996 and 1998. As security, they executed Mortgage Bonds over certain immovable property. Upon default of payment, the Petitioner Bank lawfully exercised its statutory right under Act No. 32 of 1986 (as amended), to auction the said property. As no third-party bidders came forward at the public auction held on 21.04.2008, the Bank purchased the said property on a Certificate of Sale.
3. Despite the issuance of the Certificate of Sale, the Respondents failed to yield vacant possession, compelling the Bank to file an action in the District Court of Colombo seeking possession. Although an earlier application (DSP/74/2010) was dismissed on the ground that the original Certificate of Sale had not been produced, a fresh application (DSP/260/2012) was instituted with the proper documentation annexed. That case culminated in the issuance of an *Order Nisi*, which was eventually made absolute on 08.08.2013.
4. Aggrieved by the said Order Absolute, the Respondents unsuccessfully appealed to the High Court by way of appeal and then sought revision (HCCA/REV/COL/34/2015), which was allowed, thereby reversing the learned District Judge's decision. The Petitioner Bank thereafter sought leave to appeal to this Court, which was granted.

5. The question arose in the revision application whether the plea of *res judicata* would bar the maintainability of the second District Court application DSP/260/2012 which was filed for ejectment. The learned High Court judges of the Civil Appellate Court ruled in favour of *Res Judicata* and dismissed the action of the People's Bank. Even this Court has granted leave posing the question of law.
 1. *Does the dismissal of District Court of Colombo, Case No. 74/2010/DSP for the non-production of the original of the certificate of sale amount to a technically and/or a decision not given taking into consideration the merits of the respective cases of the parties?*
6. It is trite law that applications under Section 29P of the People's Bank (as amended by No. 32 of 1986) are execution proceedings rather than substantive actions, and hence the plea of *res judicata* cannot be successfully maintained. The earlier case (DSP/74/2010) was dismissed solely due to a procedural lapse — failure to tender the original Certificate of Sale. No adjudication on the merits occurred. Accordingly, the dismissal of the said application cannot preclude the Petitioner from instituting a valid application upon rectifying the defect.
7. Section 29N of the said Act makes it abundantly clear that once a Certificate of Sale is issued, all rights, title, and interest of the

borrower vest in the purchaser. The Certificate is conclusive proof of compliance with statutory requirements. This Court is guided by precedent in *Jayawardena v Sampath Bank*¹, *Hatton National Bank v Marimuttu*², and *Haji Omar v Wickramasinghe*³, which consistently affirm the finality and legal conclusiveness of Certificates of Sale issued under this legislation.

8. It is also noted that the High Court erroneously relied on the absence of a “*reservation of right*” to file a subsequent action when dismissing DSP/74/10. No provision in law mandates such a reservation in execution proceedings. Therefore, such reasoning lacks legal basis.
9. For the foregoing reasons, this Court is of the considered view that the principle of *res judicata* is inapplicable to the subsequent application filed under Section 29P of the Amendment Act No. 32 of 1986. The Petitioner Bank acquired valid title to the property upon the issuance of the Certificate of Sale in accordance with law.
10. The Petitioner Bank is legally entitled to seek vacant possession of the property through execution proceedings. Accordingly, the judgment of the Civil Appellate High Court dated 28th February 2017 is hereby set aside. The judgment of the learned Additional

¹ 2005 2 Sri L R 340 at 341

² 2004 (Reported in the BASL Law Report.) Association

³ 2002 (1) SLR 113

District Judge of Colombo dated 8th August 2013 in Case No. DSP/260/2012 is affirmed.

11. The appeal of the Petitioner-Respondent-Petitioner-Appellant is thus allowed with costs.

JUDGE OF THE SUPREME COURT

MURDU N.B. FERNANDO, PC. CJ.

I agree

CHIEF JUSTICE

SHIRAN GOONERATNE, J.

I agree

JUDGE OF THE SUPREME COURT