

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

In the matter of an application for Restitution,
in the nature of *Restitutio-In-Integrum* under
and in terms of Article 138 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.

Court of Appeal

Case No: RII/0068/2025

DC

Case No:

Peoples Leasing and Finance PLC,
No. 1161, Maradana Road,
Colombo 10.

Plaintiff

VS

1. Selikno Holdings (Pvt) Limited,
No. 65, Palm Grove Avenue,
3rd Lane, Rathmalana.
2. Kuruppu Thanthrige Sugath Priyankara,
No. 127, Temple Road,
Mount Lavinia

Defendants

AND

Liyana Arachchilage Podisingho Appuhami,
No. 1442, Old Kotte Road,
Rajagiriya

Petitioner

Vs.

Peoples Leasing and Finance PLC,
No. 1161, Maradana Road,
Colombo 10

Plaintiff-Respondent

Vs.

Peoples Leasing and Finance PLC,
No. 1161, Maradana Road,
Colombo 10

Defendants-Respondents

AND NOW

Liyana Arachchilage Podisingho Appuhami,
No. 1442, Old Kotte Road,
Rajagiriya

Petitioner-Petitioner

Vs.

Peoples Leasing and Finance PLC,
No. 1161, Maradana Road,
Colombo 10

Plaintiff-Respondent-Respondent

Vs

1. Selikno Holdings (Pvt) Limited,
No. 65, Palm Grove Avenue,
3rd Lane, Rathmalana.
2. Kuruppu Thanthrige Sugath Priyankara,
No. 127, Temple Road,
Mount Lavinia

Defendants-Respondents-Respondents

T.A. Ranjith Dayananda
415/1, Koskandawala Road,
Hokandara

Respondent

Before : R. Gurusinghe, J.
&

Dr. S. Premachandra, J.

Counsel : Sandun Senadhipathi instructed by
L.S.K. Walasmulla
for the Petitioner-Petitioner

K. Wasantha S. Fernando with
D. Subendran
for the Respondent

Argued on : 19-11-2025
Decided on : 10-12-2025

ORDER

R. Gurusinghe, J.

The plaintiff-respondent filed an action under the Provisions of the Recovery of Loans (Special Provisions) Act No. 2 of 1990, as amended by Act No. 9 of 1994, against the 1st, 2nd and 3rd defendant-respondents, to recover a loan granted to the 1st defendant. The 2nd and 3rd defendants were guarantors. The 2nd defendant mortgaged two properties owned by him as security.

Having considered the plaint, affidavit and the documents filed by the plaintiff, issued a *decree nisi* on 14-06-2019, against the defendant-respondents. There was a settlement between the parties. However, as the defendants failed to repay the loan as agreed, the District Court allowed the Writ to be executed in relation to the mortgaged property in favour of the plaintiff-respondent.

The petitioner in this application states that he and the previous owner of the property described in the schedule to the petition had an agreement to sell the property to the petitioner in 2013 (there is no schedule in the petition). However, the previous owner sold the property (the property described in the schedule to the Mortgage Bond No. 1224 dated 10-05-2018 is hereinafter described as the property) to the 2nd defendant-respondent. Thereafter, the 2nd defendant-respondent and the petitioner entered into an agreement to sell the property to the petitioner. Petitioner further states that he had paid an advance payment to the 2nd respondent. The time stipulated in both agreements to sell the property to the petitioner has lapsed for more

than 10 years. Furthermore, when the property was mortgaged to the plaintiff-respondent by the 2nd defendant-respondent, the agreement to sell the property to the petitioner was expressly cancelled by the 2nd defendant, by deed no. 1225 dated 10-05-2018, for which the petitioner was also a party and signed the same. Therefore, there is no valid agreement to sell the property to the petitioner.

After the *decree nisi* was made absolute, the 2nd defendant-respondent executed deed no. 28 dated 13-10-2025 in favour of the petitioner for the property described in the schedule to that deed, subject to the Mortgage Bond No. 1224 dated 10-05-2018. The same property was mortgaged to the plaintiff company by the 2nd defendant-respondent by the said Mortgage Bond No. 1224.

Petitioner states that he had filed an application under section 241 of the Civil Procedure Code before the District Court of Colombo. The Learned Additional District Judge of Colombo, by her order dated 29-10-2025, dismissed the petitioner's application.

In this application, the petitioner seeks, inter alia, the following reliefs.

- b) *Revise and/or set aside the order of the learned District Judge of Colombo dated the 29th October 2025 made in the Case bearing No. DDR 151/19 of the District Court of Colombo,*
- c) *Revise and/or set aside all the orders of the learned District Judge of Colombo made in the Case bearing No. DDR 151/19 of the District Court of Colombo,*
- d) *Revise and/or set aside the fiscal report entered on 31st of October 2025 in the Case bearing No DDR 151/19 of the District Court of Colombo,*
- e) *Grant and issue an interim order staying the operation of the Writ of Execution issued against the Petitioner and the 2nd Defendant-Respondent.*
- f) *Grant and issue an interim order staying the operation of the Fiscal Report entered on 31st of October 2025,*
- g) *Grant and issue an interim order staying the further proceedings relied on the Fiscal Report entered on 31st of October 2025.*

The property was sold to the petitioner by the 2nd defendant-respondent on 13-10-2025 by Deed No. 28, subject to the Mortgage Bond No. 1224 dated 10-05-2018. The plaintiff-respondent's case was based on the same Mortgage Bond No. 1224 dated 10-05-2018. Therefore, the petitioner cannot claim that he had any right or possession independent of the 2nd defendant. Furthermore, as observed by the Learned Additional District Judge in terms of section 15 (2) of the Debt Recovery (Special Provisions) Act No.2 of 1990, as amended by Act No. 9 of 1994, the deed claimed by the petitioner is null and void as the 2nd defendant sold the property to the petitioner after the *decree nisi* was entered.

Section 15 (2) of the Debt Recovery Special Provisions Act No. 2 of 1990, as amended by Act No. 9 of 1994, is as follows:

(2) Where the defendant or his representative in interest alienates any movable or immovable property or otherwise disposes of same in any manner whatsoever after the decree nisi such alienation shall be null and void and of no force or effect in law and shall be open to seizure in whosever hands such property may be :

Provided that such alienation shall be valid if the action is dismissed or the decree nisi is discharged: and

Provided (further that such alienation shall also be valid, if the decree absolute is satisfied, but only in respect of such of the property alienated as has not been seized and applied in satisfaction of the decree absolute: and

Provided further that such alienation shall also be valid property in the hands of an alienee who has come by such property in good faith for consideration without having notice of the decree nisi either of the time the purchase money was paid, or when the conveyance was executed nor to an alienee from such an alliance, the burden of proof of which facts shall be on such alienee.

In the above circumstances, the impugned decision of the Additional District Judge is correct. The petitioner has no right to claim that the property was not liable to be sold. Even if the petitioner was in possession of the property, he was paying monthly payments to the 2nd defendant. Therefore, the petitioner can be considered as a licensee of the 2nd defendant-respondent.

For the reasons stated above, we refuse to issue formal notice on the respondents. Application is dismissed.

Judge of the Court of Appeal.

Dr. S. Premachandra J.
I agree.

Judge of the Court of Appeal.