

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

C.A. (PHC) No. 11/99

HC. Kurunegala No. 64/97

Primary Court Pilessa
Case No. 57063/L

Mohamad Saheed Mohamed Abdulla
of No. 20, Kandy Road, Mawathagama.

Applicant-Petitioner-Appellant

-Vs-

Dassanayake Mudiyanseelage Antony of
“ Supervision”, Super Market Complex,
Mawathagama.

Respondent-Respondent-Respondent

Before: : **Sisira de Abrew,J &**
Anil Gooneratne,J.

Counsel: : **M.S.A.Saheed with Ms. Purnika Hettiarachchi for the Applicant-**
Petitioner-Appellant.
S.N.Vijithsingh for the Respondent.

Argued &
Decided on: **18.03.2011**

Sisira de Abrew, J.

Heard both counsel in support of their respective cases. This is an appeal to set aside the order of the learned High Court Judge dated 16.12.98 wherein he affirmed the order of the learned Primary Court Judge dated 17.3.97.

The application was filed in the Primary Court under section 66 (1)(b) of the Primary Courts Procedure Act No. 44 of 1979. The Appellant takes up the position that the building was divided into two parts and thereafter the respondent went in to the occupation of the other part of the building by force. This was on 24.03.96.

The respondent takes up the position that he went into the occupation of the said part of the building on 15.01.96. The case was filed in the Primary Court on 13.05.96 under section 66 of the Primary Court's Procedure Act. For the respondent to succeed in this case, he must prove that he was in possession of the premises from 13.3.96 to 13.5.96

The appellant has produced electricity bill relating to March 1996. Further the appellant has produced a letter sent by the Electricity Board informing him that his electricity would be disconnected. This letter has been sent on 18.04.96.

The electricity bill relating to March 1996 reveals that the earlier meter reading was on 07.03.96. This shows that he was in possession of this building even on 07.03.96. The March 1996 electricity bill and the disconnection notice sent by the Electricity Board would show that the appellant was in possession of the premises in the month of March 1996. The respondent has produced an electricity bill for the month of May 1996, but he has not produced any electricity bill for the month of January, February, March and April 1996. He however claims that he was in possession of this premises from 15.01.96. The respondent has produced a receipt to indicate that he has paid assessment rates to the relevant municipality for the year of 1996. This payment has been made on 30.04.96. This document has been produced as 1 D C 12 . But the appellant has also produced a receipt indicating that he had paid assessment rates for the year of 1996. This payment has been made on 23.04.96. Therefore it is clear that

after the appellant paid the assessment rates, the respondent has gone to the relevant municipality and paid the assessment rates.

These documents would clearly show that the respondent was not in possession of the premises in the month of January, February, March and April 1996. From the documents produced before the learned Primary Court Judge it is clear that the respondent was not in possession of the premises from 15.01.96, although he claims that he was in possession from that date. Therefore it is clearly established that the respondent was not in possession of the premises 02 months prior to the case being filed in the Primary Court. The learned Primary Court Judge has taken up the position that there was no breach of peace at this premises. But we note from paragraph 11 and paragraph 13 of the affidavit filed by the appellant that the respondent in this case has forcibly entered the building on 23.03.96 and that he has put a padlock after breaking the padlock that had been put by the appellant. When we consider, the material in the affidavit, there is clear evidence to support the view that the breach of peace at this place was threatened.

We therefore hold that the learned Primary Court Judge was in error when he decided that there was no breach of peace at this place. The learned

High Court Judge has also fallen into the same error. Both Judges have failed to consider the affidavits filed by the appellant in the Primary Court.

n When we consider the fact^s of this case we are of the opinion that the position taken up by the respondent that he entered this building on 15.01.96 has not been proved. For these reasons, we set aside the both orders of the learned Primary Court Judge and the learned High Court Judge and direct that the appellant should be placed in possession of the part of the building that is being occupied by the Respondent. The leaned Primary Court Judge is directed to take all necessary legal steps to implement this order.

Appeal allowed.

Judge of the Court of Appeal

Anil Gooneratne, J.

I agree.

Judge of the Court of Appeal

Kpm/-