

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

Buddhipala Sirimanne  
**Respondent-Respondent-Appellant.**

Vs

CA (PHC) 105/99  
HC Balapitiya 96/97  
MC Balapitiya 95364

1. AKS Sumanapala  
2. AK Dudey Sumanapala  
**Petitioner-Petitioner-Respondents**

Before : Sisira de Abrew J &  
DSC Lccamwasam  
Counsel : Palitha Kumarasinghe President's Counsel for the appellant  
Faiz Musthapa President's Counsel for the respondents

Argued on : 5.9.2011, 6.9.2011, 7.9.2011, 13.9.2011 and 14.9.2011  
Decided on : 9.11.2011

**Sisira de Abrew J.**

Parties in CA(PHC)APN 52/98 agreed to abide by an order that would be delivered in this case.

This case relates to an application under section 66 of the Primary Courts, Procedure Act No 44 of 1979 (PC Act). The learned Magistrate, by his order dated 4.9.97, decided the case in favour of the appellant but the learned High Court Judge (HCJ), by his order dated 16.9.98, set aside the

order of the learned Magistrate. Being aggrieved by the said order of the learned HCJ the appellant has appealed to this court. The dispute in this case relates to a business and premises called Bentota Village. The appellant in this case is the brother of the wife of the 2<sup>nd</sup> respondent. The position taken up by the respondents who filed the case in the Magistrate Court is that the 2<sup>nd</sup> respondent started Bentota Village in 1987; that he handed over the management of this business to the appellant; that from 1987 to October 1996 the appellant with the knowledge and instructions of the 2<sup>nd</sup> respondent conducted the business of Bentota Village; that towards the end of 1996 the appellant with his wife left for Australia for the purpose of settling down; that on 16.5.97 the appellant with his wife returned to country but did not engage in the business of Bentota Village; and that on 30.5.97 the appellant threatened and assaulted his two servants and took the possession of Bentota Village. He further takes up the position that the business was conducted by the appellant on behalf of the respondents.

The position taken up by the appellant is that in April 1987 he started constructing the buildings relating to the business called Bentota Village; that he maintained and conducted the business on his own; that on 14.11.96 he handed over his house (Gangasiri Nivasa), the business called Bentota Village and all the keys of the house to the 2<sup>nd</sup> respondent as the appellant was planning to go to Australia with his wife; that on 16.11.96 he with his wife went to Australia for treatment for his wife as there was a problem relating to pregnancy; that he did not go to Australia for the purpose of settling down; that on 16.5.97 he returned to the country as his wife became pregnant; that after spending two days in the 2<sup>nd</sup> respondent's house in Kegalle, on 20.5.97 he with the 2<sup>nd</sup> respondent returned to Bentota Village and took over the business from the 2<sup>nd</sup> respondent; that Priyantha who was

employed by the 2<sup>nd</sup> respondent to work in Bentota Village went to Kegalle on the same day with the 2<sup>nd</sup> respondent; and that the other person employed by the 2<sup>nd</sup> respondent left the place on 21.5.97. He further takes up the position that he did not, at any stage, manage the business on behalf of the 2<sup>nd</sup> respondent and that his house and Bentota Village were given to the 2<sup>nd</sup> respondent as an authorized person of the property.

Learned PC who appeared for the respondents contended that it was the 2<sup>nd</sup> respondent who started the Bentota Village; that the appellant did not have any ownership to the property; that the appellant is a person who did not have even Rs.10/- to pump petrol to his motor cycle; that it is evident by document marked P14 wherein he had accounted for Rs.10/-; that the 2<sup>nd</sup> respondent's wife and his son were the owners of the entire property; and that the appellant in fact conducted the business on behalf of the respondents.

I now advert to these contentions and the position taken up by both parties. It is undisputed that the appellant went to Australia on 15.11.96 and returned to the country on 16.5.97; and that the respondents were in possession of the property during the period that the appellant was away from the country. According to the police report, Bentota Village was situated behind the house of the appellant (Gangasiri Nivasa). If the entire property belongs to the wife of the 2<sup>nd</sup> respondent and his son as contended by learned PC for the respondent, how did the appellant get electricity to Gangasiri Nivasa in his name? V11 indicates that the appellant had taken electricity to Gangasiri Nivasa in his name. Have the respondents produced any documents relating to supply of electricity to this premises? The answer is no. In fact the respondents have not produced any electricity bill in their

names relating to this house. The appellant has produced electricity bill for the month of May 1997 which is in his name. The respondents have produced a business registration certificate(P5) dated 10.1.97 indicating that they started the Bentota Village with effect from 19.10.1996. Then why didn't they get the name changed in the electricity bill. Further if Bentota Village was registered in their name with effect from 19.10.1996, why didn't they take the permit for running a hotel for the year 1997? They could have obtained this permit since the 2<sup>nd</sup> respondent or somebody on his behalf had gone to the Bentota Pradeshiya Sabha on 14.2.1997 to pay registration fees to change the ownership of business (vide P11 at page 259). The appellant has produced permit for running the hotel for 1992, 1994, 1995, 1996 and 1997 (vide V12 to V16 pages 375-379).

Learned PC who appeared for the respondent drawing our attention to P14 contended that the appellant did not even have Rs.10/- to pump petrol to his motor cycle; construction of Bentota Village was done in accordance with the 2<sup>nd</sup> respondent's instructions; and that the 2<sup>nd</sup> respondent spent Rs.22150/- for this purpose. When P14 is examined it is correct to say that the 2<sup>nd</sup> respondent had contributed Rs.22150/- for the construction of Bentota Village. The appellant, at page 66 of the brief, explaining the above sum, states that he took loans from the 2<sup>nd</sup> respondent and other relations to construct Bentota Village. According to P14 several people had gifted material and money and the appellant, his wife and others had worked free of charge when Bentota Village was being constructed. The appellant had even accounted for Rs.5/- that he spent for betel. When I examine P14 it appears that the appellant had written events of every day in it. When events on 22.2.1987 stated in P14 are examined, it appears that the appellant had laid the foundation stone of Bentota Village and that his wife

had served milk rice to those present at the function. Although learned President's Counsel for the respondent heavily relied on P14, when P14 is examined, I feel that it is in favour of the appellant. This document indicates that it was the appellant who constructed Bentota Village. When I consider all these matters, I am unable to accept the contention of learned President's Counsel for the respondent and the contention that the appellant conducted business of Bentota Village on behalf of the respondents.

The next point that must be considered is whether the appellant threatened, assaulted and took the management of Bentota Village on 30.5.97 as contended by the respondents or the 2<sup>nd</sup> respondent handed over the business of Bentota Village to the appellant on 20.5.97 and that the incident described by the respondents did not take place on 30.5.97. To prove the position taken up by the respondents, they have produced the 1<sup>st</sup> respondent's statement made to the Police on 30.5.97. In the said statement the 1<sup>st</sup> respondent takes up the position that his two employees Priyantha and Kokurangoda were threatened with death and assaulted by the appellant and Ratnasiri. But Priyantha and Kokurangoda had not made any statement to the Police alleging this incident although they have produced their affidavits as P15 and P16 stating the assault and the threat. Their credibility is shattered as they have failed to make statements to the Police on this matter. The respondents have produced a letter (P17) from one JW Sirimanne dated 6.6.97 indicating that he delivered certain building material to Priyantha on 7.5.97, 9.5.97, 26.5.97 and 30.5.97 (vide page 314 of the brief). Since JW Sirimanna had delivered building material and accepted money, he should be a person supplying building material to the people in the area. How did he remember that he supplied some building material to the appellant one

month ago? How did he remember the type of material that he claims to have supplied? Where is his receipt book? P17 does not indicate that he had taken this information from his receipt book. When I consider these matters, I hold the view that no reliance could be placed on P17. Respondents have produced P18 to prove that he was in possession of Bentota Village from 24.5.97. P18 is a receipt to indicate that one Dinara Enterprises had sold some beverages to Bentota Village on 24<sup>th</sup> of May. But it does not indicate that anybody accepted beverages stated in it. P19 produced by the respondents is only a mobile telephone bill of the elder brother of the 2<sup>nd</sup> respondent. Since it is a mobile phone one cannot say that it had been fixed at Bentota Village. The respondents have produced an affidavit of one Algiyawadu who is a fish seller to prove that he supplied fish to Bentota Village on 23<sup>rd</sup> and 28<sup>th</sup> of May 1997. But the appellant has produced several affidavits of respectable people to prove that he was in possession of Bentota Village from 20.5.97 to 30.5.97. When I consider all these matters I hold the view that there is no evidence to prove that the appellant threatened the employees of the respondents and took management on 30.5.97 and that there is no evidence to prove that the respondents were in possession of Bentota Village from 20.5.97 to 30.5.97. If the respondents were not in possession of Bentota Village from 20.5.97 to 30.5.97, they could not have been dispossessed on 30.5.97.

Earlier I have held that I was unable to accept the position that the appellant conducted business of Bentota Village on behalf of the respondents. When I consider the documents produced by the appellant which I have referred to earlier, I am of the opinion that appellant was in

possession Bentota Village and conducted the business on his own from April 1987 to November 1996.

Dinasiri Sirimanne, the Grama Sevaka of the area, in his affidavit has said that when he went to Bentota village on 25.5.97, employees who worked earlier were working in Bentota Village. Sarath Ananda, a retired teacher and Deputy Chairman Pradeshiya Sabha has stated in his affidavit that when he went to Bentota Village on 22.5.97, the appellant was conducting business without any problem. HP Ranaweera the General manager of Janakala Centre has stated in his affidavit that when he went to Bentota Village on 28.5.97, the appellant was conducting business. Nilushi Hettigoda, an employee of Bentota Village from 1992 says in her affidavit that on 20.5.97 the 2<sup>nd</sup> respondent handed over Bentota Village to the appellant. Ratnasiri who was running a Masks sale centre in Bentota Village too in his affidavit says that the 2<sup>nd</sup> respondent handed over Bentota Village on 20.5.97 to the appellant. When I consider all these matters and the evidence in the lower courts, I am of the opinion that the respondents had peacefully handed over Bentota Village to the appellant on 20.5.97. I therefore hold the view that respondents were in possession of Bentota Village on behalf of the appellant from November 1996 to 20.5.97. If that is so, it cannot be decided that the respondents were in possession of Bentota Village during this period. One can possess a land or a house through his agent. This view is supported by the judgment of Boncer CJ in Maduwanwala Vs Ekneligoda 3 NLR 213 wherein His Lordship observed thus: "Possession as I understand it, is occupation either in person or by agent, with the intention of holding the land as owner." I have earlier pointed out that the respondents were in possession of 'Bentota Village' on behalf of the appellant from November 1996 to 20<sup>th</sup> of May 1997. Therefore I hold

that the respondents were in possession of Bentota Village as agents of the appellant from November 1996 to 20<sup>th</sup> of May 1997.

Earlier I have held that the respondents could not have been dispossessed from Bentota Village on 30.5.1997 as they were not in possession 20.5.1997 to 30.5.1997. When I consider all these matters, I am of the opinion that the appellant was in possession of Bentota Village two months prior to the information being filed in the Magistrate's Court. Therefore the appellant is entitled to be in possession of Bentota Village.

The learned High Court Judge has not considered most of the above matters. In my view the conclusion reached by the learned High Court Judge is wrong and the conclusion reached by the learned Magistrate is correct. For the above reasons I set aside the judgment of the learned High Court Judge dated 16.9.98 and affirm the judgment of the learned Magistrate dated 4.9.97. The appellant has also filed a revision application challenging the judgment of the learned High Court Judge dated 16.9.98 and the same has been registered under CA (PHC) APN 52/98. Since I have set aside the said judgment of the learned High Court Judge, the Registrar of this Court is directed to annex a copy of this judgment to the said docket.

*Appeal allowed.*

Judge of the Court of Appeal.

DSC Lecamwasam J

I agree.

Judge of the Court of Appeal.