

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

CA PHC 108/2011

PHC Balapitiya 814/10

Damith Kodithuwakku,
Siththragoda,
Amugoda

RESPONDENT-PETITIONER-
APPELLANT
Vs

Pinnaduwa Hewa Samson,
Bogahawatta,
Amugoda

Karunawathie Seneviretna,
Bogahawatta,
Amugoda

COMPLAINANT-
RESPONDENTS-
RESPONDENTS

BEFORE: A.W.A SALAM & DEEPALI WIJESUNDARE JJ

COUNSEL:

Rohan Sahabandu PC for the appellant and D M G
Dissanayaka for the respondents.

ARGUED : 17.10.2012.

DECIDED ON : 17.01.2013.

A W A SALAM, J

The complainant-respondent-respondents (Respondents) filed information under Section 66 (1) (b) of the Primary Court Procedure Act complaining of a land dispute affecting the breach of peace citing the respondent-petitioner-appellant (appellant) as a party to the dispute. Thereafter, the appellant filed his affidavit annexing four documents and then the respondents tendered counter affidavit appending identical number of documents. The learned Magistrate, thereupon inquired into the dispute and made order that the respondents' are entitled to the possession of the property in dispute.

Being aggrieved by the said order of the learned Magistrate the appellant invoked the revisionary jurisdiction of the Provincial High Court of the area to have the said order set aside. The learned High Court Judge at the conclusion of the inquiry into the revision application held inter alia that the petitioner has failed to establish any valid grounds to set aside the said order and dismissed the revision application. This appeal has been preferred against the said order of the learned High Court Judge.

The main argument advanced by the appellant in this appeal is that the affidavit filed by the respondents under section 66 (1) (b) cannot be regarded as an affidavit filed under section 66 (3) of the Primary Court Procedure Act and therefore the *interpates* order made by the learned Magistrate is bad in law. The learned counsel for the respondents has submitted that the provisions of section 66 (3) applies to a situation where the information is filed under section 66 (1) (A) of the Primary Court Procedure Act, and the present case being filed under section 66 (1) (B) by tendering an affidavit at the instance of a private individual the requirement to

file affidavit under section 67 (3) of the Primary Court Procedure Act does not become necessary. For purpose of ready reference the said Section of the Primary Court Procedure Act is reproduced below...

66(3) On the date on which the parties are produced under subsection (1) or on the date fixed for their appearance under that subsection, the court shall appoint a day which shall not be later than three weeks from the date on which the parties were produced or the date fixed for their appearance directing the parties and any persons interested to file affidavits setting out their claims and annexing thereto any documents (or certified copies thereof) on which they rely.

Section 66 (b) (1) of the Primary Court Procedure Act which entitles a private individual (other than a police officer) to initiate proceedings under Chapter VII of the Act reads as follows...

66 (b) (i) - Any party to such dispute may file an information by affidavit in such Primary Court setting out the facts and the relief sought and specifying as respondents the names and addresses of the other parties to the dispute and then such court shall by its usual process or by registered post notice the parties named to appear in court on the day specified in the notice-such day being not later than two weeks from the day on which the information was filed.

On a proper reading of the entirety of Section 66, it is quite clear that section 66 (3) applies to a situation where the information is filed under section 66 (1) (A) of the Act. However, when the

jurisdiction of the court is invoked by a private individual upon filing an affidavit in terms of section 66 (1) (B) of the Act the necessity to file an affidavit under section 66 (3) does not arise. In the result the contention made on behalf of the appellant that the respondent should be considered as having made default in filing affidavit and documents under section 66 (3) of the Primary Court Procedure Act, is unsubstantiated and therefore merits no serious consideration.

In the circumstances, the legal objection raised against the determination of the learned Magistrate and the decision of the learned High Court Judge on the revision application is rejected and the appeal dismissed without costs.

A W A Salam, J

Judge of the Court of Appeal

Deepli Wijesundera, J

I agree.

Judge of the Court of Appeal

NR/