

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

Appeal made in terms of Article 138
(1) of the constitution, Sec. 798 of the
Civil Procedure code and Sec. 320 (1)
of the criminal Procedure code of
No.50 of 1979.

Kankanam Pathiranalage
Ingal Piyadhasa of No.1/16,
Aluth para,
Madawalamulla,
Galle.

Plaintiff - PETITIONER

Vs.

C.A. Contempt of Court No. CA1/2008^F

1. K.P. Lakshmi of No.12/2/B,
Aluth para,
Madawalamulla,
Galle.

1st defendant Respondent

2. Jayantha Siriwardhana,
Aluth para,
Madawalamulla,
Galle.

Respondent

And

3. Jayantha Siriwardhana,
Aluth para,
Madawalamulla,
Galle.

Respondent Appallent

1. Attorney General,
Attorney General Department,
Hulftsdorp,
Colombo 12.

Respondent

2. Kankanam Pathiranalage
Ingal Piyadhasa of No.1/16,
Aluth para,
Madawalamulla,
Galle.

PLAINTIFF-PETITIONER- RESPONDENT

RESPONDENT

BEFORE : S. SRISKANDARAJAH, J (P/CA)
P.W.D.C. JAYATHILAKE, J

COUNSEL : Rohan Sahabandu PC for the
Appallent.
Vikum de Abrew SSC for the 1st Respondent.

Argued On : 18.01.2013

Decided On : 12.06.2013

P. W. D. C. Jayathilake J.

Ajith Ranjan Weerasooriya licenced surveyor and a court commissioner of District Court Galle was appointed as the commissioner of partition case NO : P/15227. He issued notice for the preliminary survey to be done on 06.11.2005. On that day he went to the land with his team of workers and commenced the survey at about 9.00 a.m. When the plaintiff was pointing out the boundaries, K.P.Lakshmi the 1st defendant Respondent raised

objections, but did not make any obstruction. Then Jayantha Siriwardana Respondent Appellant who was at a nearby house threatened the commissioner saying "**get out of the land immediately**"

Then the surveyor had stopped his survey and returned with his team. He has submitted P2 in which he reports to the court that the 1st Defendant opposed to the survey and Appellant threatened him. He has also submitted the bill of his survey for the day (P3) amounting to Rs : 4340.00 .

Respondent Appellant and the 1st Defendant Respondent were charged for contempt of court under section 53(1) of the Partition Act. As the Commissioner had stated in his evidence that the 1st Defendant did not obstruct him even though she denied boundaries shown by the plaintiff, the 1st Defendant had been discharged. But the learned Additional District Judge has convicted the Appellant accepting the evidence of the commissioner given against him and rejecting the evidence of the 1st Defendant in which she asserted that Appellant was a mentally and physically weak person. The reason given for the rejection of that piece of evidence was that it had not been proved by means of relevant documents such as a medical certificate according to the section 106 of the Evidence Ordinance.

Several grounds have been raised on behalf of the Appellant Respondent at the inquiry against the complaint of the commissioner. One of them was that the commission issued to him was irregular due to the fact that he had not been authorized to enter the neighboring lands. Therefore the commissioner was erroneous in executing the survey without getting the commission papers corrected.

The preliminary survey plan which had been completed subsequently had been marked as R1. The Commissioner had admitted that the house at which the Appellant was at the time of the incident was outside the subject matter according to R1. It had been revealed at the inquiry that the Appellant is the husband of the 1st Defendant Respondent and was 74 years old at the time of the incident. There was no evidence about any physical action of the Appellant which caused obstruction to the survey.

If it is presumed that the commissioner had gone for the survey under the authority given by the District Judge by formal commission papers issued under section 16 of the partition Act, he should have known that he had the power to conduct the survey without caring any interruption or disturbance. Commissioners are authorized by the commission issued to them to enter the subject matter as well as neighboring lands. As officers who carry out court's orders they are bound to discharge their duties without hesitation despite the acts of other persons. Even the commissioner is guilty of contempt if he fails to execute the commission without any valid reason.

Somindra V. Surasena & Others (2003) 3 SLR 159 is a case decided in 1998. In that case the 11th Defendant Appellant had been charged for contempt under Sec.53 (1) (b) of the partition act for obstructing the commissioner by shifting the chain of the surveyor at the time of the survey. U.DE.Z. Gunawardena, J. in his Judgment, has stated as follows

“Assuming that the defendant – appellant pulled or slightly shifted an instrument, that is, the chain of the surveyor, it is such trivial conduct which would not have actually prevented the survey – if, in fact, the surveyor had been keen to proceed with it. It looks as if the surveyor had

been too quick to take offence and that he had obviously left the land in a huff.”

In this case even if the commissioner says that he had the fear of danger of his life, I am of the opinion that he should not have fallen into that situation just on the words uttered by a 74 year old person. He is not fit to be a court commissioner if he is such a weak personality. Generally surveys are conducted on lands which are subject to disputes among the parties residing in them. Therefore court commissioners shall not expect a warm welcome to the land by the parties. On the maturity and the experience of the officer he should know how to exhibit his impartiality and independence to win the confidence of the parties.

The relevant provision of Law to charge a person who obstructs the commissioner is Sec. 53 (1) (b) of the Partition Act.

Sec. 53(1) (b)

“Obstruct or resists any person acting under the authority of the court or exercising any power conferred on him by this Law.”

In order for an act to be act of obstruction for the meaning of above section the particular act shall necessarily be deliberate. The word resists mean an action of using force to oppose. Accordingly the mere utterance of some words does not constitute the offence prescribe by Sec. 53 (1) (b) of the Partition Act.

Therefore this court decides that the learned Additional District Judge has erroneously come to the conclusion that the Respondent Appellant has committed the offence that he was charged with. This court sets aside the conviction and the sentence and discharges the Respondent Appellant from the charge levelled against him.

Conviction and sentence set aside.

JUDGE OF THE COURT OF APPEAL

S. SRISKANDARAJAH, J (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL