

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

CA (PHC) No.109/2000

High Court of Western Province
Colombo No. HCRA 1499/1/99

MC No.95841/1

Noor Nihara Niyas,
No.25/18, Centre Road,
Colombo-12.

01st Party Respondent-Petitioner-Appellant

-Vs-

Jainool Abdeen Mohamed Anas
No.32/D1, 01 s1 Mosque Lane,
Centre Road,
Colombo-12

02nd Respondent-Respondent-Respondent

The Officer in Charge
Police Station,
Pettah.

Complainant-Respondent-Respondent

C.A. (PHC) No. 109/2000

P.H.C. Colombo Case No. 1499/99

Before : Anil Goonerathne, J. &
H.N.J. Perera, J &
Deepali Wijesundera, J.

Counsel : Riad Ameen for the 1st party respondent-petitioner-
appellant.

M. Nizzam Kariapper with M.I.M. Iyanullah for
respondent.

Argued &
Decided on : 28.08.2013.

Anil Goonerathne, J.

We have heard both learned Counsel for the appellant and the respondent. It is brought to the notice of this Court by both learned Counsel that the question of possession has not been considered by the learned Magistrate. Perusal of the order of the learned Magistrate it appears that the Magistrate has given his mind more particularly to the aspect of unauthorized constructions which is only

an item of evidence placed before the learned Magistrate. In terms of section 68 of the Primary Court Procedure Act, it is necessary for the learned Magistrate to come to a finding and make a determination as regards the question of possession.

Perusal of the order we find that such a finding has not been made by the learned Magistrate. Further the learned High Court Judge has merely confirmed the order of the learned Magistrate who has in fact not considered the question of possession as required by law. Both learned Counsel agree as regards the matter stated above. In the above circumstances we set aside the both orders of the learned Magistrate dated 06.07.1999 and the order of the learned High Court Judge dated 26.04.2000. We set aside both orders and send the case back to the learned Magistrate with a direction that he should make a determination on the available material/ evidence already placed before the Magistrate initially.

Parties would be entitled to make further submissions if they so desire before the Magistrate. Appeal allowed. No costs. Registrar

is directed to convey the above order to the learned High Court Judge and the learned Magistrate of Colombo.

JUDGE OF THE COURT OF APPEAL

H. N. J. Perera, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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