

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

CA (PHC) 119/2000

PHC. Balapitiya 237/99

G. Hubert Amarasiri Gunasekara,

15, First Lane,

Gandara Mawatha,

Sirimal Uyana,

Ratmalana

1st Respondent-Respondent-Appellant

Vs

O I C,

Police Station,

Elpitiya

Complainant-Respondent

G Ananda Gunasekara,

Pahalagoda,

Goluwamulla,

Ganegoda

2nd Respondent-Petitioner-Respondent

Before: A.W.A. Salam, J. and Sunil Rajapaksha, J

Counsel : Anil De Silva PC with Lasitha Muhamdiramge for the 1st party Respondent-Respondent-Appellant and Amila Palliyage for the 2nd Party-Respondent-Respondent.

Argued on : 12.11.2013

Decided on: 21.11.2013

A W A Salam, J

This appeal has been preferred against the judgement of the learned High Court judge dated December 1, 1999, setting aside the determination of the learned Magistrate made in respect a dispute regarding the possession of a land. The learned Magistrate by his determination dated 9 August 1999 decided that Hubert Amrasekara (identified in the original court as the 1st respondent) is entitled to the possession of the land. However, upon a revision application being filed the learned High Court judge reversed the order of the learned Magistrate and held that Ananda Gunasekara (identified in the original court as the 2nd respondent) is entitled to the possession of the said land.

As has been observed by the learned High Court judge what in fact had prompted the OIC of the respective police station to file information under section 66 (1) (a) of Act No 44 of 1979 was the complaint made by Hubert (the 1st respondent) on 28 June 1998. As has been quite correctly observed by the learned High Court judge the dispute with regard to the possession of the land in question had in fact had arisen as far back as 1 June 1996. This is quite evident from the complaint marked before the learned Magistrate as X6.

According to X6, the 1st respondent Hubert has complained to the police on 1 June 1996 against the 2nd respondent entering into the land in question and clearing the same. The learned High Court judge having adverted to the contents of X6 has come to the conclusion that the 2nd respondent had been in possession of the subject matter of the dispute at least since 1996 and therefore the 1st respondent is not entitled to obtain an order in his favour from the Magistrate's Court under section 68.

In the circumstances, I see no reason to interfere with the judgement of the learned and High Court Judge and therefore dismiss the appeal subject to costs.

Judge of the Court of Appeal

Sunil Rajapaksha, J

I agree

Judge of the Court of Appeal

NR/-