

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

1. Panniyage Bandupala Bandara
No. 179, Maya Mawatha,
Colombo 05.

2ND PARTY-PETITIONER-APPELLANT

C.A. 133/2006 (PHC)
(PHC Colombo HCRA – 638/2004)

Vs.

2. Nallahandi Lakshman de Silva
No. 83, Jambugasmulla Road,
Nugegoda.

1ST PARTY-RESPONDENT-RESPONDENT

BEFORE: Anil Gooneratne J. &
Malinie Gunaratne J.

COUNSEL: Amila Palliyage with Wajira Ranasinghe
for the Petitioner-Appellant
Gaminie Marapana P.C. with Navin Marapana
For the Respondent-Respondent

ARGUED ON: 26.06.2014

DECIDED ON: 24.07.2014

GOONERATNE J.

This is an appeal from the Judgment of the learned High Court Judge of Colombo dated 16.6.2006, arising from an Revision Application filed in the High Court from the Order of learned Magistrate of Mt. Lavinia under Section 66 of the Primary Courts Procedures Act.

What I could gather from the material placed before this court is that one of the main contentions of the party of the 2nd part Petitioner-Appellant was that the learned Magistrate had failed or has not taken the step to encourage and make every effort to facilitate dispute settlement before assuming jurisdiction. It has also placed as some material before court that the Petitioner-Appellant had been running a business described as 'Udara Mangala Sevaya', according to the information provided by the police. Perusal of the docket it is also apparent that the learned High Court Judge by his Order of

20.9.2004 issued a stay order, staying the operation of the learned Magistrate's Order of 09.09.2004.

The grounds of appeal are more particularly stated in para 9 of the Petition of Appeal. We have noted the several matters urged therein.

This court having perused the order of the learned High Court Judge wish to observe that the High Court Judge has very correctly dismissed the Revision Application on very valid acceptable grounds. As stated above one of the main contention of the Petition or Appellant was that the failure of the Magistrate to encourage settlement as described above. It is apparent that the Petitioner-Appellant has provided incorrect details on this matter and had misrepresented and deliberately failed to disclose material facts to courts, and on that basis alone the Revision Application could have been rejected by the learned High Court Judge. Perusal of the material indicates that the learned Magistrate had made every possible effort to explore the possibility of settlement and the Petitioner-Appellant has deliberately not disclosed documentation in this regard. The case record submitted subsequently (pgs. 3/4 of High Court Judge's Order) produced P1 and Journal Entry of 04.-6.2004 of 16.06.2006 and 28.7.20004 would provide ample proof in this connection.

On all other material point as to who was in actual possession of the premises or land in dispute on the date of issue of notice and the required 2 month period had been considered by the learned High Court Judge. In this regard the learned Magistrate had relied upon two vital documents 1P5 and 1P6. It consists of a complaint (1P6) made by an independent witness as described in the said order of the learned High Court Judge and another document marked as 1P5 where the keys to the door of the up-stair building had been in the possession of the party of the 1st part Respondent-Respondent. The learned Magistrate had very carefully, considered the required possession as per the Primary Courts Procedure Act based on available material. The High Court Judge no doubt had given his mind to all aspects of possession recognized by law, supported with facts and expressed cogent reasons. This court is not inclined to disturb such findings. The law recognizes two types of possessions, i.e direct physical control at a given time which is actual possession. The other is constructive possession, to exercise dominion or control over a thing either directly or indirectly through an agent. No doubt the learned High Court Judge has approached the case having above in mind.

The learned High Court Judge in his conclusion states that the required exceptional circumstances have not been proved to maintain the Revision Application, filed in the High Court. This is an appeal from the Order of the High Court in the exercise of its revisionary jurisdiction. The grounds of appeal of the Appellant and the matters urged before this court and before the High Court/Magistrate's Court have no merit. As such we proceed to dismiss this appeal. Order of the High Court dated 16.6.2006 affirmed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL