

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

CA No.CA(PHC)55/2011
HC/NE/32/10
M.C.Hatton No. 21542

02. Mukan Loganathan
03. Periyasamy Devaraj
04. R. Vengadasalam
05. Pichchal Sivaraj
All of Bogawantalawa 22060

2-5 Respondents-Petitioners-

Appellants

Vs
A.P.H.De V.Gunawardena
No.4 Pieris Veda Mawatha,
Ambalangoda

Petitioner-Respondent-Respondent

BEFORE : A.W.A. Salam J., and

Sunil Rajapakse J.,

COUNSEL: Anura Meddagoda for the 2nd and 5th Appellants

ARGUED ON: 30.10.2013

Decided on: 01.08.2014

Sunil Rajapaksa J.,

This Appeal has been filed by the 2nd-5th Respondent-Petitioner-Appellants challenging the Order dated 08.06.2011 of the learned High Court Judge of Nuwara Eliya. The learned High Court Judge affirmed the order made by the learned Magistrate of Hatton dated 30.07.2010.

The Order of the learned Magistrate was made in respect of a dispute affecting land and premises where the breach of peace was threatened, in terms of Chapter VII of the Primary Courts Procedure Act No.44 of 1979. In the Magistrates Court, after considering the submissions and the documents submitted by both parties., the learned Magistrate has held that the Petitioner Respondent Respondent is entitled to possession of the said disputed land and premises. Being aggrieved by the said Order, the Appellants filed an application for Revision before the High Cou4t of Nuwara Eliya. The Revision Application was dismissed by the learned High Court Judge of Nuwara Eliya.

When the case was taken up for argument the Appellants main contention was that the learned High Court Judge's Order was bad in law on the following grounds:

- i. That the affidavits filed in the Magistrate's Court are bad in law;
- ii. That the Court has failed to consider the evidence placed before Court by the Appellants;
- iii. That there has been non-compliance with the provisions of the Primary Court Procedure Act No. 44 of 1979;
- iv. That the Respondents have failed to satisfy the Court that they were in possession of the land in dispute during the period of two months immediately preceding the institution of the action in the Magistrate's Court.

After analyzing the Order of the learned High Court Judge of Nuwara Eliya, I am of the opinion that the order of the learned High Court Judge is a well considered order as the learned High Court Judge had taken into consideration both relevant facts and law when arriving at the decision on 28.06.2011.

In this case the Magistrate's Court proceedings reveal that the Petitioner Respondent-Respondent was in actual possession of the disputed premises. The learned Magistrate has correctly stated that he declares the Respondent Petitioner is entitled to possession of the land and premises which is the subject matter of this dispute. I am of the view that the Petitioner Respondent 's documents which had been filed by the Petitioner as P13 and P14 were correctly considered by the learned Magistrate. The Appellants main contention is that the possession of the subject matter by the Appellant has not been correctly considered by the learned Primary Court Judge. Appellants position is that they were in possession of the land and premises two months prior to the filing of the first Information under Section 68 of the Primary Courts Procedure Act. But the Appellants have failed to prove their position in this case. The Respondents marked documents (P13 and P14) reveal that the Respondent was in possession of the disputed land two months prior to filing of First Information . Therefore the learned High Court Judge had given due consideration to Section 68 of the Primary Courts Procedure Act and affirmed the learned Magistrate's Order.

I shall now deal with the grounds urged by the learned Counsel for the Petitioner-Respondent Respondent-Respondent's argument in the High Court was that the Appellant had not proved any exceptional circumstances which constitute grave miscarriage of justice to revise the impugned order of the learned High Court Judge of Nuwara Eliya.

In this regard I would like to cite the following authorities:

Kanakalingam vs Jeatheeswaram and others - 2009 1 SLR 152, it was held "The Primary Court not deciding an issue finally whatever the order that a Primary Court Judge shall make would be temporary in nature."

In Warapragasam vs Emanuel - CA 931/84 it was held "It is now settled law that the power of Revision vested in the Court of Appeal is a discretionary remedy. The practice is not to exercise the power of Revision when any other or alternate remedy is available for the reason that is a discretionary remedy vested in court and it is exercised when the Applicant has no other remedy. But it is also now settled law that the revisionary power would be exercised even though there is an alternate remedy only if there is the existence of exceptional circumstances are shown necessitating the indulgence by court to exercise its discretionary remedy of Revision."

In Devi Property Development (Pvt) Limited and another vs Lanka Medicals (Pvt) Ltd., C.A. 518/1 decided on 20.06.2001 it was held "Revision is an extraordinary jurisdiction vested in Court to be

exercised under exceptional circumstances, if no other remedies are available."

After analyzing the above laid down principles I am of the view the Appellant who sought the revisionary jurisdiction of the High Court has an alternative remedy. Further I have gone through the proceedings before the High Court and note that the Respondent Appellants have not established an exceptional circumstances in the High Court. Further I am of the opinion if the Appellant had dissatisfied with the decision of the learned Magistrate he could have filed a civil case in the District Court. The Appellant who sought the revisionary jurisdiction of the High Court has an alternative remedy in this case. There is no miscarriage of justice whatsoever. Therefore, I am of the view that the learned High Court Judge of Nuwara Eliya had come to the correct conclusion by his order and refused to set aside the said order in revision.

For the above reasons, I affirm the judgment of the learned High Court Judge dated 28.06.2011 and the learned Magistrate's judgment on 30.07.2010.

Appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Salam J., - I agree.

JUDGE OF THE COURT OF APPEAL.