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

CA (PHC) 89/1 0

M.C. Hatton 41055

H.C. Nuwara Eliya 22/10 RE

- 1. Muthunagalingam
- 2. Koladawel Rajendran
- 3. Kadirawel Sivalingam
- 4. Waran Aran
- 5. Sannasi Karupaiya
- 6. Ramaiya Jayaprakash
- 7. Kanagamuthu Kokila Krishnan

All of

Down side of Norwud Estate, Norwud.

Petitioner Appellant

Vs.

- 1. Jeyarama Manoharan, No 1, Layima, Down side, Norwud Estate, Norwud.
- 2. Mani Balaraj, No 154, Main Street Norwud
- 3. Ponnaiya Sammuganadan No 154/4 Down side, Norwud Estate, Norwud.
- 4. Udayara Jothiraja Down side, Norwud Estate, Norwud.

Respondent Respondents

And

OIC

Police Station, Norwud.

Plaintiff Respondent

C.A. (PHC) No. 89/2010 H.C. Nuwara Eliya Case No.22/10 (Rev)

Before : K. T. Chitrasiri, J &

W.M.M. Malinie Gunarathne, J.

<u>Counsel</u>: Lasith Chaminda with Mihiri Abeyrathne

for the 1st party-petitioner-appellants

P. Peramunagama

for the 2nd party Respondent-Respondents

Argued &

Decided on: 03.09.2014

K. T. Chitrasiri, J.

Heard both Counsel in support of their respective cases.

This is an appeal seeking *inter alia* to set aside the judgment dated 19.11.2010 of the learned High Court Judge in Nuwara Eliya and to have the reliefs prayed for in the petition filed in the High Court by which the order dated 19.05.2010 of the learned Magistrate of Hatton was challenged.

This is an action filed by the O.I.C. Police Station Norwood under section 66 of the Primary Court Procedure Act No. 44 of 1979. Accordingly, the learned Magistrate having considered the material before him determined that the 2nd party respondent- respondents are entitled to possess the premises put in suit. Being aggrieved by the said decision of the learned Magistrate, 1st

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party Petitioner-Appellants filed a revision application in the High Court of Nuwara-Eliya. Learned High Court Judge, having looked at the merits of the case, affirmed the decision of the learned Magistrate. This appeal is to canvass those two judicial decisions.

In terms of the provisions contained in Part VII of the Primary Court Procedure Act, it is the duty of the learned Magistrate to make an order giving possession to the person of the presses in question who was in possession at the time the information was filed in Court. [Section 68(1)] However, if a person is dispossessed within a period of 2 months prior to the filing of information, the Court shall make an order restoring him in possession of the land from which he was dispossessed. [Section 68(3)] In this instance, the impugned order had been made by the learned Magistrate relying upon Section 68(3) of the Primary Court Procedure Act. Therefore, it is necessary to ascertain whether the learned Magistrate was correct when he made order to restore possession of the 2nd party respondent-respondents of the premises subjected to this case.

It is evident that a dispute over the possession where Sri Muttu Mari Amman Kovil is situated has arisen pursuant to a padlock been put on its doors on 20.11.2009 preventing entering into the premises after completion of a festival of the said Kovil. Admittedly, it is the cause for the dispossession of the respondents from the premises in dispute. The O.I.C. Police Station Norwood had filed the information to Court on 30.11.2009 making it 10 days

after the alleged dispossession. (Vide proceedings at page 257 in the appeal brief). These facts have been carefully considered and analyzed by the learned Magistrate. His observation in this regard is as follows.

"තවද ආරවුලට අදාල දිනයන්හි පැවති කුම්බාහිෂේක මංගලායට අදාල පුජා කටයුතු සඳහා මුදල් ගෙවු බවට වක්ස් 21 ලේඛනයක් ඉදිරීපත් කර ඇත. පළමු පාර්ශවය අදාල මුදල් ගෙවීම සම්බන්ධයෙන් හබ කර නැත. පළමු පාර්ශවය හා හබ කර ඇත්තේ අදාල මුදල් කෙසේ ලැබුණාද යන්න පමණයි. වක්ස් 26 හා 27 ලේඛන කුම්බාහිෂේක මංගලා අදාල දිනයන්හි පැවති බවට සනාථ කරන ලේඛනයක් වන අතර, වකී ලේඛනයේ මෙම කුම්බාහිෂේක උත්සවය සම්බන්ධයෙන් පළමු පාර්ශවය සඳහන් කරන පරිදි ශුි මුත්තුමාරී අම්මාන් දේවස්ථානයෙහි සම්බන්ධතාවය සම්බන්ධයෙන් කිසිදු සඳහනක් කර නොමැත. පළමු පාර්ශවය වර්ෂ 2009.11.20 වන දින පොලිස් ස්ථානයට කරන ලද පුකාශයෙහි මෙලෙස සඳහන් කර ඇත.

"නොර්වුඩ් නගරයේ පිටුපස සිටින අයත් රැස්වීමක් තියලා ඒ අයත් සභාපතිතුමන්, ලේකම්තුමන්, භාණ්ඩාගාරීකත් පත්කර ගෙන කෝවිලට අයිතිවාසිකම් කියනවා. අද දින කෝවිලේ අවසන් පුජාව තිබුණත් මේ කෝවිලේ පුජාව තියෙන්නේ ශුී මුත්තුමාරී අම්මාන් කෝවිලේ පුජකයා වන ජයපුකාශ් තමයි. පුජාව තියන්න එන්නේ. ඒක නිසා මාරී අම්මාන් කෝවිලේ බඩු තමයි මෙතනගෙනත් තියෙන්නේ. ඒ බඩු තියපු කාමරේ යතුර තමයි ජොත්කුමාර් ගාවයි, මනි පාලරාජ් ගාවයි තියෙන්නේ. අපි අද උදේ ඉඳලා කෝවිලේ යතුර දෙන්න කියලා කිව්වා. ඒ අය යතුර දන්නේ නැහැ."

ඒ අනුම මෙම නඩුවට ආරවුල හට ගත් කාල සීමාව වන විට දේවස්ථානයේ යතුරු සහ මුලා පාලනය දෙවන පාර්ශවය සතු වු බව පෙනී යයි. ඒ අනුව නිර්බුක්ති කිරීම සිදුව ඇත්තේ 2009.11.20 වන දින බවත් පෙනී යයි. එනම් එකී වකවානුව තොරතුරු වාර්තාව ගොනු කරනු ලැබු දින එනම් 2009.11.30 දින සිට මාස දෙකක් පිටු පසට වු කාල සීමාවක් තුලය."

(Vide proceedings at pages 286-288 in the appeal brief)

Learned High Court Judge also, has adverted to this aspect of alleged dispossession and also as to the date it had taken place. (Vide page 34 in the appeal brief). Having done so, he affirmed the decision of the learned Magistrate.

Learned Counsel for the appellant does not dispute these matters particularly the fact of dispossession of the respondent-respondents from the premises in question within a period of two months prior to the filing of information by the Police. In the circumstances, it is clear that both the learned Judges have carefully considered the facts of this case and applied the law relevant there to in the correct manner. Accordingly, we are not inclined to interfere with the decision of the learned High Court Judge as well as the learned Magistrate.

For the aforesaid reasons, this appeal is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunarathne, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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