

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

C.A. (PHC) No. 05/2002

H.C. Kandy Case No. 316/2000 (R)
Primary Court Kandy Case No.64571

J.P. Abeypala
93/B/1,
Pujagoda,
Handessa.

Petitioner – Respondent - Appellant

Soma Rajapakshe
Gampala Road,
Panideniya,
Peradeniya.

Respondent – Petitioner - Respondent

C.A. (PHC) No. 05/2002

H.C. Kandy Case No. 316/2000 (R)
Primary Court, Kandy Case No. 64571

Before : K. T. Chitrasiri, J
W.M.M. Malinie Gunarathne, J.
Counsel : Parties are absent and unrepresented.
Decided on : 01.09.2014.

K. T. Chitrasiri, J.


Pursuant to the preparation of briefs, the Registrar of this court has sent notices under registered cover to the parties directing them to be present in this Court on 18.02.2014. However on that date, parties were absent and unrepresented even though those notices have been sent under registered cover to the addresses given in the petition of appeal. Accordingly, it is clear that the parties are not interested in pursuing this appeal.

However since the appellant has paid the brief fees to proceed with this appeal, we decide to consider the merits of the appeal. This appeal had been filed seeking to set aside the orders dated 27.06.2000 and 12.12.2001 made by the Primary Court Judge and the learned High Court Judge in Kandy, respectively. The Primary Court Judge has

inspected the land in dispute and has found that damages had been caused to an old fence found thereon. Accordingly, the Primary Court Judge had made order to erect the fence in the manner, in which the interim order dated 31.01.2000 was made.

However, the learned High Court Judge reversed the order of the Primary Court Judge stating that there had not been sufficient evidence as to the breach of the peace amongst the parties in the application made in the Primary Court, in order to assume jurisdiction by the learned Primary Court Judge.

In paragraph 9 of the affidavit filed by the petitioner-respondent in this case, he has stated that there had been breach of the peace due to the dispute before Court. Furthermore, in the affidavit dated 14.02.2000 filed by the respondent-petitioner- appellant, she has not denied the said contents as to the breach of the peace referred to in paragraph 9 of the affidavit filed by the respondent namely Abeypala. Accordingly, we are of the view that the learned High Court Judge misdirected himself when he dismissed the revision application on the basis that there was no evidence as to the breach of the peace between the parties.

For the aforesaid reasons we set aside the order dated 12.12.2001 of the learned High Court Judge and affirmed ~~the~~ the order 

dated 27.06.2000 of the Primary Court Judge. Accordingly, we allow the appeal.

At this stage, it is necessary to note that the Primary Court Judge in her order has stated that there had been a partition action filed in respect of the land subjected to in this case and an appeal was pending, by the time the order was made on 08.05.2000. Therefore, the decision made in this case should prevail subject to the decision in that action bearing No.P8710, since the decisions made in applications filed in terms of the provisions contained in Part VII of the Primary Court Procedure Act No.44 of 1979 shall prevail until an order is made by an appropriate forum (Section 74).

Hence, the Primary Court Judge is directed to ascertain from the parties as to the status of the partition action P8710 before he takes steps to implement the order made in this case by the Primary Court Judge.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunarathne, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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