

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

**Case No.: CA (PHC) 116/2009**

1. Atula Kumara Nupe Arachchi

**Plaintiff - Petitioner**

1. Mass Developments (Pvt) Ltd,

**Vs.**

1. Rev. Balapana Sumanasara

2. Nimal Sunil Shanta Siri De Silva

3. Sunil Karunarathna

4. Samarasinghe Arachchilage Padma

5. Vithanarachchilage Thilakarathne

**Respondent**

**C.A. (PHC) No. 116/2009**

**P.H.C. Colombo HCRA No. 157/2007**

**M.C.Mt. Lavinia 180/9/2007**

Before : **K. T. Chitrasiri, J &**  
**W.M.M. Malinie Gunarathne, J.**

Counsel : N.T.S. Kularatne with Jinesh Tillchant for the 2<sup>nd</sup> Party  
Respondent-Appellants  
Faiz Musthapha P.C. with Riad Ameen for the 1<sup>st</sup> Party  
Petitioner-Respondent and for the 1<sup>st</sup> Party – Intervenient  
Respondent-Petitioner –Respondent

Argued &

Decided on : 16.09.2014

**K. T. Chitrasiri, J.**

Heard the learned Counsel for the Appellants.

Officer in charge of the Police Station, Mt.Lavinia filed an information in the Magistrate's Court of Mt.Lavinia in terms of the provisions contained in Part VII of the Primary Court Procedure Act No.44 of 1979 seeking for an order under Section 68 of the said Act. When such an application is filed in the Primary Court, it is the duty of the trial Judge to ascertain the person who was in possession of the land in dispute, at the time the information was filed or to determine whether there was any

dispossession within a period of two months prior to the filing of information in Court, of the person who was in possession of the land in dispute. Section 68(1) and 68(2) requires the Primary Court Judge to determine as to who was in possession of the land on the date of the filing of information and accordingly to make order declaring that person, who was in possession at the time the information was filed, is entitled to the possession of the land in dispute. Similarly, under Section 68(3) of the Act No.44 of 1979, the Primary Court Judge is required to hand over possession of the disputed land, to the person if that person had been dispossessed from the land within a period of two months prior to the filing of information in Court.

In this instance the learned Magistrate, basically relying upon the photographs marked 2V (6) to 2V (17) had come to the conclusion that the appellants who were in possession had been dispossessed by the respondents within two months prior to the filing of information. Those photographs tendered by the appellants do not indicate the date on which those were captured. Therefore, it is incorrect to decide the issue as to the exact period of possession or dispossession of the disputed land since the date of capturing of those photographs has not been established. Hence, it is clear that the learned Magistrate has misdirected herself when she made the order in favour of the appellants relying upon those photographs.

At the same time, it is necessary to note that the learned Magistrate has not given due consideration to the documents tendered on behalf of the respondents. Clear evidence is found in those documents filed by the respondent in the Magistrate's Court to show that the respondents were in possession at the time the information was filed having obtained electricity after developing the land put in suit.

In the circumstances, it is our view that the learned High Court Judge is correct when he decided the case in favour of the respondents having set aside the order of the learned Magistrate.

Accordingly, we are not inclined to interfere with the judgment of the learned High Court Judge.

For the aforesaid reasons, this appeal is dismissed without costs.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL

**M.M.M. Malinie Gunarathne, J.**

I agree

JUDGE OF THE COURT OF APPEAL

/mds