

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

Kalutara magistrate's courts

Case No: 78609

Divisional secretary

Kalutara

Applicant

vs

Kalupahana Mestrige

Jayatissa,

No 09/20, Mahajana Pola,

Kalutara south.

Respondent

Kalutara Hight court

Case No: Rev/14/2011

And

Kalupahana Mestrige

Jayatissa,

No 09/20, Mahajana Pola,

Kalutara south.

Respondent – petitioner

Vs

**01. Divisional Secretary
Kalutara**

**02. Attorney General
Attorney General's
Department**

Colombo

Applicant – Respondents

And now between

Court of Appeal

Case No: CA/PHC/193/2011

01. Divisional secretary

Kalutara

02. Attorney General

Attorney General

Department,

Colombo.

Applicant- respondent –

appellants

Vs

Kalupahana Mestrige Jayatissa,

No 09/20, Mahajana Pola,

Kalutara South.

Resondent- petitioner-

respondent

Before - A.W. A Salam J.

Sunil Rajapaksa J.

Counsel - Sonali Perera SA for appellant

Vijaya Niranjan Perera with Jeevani Perera for the Respondent -

petitioner- respondent

Argued on - 28. 11. 2013

Decided on - 01. 09. 2014

Sunil Rajapaksa J.

This appeal has been filed by the applicant- respondent- appellants challenging the order dated 08.12.2011 of the learned high court judge of Kalutara. The learned high court judge dismissed the order made by learned magistrate of Kalutara on 04.03.2011.

1st applicant- respondent- appellant filed a case in the magistrate court of Kalutara under the provisions of state land (recovery of possession) act No 07 of 1979. After considering the submissions made by both parties the learned magistrate of Kalutara delivered his order on 04.03.2011 allowing the application of the applicant- respondent- appellant and issued an order of ejectment. Being aggrieved by the said order the respondent- petitioner- respondent made a revision application to the high court of Kalutara. The learned high court judge of Kalutara in his order dated 08.12.2011 dismissed the learned magistrate order and allowed the revision application. Dissatisfied by the said order of learned high court judge of Kalutara appellants preferred this appeal.

When this case was taken up for argument appellants' main contention was that the judgment of learned high court judge of Kalutara was contrary to the provisions of state land (recovery of possession) act and the settled law. Further appellants urged that the order dated 08.12.2011 of the learned high court judge of Kalutara was erred in law.

Respondent- petitioner- respondent's argument was that the disputed land was not a state land. Further respondent urged that the provisions of this act had not been entitled the state to recover possession of lands that state had lost possession of by encroachment or ouster over long period of time.

Respondent has produced V4, V7, V8, V10- 21-22 receipts and V27- 49, V50 (license fee) to prove his lawful possession in the disputed land. All above payments made to the Kalutara urban council behalf of the respondent.

Respondent- petitioner- respondent cited following judgments to support his argument.

1. S.C appeal No 19/11
2. Senanayake vs Damunupola 1982 2SLR 621
3. Edwin Thilakarathne 2001 3SLR 34
4. Nirmal paper converters (pvt) limited vs SL ports authority 1993 1SLR 219

S.C appeal No 19/11 it was held "The main contention of the appellant before the DC was that the land in question was crown land. However the learned district judge had clearly stated in his order that the according to the submissions made and the documents produced before that court, the appellant had failed to produce any documents to prove that the land in question was either vested in the government or whether it was acquired by the state." (The order of the district court dated 05.05.2009 and the order of high court dated 01.07.2010 are therefore affirmed. This appeal is accordingly dismissed.)

Nirmal paper converters (pvt) limited vs SL ports authority 1993 1SLR 219 it was held "upon a two construction of the statute as a whole the forms of notice, application and affidavit had to be strict compliance with those which the legislature has thought important enough to set out in the schedules before the jurisdiction of the magistrate to eject the person in possession or occupation could be exercised."

Senanayake vs Damunupola 1982 2SLR 621 it was held "that this act was never intended to be made use of where the possession was authorized or where there was a doubt whether the land in question was state land or not."

"The provisions of this act do not entitled the state to recover possession of lands that the state has lost possession of by encroachment or ouster over long period of time."

After analyzing the submissions made by both parties I note appellants had failed to produce any documents to prove that the land in question was either vested in the government or whether it was acquired by the state. Respondent- petitioner- respondent had proved his lawful occupation in the said disputed land. I am of the view that the right or title of state of the disputed land is doubtful. There is no material to substantiate that the disputed land has been acquired by the state. Therefore documents submitted by the appellant do not support the ownership of the state to the land in dispute.

The divisional secretary's opinion is contrary to the guidelines set out in the land circulars. The state has never proved any encroachment by the respondent- petitioner- respondent on any acceptable documents. According to S.C appeal 19/11 that the land in question is not a state land. Therefore, I am of the opinion that the learned magistrate of Kalutara had misconceived the law and reached a determination totally biased towards the state.

I hold, the learned high court judge had correctly analysed the evidence before him and came to a correct conclusion and dismissed the learned magistrate order dated 04.03.2011.

Fore aforesaid reasons, I affirm the learned high court judge's order dated 08.12.2011 and dismiss the appeal. Registrar is directed to annex the copy of judgment to the case No 194/11, 195/11, 196/11.

Appeal is dismissed without cost

Judge of the court of appeal

A.W.A Salam J.,

I agree

Judge of the court of appeal