

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

CA (PHC) 102/2011

Kankanam Pathiranage Ariyawathie,
Near the Viharamaha Devi Seya,
Kandasurindu Gama,
Katharagama.

**Respondent -Petitioner-
Appellant-Petitioner**

-Vs-

1. Divisional Secretary,
Divisional Secretariat office,
Katharagama.

2. Hon. Attorney General,
Attorney General Department,
Colombo 12.

**Respondent-Respondent-
Respondents**

CA(PHC)102-2011**High Court(Hambanthota)HCRA46-2009**

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

Counsel : Asthika Devendra with Lilan Warusavithana
for the Petitioner-Appellant.
Nayomi Kahavita SC for the Respondent.

Argued &

Decided on : **01.10.2014**

K.T. Chitrasiri, J

This is an appeal seeking to set aside the judgement dated 07.06.2011 of the learned High Court Judge in Hambantota and also to have the order dated 18.09.2009 of the learned Magistrate of Hambantota vacated. The learned Magistrate having allowed an application filed by the 1st respondent, made order to evict the appellant from the premises in suit.

Being aggrieved by this order, the appellant made an application to the High Court to have the said order set-aside. Appellant, in the High Court has taken up the position that the application made to the Magistrate Court and the affidavit filed along with the said application were not in conformity with the provisions contained in the State Land

(Recovery of Possession)(Amendment) Act No.58 of 1981 and State Lands(Recovery of Possession) (Amendment) Act No. 29 of 1983. Those two Enactments stipulates the manner in which the application and the affidavit to be filed in such an action and the matters that are to be included thereof.

Admittedly, the application and the affidavit filed in the Magistrate Court is not in conformity with the requirements mentioned in the aforesaid amendments made to the State Lands Recovery of Possession Act. Despite those infirmities, The learned High Court Judge has held that the order of the learned Magistrate should not be disturbed as those amounts to technical defects.

Learned counsel for the appellant referring to the case of Kandaiya Vs. Abeykon (1986 (3) CALR page 41) submits that this court on the same question of law has held that those matters brought into the statute book by the said amendments are to be followed in strict compliance.

In the circumstances, the issue in this appeal is to determine whether the non conformity with the matters referred to in the State Lands Recovery of Possession (Amendment) Act No.58 of 1981 and the State Lands Recovery of Possession (Amendment) Act No.29 of 1983 are to be considered as mandatory or not. In the aforesaid decision namely Kandiah Vs. Abeykoon,(supra) it had been held thus:

The objections are validly taken and go beyond mere technicality. The operation of the Act and its provisions could well have a serious impact upon proprietary rights. Upon a true construction of the Statute as a whole the forms of notice, application and affidavit had to be in 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 a person in possession or occupation could be exercised.

The above authority shows that it is mandatory to mention that the land in question is a state land as to the opinion of the person who makes that application. Also, it is necessary to mention the place where the affidavit was deposed to, in the jurat to the affidavit filed with the said application. In this instance the application and the affidavit filed in the Magistrate Court are marked as "P2" and are found at pages 59 and 61 in the appeal brief.

Those two documents do not contain the matters required to have mentioned that were brought in by the two amendments made in the Act No.58 of 1981 and in the Act No.29 of 1983. As decided before in *Kandaih Vs. Abeykoon (supra)*, we are also of the view that those requirements are to be considered as mandatory. Hence those should not be considered as mere technicalities. Therefore, we decide that the learned High Court Judge misdirected himself when he decided that those are technical in nature.

For the aforesaid reasons, this appeal is allowed. Judgment dated 07.06.2011 of the Learned High Court Judge of Hambantota is set aside.

The order dated 18.09.2009 of the Learned Magistrate is also set aside.
For the aforesaid reasons this Appeal is allowed.

Learned State Counsel moves that the state be allowed to proceed to recover possession of the land in question after following the proper procedure laid down in the law. The Judgment delivered today is on the issue of procedure that is to be followed when making applications under the State Land Recovery of Possession Act. We have not considered the merits of the case. Therefore this will not have any effect for the state to take action under the law, following the proper procedure. However, learned counsel for the appellant moves to reserve his right, to raise objections in the event another application is filed.

Judge of the Court of Appeal

W.M.M. Malinie Gunaratne, J

I agree

Judge of the Court of Appeal

Na/-