

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

**C.A. (PHC) No.231/2005**

P.H.C. Ratnapura RA. No: 10/2002

01. Mannalage Shanthi Karunanayake  
Parathalakanda, Erathna

**1st Respondent- Respondent Appellant**

01. Hapuarachchige Charlis  
Parathalakanda, Erathna

**Vs.**

**2nd Respondent-Appellant-Respondent (Deceased)**

01A. Mannalage Roshalin alias Manna  
Devage Dhayani

01 B. Hapuarachchige Upali Ratnasinghe

Both No.23,  
Tack 12,  
Jayanthipura, Polannaruwa

**Substituted 2nd Respondents- Appellant-Respondents**

C.A. (PHC) No. 231/2005 - P.H.C. Ratnapura RA. No: 10/2002

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

Counsel : A.D.H. Gunawardhana for the 1st Party Respondent-  
Appellant.

Thanuka Nandasiri for the Substituted 2<sup>nd</sup> Party-  
Petitioner- Respondent.

Decided on : 09.10.2014.

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

Heard both counsel in support of their respective cases.

This is an appeal seeking to set aside the Judgment dated 19.05.2005 of the learned High Court Judge of Ratnapura and also to have the order dated 13.12.2001 of the learned Magistrate of Ratnapura vacated.

Learned Magistrate made order handing over the possession of the land in dispute to the 1<sup>st</sup> party in terms of the provisions contained in Part V11 of the Primary Code Procedure Act No: 44 of 1979.

The reasons for the said handing over of the possession to the 1<sup>st</sup> party Appellant by the learned Magistrate is found in paragraph 4 in the impugned Judgment (Vide at page H 13 in the appeal brief). In that paragraph found in his judgment, the learned Magistrate has stated that the 2<sup>nd</sup> party in his statement to the police dated 18.11.2000, has admitted that his Mother-in-law had handed over the possession of the land in question to the Appellant after the death of his father.

Moreover, it is revealed that the 2<sup>nd</sup> party in his statement to the police has also stated that he has permitted the Appellant to pluck tea leaves from the tea plantation found on the disputed land. This position is revealed when perusing the contents in the police statements marked 2V6, 2V7 & 2V8.

Learned Counsel for the Respondent too concedes that the matters contained in the statement of the 2<sup>nd</sup> party Respondent. However, the learned High Court Judge having considered the documents marked 2V6 & 2V7 has stated that the learned Magistrate has erroneously interpreted the contents in those statements and has made order reversing the decision of the learned Magistrate. However, we do not see any error on the part of the learned Magistrate in the manner he has looked at the contents in those documents, particularly when it comes to the law referred to in section 68 of the Primary Court Procedure Act. We also observe that no acceptable reasons are found in the decision of the learned High Court Judge.

For the aforesaid reasons, it is clear that the learned High Court Judge is wrong when he set aside the order of the learned Magistrate.

In the circumstances, we affirming the order dated 13.12.2001 of the learned Magistrate, set aside the order dated 19.05.2001 of the learned High Court Judge.

Accordingly, we allow the appeal. We make no order as to the costs of this appeal.

*Appeal allowed.*

JUDGE OF THE COURT OF APPEAL

**Malinie Gunaratne, J.**

I agree

JUDGE OF THE COURT OF APPEAL

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