

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

**C.A. (PHC) No.102/2001**

P.H.C. Galle No.09/2000(Rev)  
M.C. Udugama Case No.65643

Jeevantha Senarathna  
Homadola Watta,  
Udugama.

Galabada Gamage Wasantha  
Scotland Watta,  
Udugama.

Ranjith Thilak Wanniarachchi  
Mavidola watta,  
Bar Handiya,  
Udugama.

**Respondent - Appellant**

**Vs.**

Hon. Attorney General  
Attorney General's Department,  
Colombo 12,

Officer - in- Charge,  
Police Station,  
Udugama.

**Plaintiff - Respondents**

C.A. (PHC)No.102/2001

P.H.C. Galle No.09/2000(Rev)

M.C. Udugama Case No.65643

BEFORE : K. T. CHITRASIRI, J &  
W.M.M.MALINIE GUNARATNE, J.

COUNSEL : Manohara de Silva P.C. with Hirosha  
Munasinghe for the 3<sup>rd</sup> respondent-petitioner-  
appellant.

J.P. Gamage for the 1<sup>st</sup> and 2<sup>nd</sup> respondent-  
respondent-respondents.

ARGUED AND

DECIDED ON : 28<sup>th</sup> October 2014.

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**K. T. CHITRASIRI, J**

Heard both Counsel in support of their respective cases.

This is an appeal seeking to set aside the decisions dated 30<sup>th</sup> January 2001 and the 10<sup>th</sup> February 2000 of the learned High Court Judge and of the learned Magistrate respectively. Outcome of those two decisions of the learned Judges was to hand over possession of the land in question to the 1<sup>st</sup> and the 2<sup>nd</sup> respondent-respondent-respondents. (hereinafter referred to as the 1<sup>st</sup> and the 2<sup>nd</sup> respondents) Admittedly, those two respondents were representing the Stockland Estate in Udugama, for the purposes of this action filed in the Primary Court of

Udugama in terms of the provisions contained in the Primary Courts' Procedure Act No.44 of 1979, they being the Superintendent and the Assistant Superintendent of the said Estate.

Learned Primary Court Judge by his order dated 10<sup>th</sup> February 2000 decided that the 1<sup>st</sup> and the 2<sup>nd</sup> respondents had been dispossessed from the premises in dispute within two months prior to the filing of information in Court. In coming to the said conclusion the learned Primary Court Judge has considered the observations made by the police and the matters contained in the affidavits filed by the respective parties. (Vide at page 117 in the appeal brief).

When the revision application filed in the High Court by the appellant seeking to have the order of the Learned Magistrate set aside, the learned High Court Judge too has considered the merits of the application and decided in the same manner as decided by the learned Magistrate and has dismissed the revision application.

When the matter was taken up before this Court, learned President's Counsel for the appellant contended that it is incorrect to

rely upon the observations made by the police. He also argued that when the material before the trial Judge as to the possession of the respective parties become equally balanced, then the Magistrate may consider the title to the land in question as well when making an order in an application filed under Section 66 of the Primary Courts' Procedure Act. In support of his contention, he relied upon the decision in the case of **Ramalingam vs. Thangarajah. (1982 2 S.L.R. page 693 at 699)** Hence, we shall now turn to consider the merits of this case to ascertain whether the material including the evidence produced by the respective parties as to the possession of the land in question is equally balanced or not.

The 3<sup>rd</sup> respondent-petitioner-appellant in his undated affidavit has stated that he is having title to this land by a deed attested by Mapalagama Wimalaratne, Notary Public. The aforesaid deed is found at page 265 in the appeal brief and it is a deed of gift by which the property subjected to in that deed had been gifted to the 3<sup>rd</sup> respondent-petitioner-appellant. The Donor to that deed is his mother Somawathie. In the schedule to that deed, it is stated that the donor became entitled to the land by way of possession she had over a period of 50 years. It is significant to note that such a chain of title is usually narrated not in the schedule to the deed but in the body of the deed. Be that as it may, it is

to be noted that in the affidavit of the 3<sup>rd</sup> respondent-petitioner-appellant, (vide at page 108 in the appeal brief) he has failed to refer to any documentary evidence to establish the manner in which he possessed this land. It is the aforesaid deed of gift that is being referred to which has been executed two months before he filed this private plaint in the Primary Court of Udugama.

On the other hand, the 1<sup>st</sup> and the 2<sup>nd</sup> respondents in their affidavits have stated that the documents marked 1V1 to 1V14 also have been tendered in addition to the other evidence they have produced to support the possession claimed on behalf of the Stockland Estate. The documents marked 1V3 and 1V4 indicate several items that were inside the house that had been handed over by the person as an employee of the Estate who came into occupation of that house situated on the premises in question. Documents marked 1V8 and 1V9 namely, the electricity bills also have been tendered to Court to show that the Stockland Estate has paid the electricity bills to a house found on this land. In the affidavits of the 1<sup>st</sup> and the 2<sup>nd</sup> respondents, they have clearly stated that those are the electricity bills pertaining to the house in question. That evidence has not been objected or denied by the respondents. Therefore, the matters contained in the electricity bills, those being part and parcel of the affidavit of the 1<sup>st</sup> and the 2<sup>nd</sup>

respondents, cannot be rejected. The document marked 1V10 shows that there had been a quotation prepared to effect repairs by the Stockland Estate to this particular house.

The contents of those documents cannot be rejected since those have been marked as part and parcel of the affidavit of the 1<sup>st</sup> and the 2<sup>nd</sup> respondents. Therefore, it is clear that the 1<sup>st</sup> and the 2<sup>nd</sup> respondents have established that they were in possession of this premises for a considerable period of time prior to the filing of information in the Primary Court of Udugama. Accordingly, it is abundantly clear that the 1<sup>st</sup> and the 2<sup>nd</sup> respondents have produced much more evidence than the 3<sup>rd</sup> respondent-petitioner-appellant as to the possession of the land in question. Hence, I am of the view that the law referred to in Ramalingam vs. Thangarajah(Supra) is not applicable in this instance though the learned President's Counsel was of the view that it is applicable.

The complaint made to the police by the 1<sup>st</sup> respondent Jeewantha Senaratne shows that the 3<sup>rd</sup> respondent has taken over the possession of the house situated on the land in dispute on the 22<sup>nd</sup> May 1999. In that complaint, he has stated that a padlock had been placed

on to the door of the said house preventing the 1<sup>st</sup> and the 2<sup>nd</sup> respondents entering into the house. As a result, the 1<sup>st</sup> and the 2<sup>nd</sup> respondents had been dispossessed. In that complaint made by the 1<sup>st</sup> respondent, he also has stated that he saw the wife of the 3<sup>rd</sup> respondent been present inside the house. The 2<sup>nd</sup> respondent too has made a complaint to the same effect. Pursuant to those complaints, the police had filed the information in the Primary Court. The Officer-in-Charge of the Police Station Udugama has also stated that the police have filed a criminal action as well, charging the 3<sup>rd</sup> respondent for trespassing into the aforesaid house found in the premises in suit. (Vide at page 197 in the appeal brief). The number in that case is B238/99.

The aforesaid circumstances show that the 1<sup>st</sup> and the 2<sup>nd</sup> respondents, they being the employees of the Stockland Estate, were having control and actual possession of the land in dispute until they were dispossessed on the 23<sup>rd</sup> May 1999 by placing a padlock on to the door of the house situated at the premises in suit. Accordingly, it is clear that overwhelming evidence is forthcoming to establish that the premises in suit was under the control and possession of the persons managing the Stockland Estate until they were dispossessed on the 23<sup>rd</sup> May 1999 by the acts of the 3<sup>rd</sup> respondent. Law relevant to such a

situation is found in Section 68(3) of the Primary Courts' Procedure Act.

It reads thus:-

*“ any person who had been in possession of the land or part of the land has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under Section 66, it is the duty of the Primary Court Judge to make an order directing that the party dispossessed be restored to possession, prohibiting all disturbances of such possession otherwise that is under the authority of an order or decree of a competent Court.”*

The circumstances described herein before show that the 2<sup>nd</sup> and the 3<sup>rd</sup> respondents had been dispossessed by the acts of the 1<sup>st</sup> respondent from the premises in suit within a period of two months prior to the filing of information in Court.

Accordingly, it is clear that the learned Magistrate has correctly evaluated the material before Court and has applied the law relevant thereto, by making an order to hand over possession to the 1<sup>st</sup> and the 2<sup>nd</sup> respondents of the land subjected to in this action. Therefore, it is evident that the learned Magistrate and the learned High Court Judge have correctly decided the issue.



In the circumstances, we are not inclined to interfere with the decisions of those two learned Judges. For the aforesaid reasons this appeal is dismissed with costs fixed at Rs.100, 000/=.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL

**W.M.M.MALINIE GUNARATNE, J.**

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/-