

IN THE COURT OF APPEAL OF DEMOCRATIC SOCIALIST REPUBLIC

OF SRI LANKA

In the matter of Application for the exercise appellate jurisdiction under article 154 (P)(6) of the Constitution against order made in HC/NE/ඉඪ/23/13 in provincial High Court of Nuwaraeliya.

Ratna Asari Thiyagarajan,
Kotiyagala Estate Lower Division,
No. 9, Housing Scheme,
Block No.21,
Kotiyagala Estate,
Bagawanthalawa.

(No.23/16, Bharathipura -
Bagawanthalawa.)

**Claimant - Competent
Authority - Respondent**

Case No:- CA/PHC/98/13

High Court Case No:-HC/NE/ ඉඪ/23/13

Magistrate Court Case No:-68430/13

**Respondent - Petitioner -
Appellant**

J.M. Chandrika Priyadarshani,
Plantation Monitoring Officer,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries
Colombo.

Applicant - Respondent -
Responder

Before : W.M.M.Malanie Gunarathne, J

: P.R.Walgama, J

Counsel : Dayarathna Hettiarachchi for the appellant.

: R.C. Karunakaran for the Respondent.

Argued on : 11.03.2015

Decided on : 13.08.2015

CASE- NO- CA-(PHC)- 98/2013- JUDGMENT- 13.08.2015

P.R.Walgama, J

The instant appeal lies against the order of the Learned Magistrate dated 29.07.2013 and the order of the Learned High Court Judge of Nuwara eliya dated 08.08.2013, by which orders the Respondent- Petitioner-Appellant's is to be ejected from the disputed land.

The following are the facts germane to the instant appeal for determination.

Applicant-Respondent- Respondent(herein after sometimes called and referred to as the Respondent) being the Competent Authority, of the Plantation Management Monitoring Division, Ministry of Plantation Industry, instituted action in the

Magistrate Court of Hatton, pursuant to the service of the quit notice on the Respondent- Petitioner- Appellant(herein after sometimes called and referred to as the Appellant) seeking an eviction of the Appellant from the land described in the schedule thereto.

Thereafter the Appellant filed his objections showing cause as to why he should not be ejected from the disputed land. To fortify his position he tendered the exhibits marked V1 to V13.

The Learned Magistrate, after summary inquiry by his order dated 20th May 2013, has given effect for an ejection of the Appellant from the said land. Being aggrieved by the said impugned order, the Appellant made an application by to the High Court way of Revision for the vacation of the said order.

The Learned High Court Judge after inquiry in to the said application up held the order of the Magistrate. Being aggrieved by the said order of the Learned High Court Judge, the Appellant Appealed to this Court to have the orders of the Learned Magistrate and the Learned High Court Judge, to be set aside or vacated.

It is pertinent to note that the Applicant- Respondent instituted action in the Magistrate's Court Hatton in terms of Section 03 of the State Lands Recovery of Possession Act No. 07 of 1979, to eject the Respondent- Appellant from land described in the schedule.

The Responcent- Appellant in objecting to the afore said application had stated the following;

That the Claimant has no legal right to make the said application for the ejectment of the Respondent as the competent Authority of the Land Development Authority,

That the land in issue is not been properly identified,

The Learned Magistrate by his afore said order has rejected the said objections.

Further the Learned Magistrate has adverted to the documents marked V3 and V7 and was of the view that the said documents are not adequate to establish Appellant's title to the land in issue, and held that the Appellant does not have the permission to possess the land in issue. Thus it is clear that the Respondent - Appellant is in unauthorized occupation of the land, purported to be a State land,

Further it was observed by the Learned Magistrate that the schedule to the purported deed marked V1 and the land described in the quit notice do not tally, as such the identity of the corpus is uncertain, besides the said deed is not a valid deed as there are many infirmities in the said deed, in that it was apposite to state that the said deed was not properly executed as the signatories had placed their signatures to the above deed on 10.04.2012, and the deed was properly executed only on 10.04.2013, of course without the Common

seal of the Land Reform Commission. In addition it is salient to note that the Respondent-Appellant has tendered to court only a photo Copy of the alleged deed and as such the Learned Magistrate has declined to accept the deed and was of the view that the Respondent is in occupation of the corpus without a valid document.

In the above setting the Learned Magistrate was of the view that the Respondent did not have a legal right to be in possession of the said land in terms of Section 9 of the above Act, and as such the Learned Magistrate has acted in terms of Section 10 of the State Land Recovery of Possession Act, and issued the eviction order accordingly.

Being aggrieved by the said order the Petitioner-Appellant preferred a revision application to the High Court seeking to set aside the same. The Learned High Court Judge was of the view that the Learned Magistrate has analyzed the facts and the law in the correct perspective, and up held the order of the Learned Magistrate, wherein the order of eviction was to be effected. Further it is to be noted that the High Court is barred in exercising Revisionary jurisdiction in respect of State Land as per article 154(p)(6) of the 13th Amendment to the Constitution, and the outcome of the judgment SOLAMUTTU RASU .VS. THE SUPRENTENDANT, STAFORD ESTATE RAGALA- decided on 26th September 2013, in the case of S.C.Appeal No.21/2013.

The contentious issues in the instant matter are two fold;

Whether the land in issue is a State Land

AND

Whether the Respondent-Appellant is in lawful occupation of the said land by holding a valid permit or with a written authority of the Respondent.

It is contended by the Claimant - Respondent that by the gazette notification marked as A2, the State has acquired the item No. 11 which has reference to the Bagawanthalawa Estate containing in extent A 543-R1-P39. AND item No. 16, being the Kotiyagala Estate containing in extent A1081- R2- P1. Therefore it is abundantly clear that the disputed land is undoubtedly a State Land and the Respondent - Appellant was duty bound to prove his rights in terms of Section 9 of the said Act.

The Claimant - Respondent has adverted Court to the document marked V7, which is a proof of the fact that the purported deed was not in existence even on 10th April 2013. Apparently V7 is a letter dated 15th May 2013 written by the Director, District Land Reform Authority, Nuwara Eliya. In the said letter it is stated that steps are in progress to issue a deed with the authority of the LRC. The purported Deed V1 is assailed by the Respondent on many grounds. Further it is salient to note that the land described in the schedule to the said deed marked V1, is different from the land referred to in the document marked V3. Therefore it is apparent that the

Appellant did not have a valid document to prove his title, and as such he was in unlawful occupation of the corpus.

It is further asserted by the Claimant - Respondent that the Land Reform Commission has no authority to deal with the lands belonging to the State. But the said Commission will have the powers to deal with the lands legally vested in it.

This Court will also consider the Petitioner's application in revision in the case bearing No. CA/PHC/APN/134/13 in the instant action, and the parties have agreed to abide by the judgment in the matter in hand. In the above styled action the Petitioner has made the Chairman LRC as a party.

It is alleged by the Respondent that the Chairman of the LRC, has acted in a illegal manner by issuing certain documents and thereby fortifying the case for the Appellant.

It is viewed in the Petition of Appeal, the Petitioner-Appellant in paragraph 3 (d) has stated that the Respondent by refusing to accept the land mentioned in the quit notice and the land described in the schedule to the afore said deed marked as V1, is one and the same land. Thus it is contended by the Respondents that the Appellant's stance has been the land in issue and the Land described in the schedule to the afore said deed, is one and the same land.

The ground norm of the Respondent is that as the land in issue is a State Land the relevant law applicable, is embodied

in the State Lands (Recovery of Possession) Act No. 7 of 1979, and the amendments thereto.

Therefore if the competent authority is of the view that a particular land is a state land and decides to issue a quit notice in terms of Section 3 of the said Act, and if the occupant of such land fails to vacate the said land, the competent authority can file action in the Magistrate Court to obtain an eviction order in terms of Section 5 of the said Act.

As per Section 9(2) of above Act the Magistrate is barred from leading evidence of the competent authority.

Section 9(1) provides an opportunity to a person who is in unauthorized occupation to establish the fact that he is a holder of a valid permit or he is possessed a valid written authority, and it is in force and not revoked.

Further it is contended by the Claimant - Respondent that if the Appellant had a valid document he should have challenged the said quit notice by way of a writ of Certiorari by filing a writ application in the Court of Appeal.

It is intensely relevant to note the Appellant has not made the LRC as a necessary party to this appeal. Nor has the LRC intervened to defend the title of the Appellant. If the disputed land was under LRC, certainly they would have established the said fact. The purported deed marked as V1, which has no

validity, supposed to have executed by the LRC, does not confer any title to the Appellant.

For the foregoing reasons I am of the view that the application by way of an appeal is devoid of merits, and should stand dismissed. Accordingly I dismiss the appeal subject to a cost Rs.10,000/-

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malanie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL