

**IN THE COURT OF APPEALS OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.**

1. Parathalawe Wahalkade Gedara
Dharmasena,
2. Parathalawe Wahalkade Gedara
Chaminda Sarath Kumara,
3. Parathalawe Wahalkade Gedara Upul
Deepthi,

All are of Pitawella,
Politiya, Parathalawe.

**Second Party – Petitioner –
Appellants**

Case No. CA/PHC/199/2001
High Court No. HC/34/2001/R
PC Hatton : 86387

Vs.

1. Gonaarambe Mudiyanseage Tikiri
Banda,
2. Wagure Gamaralalage Ranmenika,
Both are of Parathalawe, Madeniya,
Pitawala.

**First Party – Respondent –
Respondent**

Before : W.M.M.Malinie Gunarathne, J
: P.R.Walgama, J

**Counsel : C.M.G. Kroon - for the Appellant.
: V. Kulatunge for the Respondent.**

Argued on : 10.07.2015

Decided on: 23.11.2015

Case No – CA (PHC) 199/2001 – Judgment – 03.11.2015

P.R. Walgama, J

The instant appeal lodged by the Second Party - Petitioner - Appellant has sought the reliefs inter alia;

To set aside the order of the Learned High Court Judge dated 25th of July 2001.

AND

To set aside the order of the Learned Primary Court Judge dated 21.05.2001 and to grant possession to the Appellant in the land in dispute.

The Officer in Charge of Ginigathena Police on 08.01.2001, filed a report in the Magistrate Court of Hatton in terms of Section 66 (1) of the Primary Court Act, in respect of a land dispute which culminated to a breach of the peace.

The Learned Primary Court Judge in the said impugned order has referred to the sketch which was filed with the report by the Police, and was of the view, that the sketch is accurate, and had accepted the same. The said report

is marked as "X 14" Further it was held by the Primary Court Judge that the 'dispute' complained by the Police is regarding a part of a land as contemplated in Section 75 of the Primary Courts Procedure Act, and hence the alleged dispute should be determined in terms of section 68 of the said Act.

The said section is reproduced herein below section 68 (1).

"Where the dispute relates to the possession of any land of part thereof it shall be the duty of the Judge of the Primary Court holding the inquiry to determine as to who has possession of such land or part thereof"

The Learned Judge of the Primary Court has taken cognisance of the Complaint made by the 1st Party – Respondents regarding the 2nd and 3rd Party – Respondents involvement in cutting down some trees in his land.

The observation made by the investigating officer was also considered by the Judge of the Primary Court in the said impugned order.

The following facts emanate from the said observations, viz.

That the 2nd party Respondent has claimed the coffee plantation. The 1st Party Respondent has produced the Deed bearing No. 1714 and asserted the fact that he is the owner of the land in dispute.

Further more the 2nd Party Respondent has admitted that he cut 7 trees of Ginisapu as those trees belonged to his father.

It has been the contention of the 2nd Party - 1st Respondent, that he possessed the disputed land, from a partition decree.

The Learned Judge of the Primary Court has considered all the relevant documents tendered by all parties, to buttress their possession to the land is issue.

The 1st Party – Respondent has tendered certain documents marked x 9 to x 12 viz the receipts of the payment of acreage fees. The Learned Judge was of the view, that those receipts do not cover the period relevant to this issue.

It is the categorical position of the 2nd Party – Respondent, that the 1st Party Respondent never had possession of the same.

The Learned Judge of the Primary Court has also recognised the case of RAMACINGAN vs THANGARAJAH, (1982) 2 SLR 699 - which was held thus ;

“On the other hand if the dispute is in regard to any right of possession of such land, and question for decision according to section 69 (1) is who is entitled to the right which is the subject of the dispute. The word ‘entitle’ here connotes the ownership of the right, or is entitled for the time being to exercise that right. In contradiction to section 68, section 69 requires the Court to determine the question which

party is entitled to the disputed right preliminary to making an order under section 69 (2) ”

Nevertheless the Learned Judge of the Primary Court has arrived at the determination in terms of section 68 (3) of the Primary Court Procedure Act. The 1st Party Respondent has made a complaint to the Police on the 16.12.2000, and the Police filed a report on 08.01.2001, in terms of Section 66 (1) of a land dispute which has given rise to a breach of the peace.

Therefore in the light of the above it is ostensible that the 1st Party – Respondent was in possession 2 months prior to the, police filed the information in the Magistrate Courts.

In the above setting it was alleged by the 1st Party - Respondent that he was dispossessed by the 2nd Party - Respondent.

The Learned Primary Court Judge was of the view that the 1st Party Respondent has been forcibly dispossessed by the 2nd Party Respondent, and had accordingly placed the 1st Party Respondent in possession.

Being aggrieved by the said order the 2nd Party Petitioner has made an application in Revision, seeking to have the said order set aside.

The Learned High Court Judge, in the afore said impugned order dated 25.07.2001 has considered the fact whether, notice on the 1st Party Respondent should be issued or not. In that the Learned High Court has, taken in to consideration of the observation made by the Police Officer of Hanguranketha Police.

In addition the Learned High Court Judge has considered the fact that the 2nd Party Respondent has made faulty description in respect of the disputed Land. Therefore in the light of the factual and legal matrix the Learned High Court Judge was of the view that the documents tendered by the 1st Party Respondent is more trustworthy and have a probative value thereto.

Besides the Learned High Court Judge has also observed that the 2nd Party – Respondent should go before a Court which can grant permanent relief. Further it is trite to recognized the rationale observed in the case of CA.938/90 decided 09.11.95 by His Lordship H.W. SENANAYAKE. It was held that when there is an opportunity to have recourse to a permanent relief in a different forum, the Petitioner will not be entitled to the discretionary remedy of Revision Further it was observed by the Learned High Court Judge, the proposition that was laid down in the case of Vanik Incorporation - Vs – Jayasekara - 1997 SRI LR - 365 which held that the Court should exercised is revisionary powers, only where

there had been substantive miscarriage of justice in the procedure followed by the original Court.

Hence the Learned High Court Judge was of the view that the Learned Judge of the Primary Court has not made an order which is palpably wrong and obnoxious to the procedure laid down in the Primary Court procedure Act.

For the reasons as stated here in before, I am of the view that the instant application of the 2nd Party - Respondent Appellant is unmeritorious and should stand dismissed.

Hence the appeal is dismissed accordingly.

Appeal is dismissed Subject to a cost of Rs.5000/-

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL