

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

In the matter of an Appeal under Article 154
P (6) of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

CA (PHC) 141/2013
Revn Appn No. HCR

04/2012

Puttlam Magistrate Court

Case No. 54962/11/P

The Head Quarter's Inspector
Police Station, Puttlam.

Complainant

Vs.

Shaul Hameed Mohamed Ruwais
No. 254 Colombo Road, Thillayady,
Puttlam.

Party of the 1st Part

AND

Mohamed Mohamed Thamby,
No. 2/6 Vettukulam Road,
Puttlam.

Party of the 2nd Part

Vs.

Shaul Hameed Mohamed Ruwais
No. 254 Colombo Road, Thillayady,
Puttlam.

Party of the 1st Part Petitioner

Mohamed Mohamed Thamby,
No. 2/6 Vettukulam Road,
Puttlam.

Party of the 2nd Respondent

AND NOW

Shaul Hameed Mohamed Ruwais
No. 254 Colombo Road, Thillayady,
Puttlam.

Party of the 1st Part Petitioner –
Appellant

AND

Mohamed Mohamed Thamby,
No. 2/6 Vettukulam Road,
Puttlam.

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

: P.R.Walgama, J

Counsel : Ikram Mohamed P.C. for the Appellant.

: M.T.S. Kularathne for the Respondent.

Argued on : 01.09.2015

Decided on: 20.11.2015

P.R.Walgama, J

The instant Appeal lies against the backdrop of the following facts.

The Officer In Charge of the Puttalam Police filed an information report in terms of Section 66 (1) (a) of Primary Court Procedure Act No 44 of 1976, pursuant to a complaint made by 1st Party – Petitioner – Appellant, regarding a land dispute, which is likely to culminate to a breach of the peace.

It is common ground that the subject matter is the building, No 18 Main Road Puttalam. As submitted by the Petitioner – Appellant the building in issue belong to the Mohidan Jumma Mosque at Puttalam, and the said disputed premises is under the control of the Board of trustees. The notice of assessment issued by the Municipal Council of Puttalam to the said Board of Trustees are marked as 1V2, 1V3, 1V4 and 1V5.

The disputed premises was given on lease by the said Board of Trustees to one Nargur Pitchai Casim Mohideen, and said Casim Mohideen had paid taxes in respect of the premises, and in proof of the said payment the Appellant has produced documents from 1V6 – 1V12.

It is to be noted that the Petitioner – Appellant came to the possession of the subject premises by virtue of power of Attorney marked as 1V64.

By the Deed marked 1285 dated 03.09.2011, attested by Faslar Rahuman NP the Board of Trustees had leased out the said premises to one Shahil Hameed Mohonmed Jafries.

It is stated by the Appellant that at the time he was renovating the said premises, the 2nd Party Respondent had claimed that he is the owner of the disputed premises, and had asked for the possession of the premises. Pursuant to the afore said, the Trustee of the Jumma Mosque too had made a complaint to the Police.

The stance of the 2nd Party Respondent is that the disputed business premises, belongs to his father, and to buttress the said position he has tendered the Deed marked as 2V2, and the relevant folio as 2V3. In 1971 the father of the Respondent has died and after his demise the Respondent's mother was in control of the said premises and had rented out to one Casim Mohideen.

Further it is stated that in the year 2011 the Respondent renovated the subject premises and in proof of the said fact he had produced documents marked 2V9 and 2V10 and 2V11.

It is alleged by the 2nd Party Respondent that the Chairman of the Board of Trustees of the Jumma Mosque, has abused

his powers and had taken steps to hand over the premises to the 1st Party Appellant.

The Learned Magistrate in the impugned order has observed that the 1st Party – Appellant has not proved the fact that the disputed premises belong to the Jumma Mosque.

It is salient to note that the Learned Magistrate in the said impugned order has rejected the documents marked as 1V1 - 1V60 as they do not fortify his case. Besides it was considered that 1V61, 1V64 and 1V65 (which is a lease is agreement,) that it self is no proof of possession.

The Learned Magistrate was also of the view that by the documents marked 2V9, 2V10, 2V11 and 2V15 tendered by the 2nd Party Respondent has established the fact that he was in possession 2 months prior to the information report regarding land dispute; was filed in the Magistrate Courts. Therefore the Learned Magistrate has placed the 2nd Party – Respondent in the disputed premises till the rights of the parties are decided by a Competent Court.

Being aggrieved by the said order 1st Party Respondent - Petitioner, came by way of revision to the High Court seeking to set aside the said impugned order of the Learned Magistrate.

The Learned High Court Judge by her order dated 04.10.2013 has dismissed the Petitioner's application on the basis that no exceptional circumstances emerged from the said application

which warrants an intervention to inquire in to the legality of the order of the Learned Magistrate as stated here in before.

Being aggrieved by the said order the 1st Party – Petitioner – Appellant, appealed to this Court and urged for the following reliefs.

To set aside the order of the Learned High Court Judge dated 04.10.2013, and the order made by the Learned Magistrate dated 03.01.2012.

The facts stated in the appeal albite brief are as follows.

As stated here in before the Appellant asserts that the premises in issue, that the above stated Mosque was rented out to one Nagur Pichchai Cassim Mohideen, and was in possession for well over 30 years. To buttress the above the Appellant has tendered number of documents issued by various sources. But nevertheless the Learned Magistrate was of the view that documents marked from 1V1 - 1V59 do not establish the fact that the Petitioner – Appellant was in possession of the premises in issue. Further the document marked 1V60 was rejected by the Learned Magistrate on the basis that the said document is only a photocopy of the alleged deed marked as 1V60.

The Appellant had also produced the tenancy agreement marked as 1V61 the Board of Trustees had granted the tenancy to Mohomed Jaffris the brother of the Appellant. But the

Learned Magistrate was of the view that same is not a proof of the possession of the Appellant of the said premises.

The Counsel for the Appellant has adverted Court to the following facts. In that it is said that the Learned Magistrate has not considered the fact, who was in actual possession of the premises as at 14.09.2011 when the information was filed in Court. Further it is apparent from the statement made by the Respondent, that Casim Mohideen was in possession, and Respondent was to pay Rs. 15 lack to said Casim Mohideen and to obtain the key of the disputed premises. But according to him this did not materialize. Therefore it is obvious that the Respondent was never in possession of the disputed premises. Therefore it is abundantly clear that although the Respondent has produced affidavits from various people to say that the disputed premises were renovated and was looked after the premises by a third party was totally false, when considering his statement to the police made by the Respondent admitting that one Cassim Mohideen had been paying rent as the tenant to the Mosque.

In the above setting it is ostensible that at the time the information was filed in terms of Section 66 (1) of the Primary Court procedure Act, the Petitioner – Appellant has been in possession of the disputed premises.

It is viewed further that the Learned High Court Judge in her impugned order has stated the fact that no exceptional circumstances averred, for the High Court to exercise Revisionary powers of the High Court.

But it is trite that if the Magistrate has made an order which is ex-facie wrong, would be quashed by way of Revision even though no appeal may lie against such an order. It was thus observed in the case of Mallika De Silva – Vs Gamini De Silva 1999 (1) SLR - page 85.

“Where the order of Court is ex-facie wrong it would be quashed by way of revision though no appeal may lie against such order”

The stance of the Respondent is that he was the registered owner of the premises in suit, by virtue of Deed No. 7028 dated 28.08.1958, as such it is contended that only he is entitled to enter in to any tenancy agreement to rent the premises to the Appellant or to any other party. Hence it is stated that only with his authority, that the Mosque can enter in to any tenancy agreement. Therefor it is the position of the Respondent that the Appellant has no right to possess the disputed premises.

Further it is stated by the Respondent that, as owners of the subject premises, as an Act of charity, the Respondent has allowed the Mosque to receive the rent from tenants.

In the instant matter it is to be noted, a Magistrate acting in terms of Section 66(1) of the Primary Court Act, is not entitled to decide on the legal rights of the parties to the dispute unless the situation calls for such determination.

It is abundantly clear that the Appellant was renovating the said premises, when the Respondent came and demanded the vacant possession of the said premises, and the Learned Magistrate was duty bound to decide who was in possession of the said premises at the time when the police filed the information report in the Magistrate Court.

Therefore as per facts stated herein before the only conclusion the Learned Magistrate was compelled to decide was whether the Appellant was in possession of the premises in suit, at the time the information was filed in terms of Section 66(1) of the Primary Court Procedure Act.

In encapsulating the above facts, the Respondent's statement to the police gives a clear picture of the dispute relevant to this case. According to his statement he was to obtain the key of this premises by paying 15 lacks to Casim Mohideen, but it did not materialize According to the above statement this was to take place in July in 2011, at that moment he observed that the said premises were given by the Mosque to a 3rd party who has employed to clean the said boutique.

Hence for the above compelling reasons this Court has arrived at the conclusion that the Petitioner – Appellant was in possession of the subject premises, and the Learned Magistrate and the Learned High Court Judge has not evaluate the facts in the correct perspective, and as such I set aside the said impugned orders of the Learned High Court Judge and the order of the Learned Magistrate accordingly.

In the said backdrop I allow the Appeal, and order no cost.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL

Appeal allowed