

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

In the matter of an Appeal in terms of
Article 138 and read with Article 154
P (6) of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

**CA (PHC) No. 34/2004
PHC Balapitiya No.480/02 Rev.
Balapitiya Magistrate Court
Case No. 36853.**

1. Hendadura Manoj Priyankara De Silva
2. Appuwadura Rosi De Soysa,
3. Appuwadura Victor De Soysa,
- All of Egodamulla, Ahungalla.

2nd,3rd,and 4th Respondents-Appellants.

VS.

1. Keerahandi Gnanasiri De Silva,
No. 134, Galle Road, Ahungalla.

1st Respondent-Petitioner-Respondent

2. Siriwardena Piyaratna De Silva,
Egodamulla, Ahungalla.
3. Ihalage Vipulawathie,
4. Ihalage Sugeewa,
5. T. Shali Warusawathie De Silva.

6. Akuretiya Gamage Nilmini,

All of Kopiwatta, Ahungalla.

Respondents-Respondents-Respondents

**BEFORE: W.M.M. Malinie Gunaratne, J. and
P.R. Walgama, J.**

COUNSEL: Appellants were absent and unrepresented.

**Nimal Ranamukhaarachchi
for the 1st, 3rd and 4th Respondents.**

Argued on : 18.05.2015

Written submissions filed on : 08.06.2015.

Decided on:30.11.2015. check

Malinie Gunaratne, J.

Pursuant to an information filed by the Balapitiya Police in terms of Section 66 of the Primary Court Procedure Act, the learned Primary Court Judge held an inquiry into the dispute between 2nd, 3rd and 4th Respondents – Petitioners – Appellants (hereinafter referred to as the Appellants) and 1st, 3rd and 4th Respondents – Respondents – Respondents (hereinafter referred to as the Respondents) in respect of the land called Kirillawela, held that he is unable to make any order with regard to the possession of the land, as the parties have not identified the disputed land properly and ordered to

maintain the statusquo until the rights are decided by the Partition action already filed in the District Court.

Aggrieved by the said Order, Respondents sought to move in Revision against the said Order by Revision Application No. 480/02, filed before the High Court Balapitiya.

The learned High Court Judge disagreeing with the Order made by the learned Magistrate, set aside the said Order. By that Order learned High Court Judge handed over the possession of the land in dispute to the Respondents.

The Appellants have now filed this appeal seeking to set aside the said judgment of the learned High Court Judge dated 12.02.2004.

When this case was taken up for argument on 18.05.2015 the Appellants were absent and unrepresented although notices have been issued on them and the registered attorney, on several occasions. Hence, the Court heard only the arguments of the Counsel for the Respondents.

The contention of the Counsel for the Respondent was, in the Magistrate's Court, the Respondents had very clearly stated details about the property involved in the dispute. Specially in the schedule of the Affidavit which they had filed, the Respondents had clearly shown the details and the boundaries of the property in dispute. In addition, Grama Niladari of the area had testified in Court and clearly identified the land in dispute. The Counsel's contention is accordingly that the Order of the learned Magistrate is erroneous.

In an inquiry where the dispute relates to the possession of any land or part thereof it shall be the duty of the judge of the Primary Court to determine as to who was in possession of the land or the part thereof on the date of filing of the information under Section 66 and make order as to who is entitled to possession of such land or part thereof. But where a forcible dispossession has taken place within a period of two months immediately before the date on which the information was filed under Section 66, he may make an order directing that the party dispossessed be restored to possession prohibiting all disturbance of such possession otherwise than under the authority of an order or decree of a competent Court.

In the instant case the Primary Court Judge's view was, as the parties had not been able to identify the land in dispute he is unable to make any order under Section 66(1)(b) of the Primary Court Act and ordered to maintain the statusquo until the rights are decided by the Partition Action filed in the District Court.

The learned Counsel for the Respondents submitted that the Order of the learned Magistrate is erroneous and against the said order the Respondents sought to move in revision, and the learned High Court Judge set aside the Order made by the learned Magistrate and decided to hand over the possession of the land in dispute to the Respondents.

On perusal of the judgment of the learned High Court Judge, it is apparent that the learned High Court Judge has taken into consideration the affidavits and documents filed by both parties and has come to the aforesaid conclusion.

Further, I do not see any wrong in the manner in which the learned High Court Judge has considered the facts and the way in which she has applied the law in this instance.

For the above stated reasons, I see no basis to interfere with the Order made by the learned High Court Judge. Therefore, I affirm the Order of the learned High Court Judge dated 12.02.2004.

Appeal is accordingly dismissed with costs.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed with costs.