

**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) No. 112/2005

HC (R.) Ratnapura No.47/2003

MC Ratnapura Case No.8720

Damme Arachchige Gamini,
Dellabada, Karangoda.

**PARTY OF THE 2ND PART -
PETITIONER - APPELLANT**

Vs.

1. Damme Arachchige Saman
Karunaratne,
Dellabada, Kamangoda.

**PARTY OF THE 1ST PART -
RESPONDENT - RESPONDENT**

2. Officer - in - Charge,
Minor Complaints,
Police Station, Ratnapura.

APPLICANT – RESPONDENT –
RESPONDENT

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

: P.R.Walgama, J

Counsel : Ashiz Hassim for the Appellant.

: Ranil Samarasooriya with. J.Jayasooriya for the 1st
Party – Respondent.

Argued on : 16.10.2015

Decided on: 09.03.2016

CASE - NO - CA (PHC) - 112/2005 -JUDGMENT- 09.03.2016

P.R.Walgama, J

The 2nd party Petitioner – Appellant by the instant appeal assailed the order of the Learned Magistrate dated 30.07.2003 and the order of the Learned High Court Judge dated 02.02.2005.

The facts germane to the above appeal are as follows;

The Officer in Charge of Ratnapura Police has filed a information report in terms of Section 66 of the Primary Court Procedure Act No. 44 of 1979 in the Magistrate Court of Ratnapura of a land dispute which has caused the breach of the peace.

The said information was filed pursuant to a complaint made by the 1st Party Respondent alleging that the 2nd Party Petitioner has made arrangement to carry out mining activities in the disputed land which belongs to their father.

But it is noted that he has never stated that he also have right to the subject land. The 2nd Party - Appellant is the brother of the 1st Party Respondent and it is stated that he had possessed the land for 17 years and the 1st Respondent cannot be allowed to possess the land all by him.

The Learned Magistrate has observed the following in the said impugned order;

That the 1st Party - Respondent has a deed in his favour to the land in issue and the 2nd Party - Petitioner has forcibly entered the disputed land and had started mining in the land.

The 1st Part - Respondent has tendered the title deed bearing No.2621 and the affidavits from the father and from the brothers and sister as 1V5 and 1V6.

It was the stance of the 2nd Party - Appellant that he was in possession of this land well over 17 years and with the consent of his

father he had in fact plucked coconuts, and also had been mining gems in the subject land.

The Learned High Court Judge has considered the affidavits tendered by both parties and was of the view that the said documents has established the possession of the 1st party - Respondent to the land in suit, and had placed the Respondent in possession of the afore said land.

Being aggrieved by the said order the 2nd party - Petitioner - Appellant has lodged a revision application in the High Court of Ratnapura to have the said order set aside.

The Learned High Court Judge in handing out the impugned order was of the view that the Learned Magistrate has arrived at the correct finding in the above circumstances and therefore has held that the Learned Magistrate has not flawed in the factual and legal matrix in the above determination.

Being aggrieved by the said order of the Learned High Court Judge, the 2nd Party - Petitioner - Appellant made the instant application by way of Appeal to have the said impugned order set aside or vacate.

In the written submissions tendered by the counsel for the Respondent has reiterated the fact that the Learned Magistrate has considered the affidavits tendered by the Respondent, being the affidavits by the father and the siblings which are of a probative value and had given more weight to the material emerged from said affidavit.

The Respondent has also adverted court to the fact that the Appellant's allegation that the Respondent has not made a complaint to the effect that there was a dispossession and therefore action could have not been filed under Section 66 (1)(a) of the Primary Court Procedure Act No. 44 of 1979.

But it is apparent from the complaint made by the 1st Respondent - Respondent that the Petitioner has entered disputed land forcibly with a group of persons for the purpose of mining. Therefore it is abundantly clear that a land dispute has occurred and there is a breach of the peace or likely hood of a breach of the peace.

In the above setting this Court is of the view that there is no merit in the position taken by the Petitioner - Appellant as to the issue of dispossession as it is clear from the statement made by the Respondent that the Petitioner - Appellant and a

group of persons has forcibly entered the disputed land for the purpose of mining.

Pursuant to the complaint made by the Respondent of the above situation the Officer in Charge of Ratnapura Police has filed the information Report in the Magistrate Court in terms of Section 66(1)(a) of the Primary Court Procedure Act No. 44 of 1979.

The Respondent has adverted court to the case of RAMALINGAM .VS. THANGARAJAH (1982) 2 SLR 693- which has express thus;

“that a judge should in an inquiry under Section 66 confine himself to the question of actual possession on the date of filing information except in a case where a person who had been in possession of land had been dispossessed within a period

of two months immediately preceding filing of information”.

Therefore in the said backdrop it is abundantly clear that the Learned Magistrate has made the said order in the correct perspective which warrants no interference from this court.

It is also salient to note that the affidavit tendered by the surveyor which confirms the possession of the Respondent in the land in suit.

The above circumstances, in my opinion, form a complete chain and lead to an irresistible conclusion that the Petitioner – Appellant’s application to revise the orders of the Learned High Court Judge and the order of the Learned Magistrate is devoid of merits and should stand dismissed.

Accordingly application is dismissed subject to a costs of Rs.10,000/

JUDGE OF THE ~~COURT~~ OF APPEAL

W.M.M.Malinie Gunarathne, J
I agree,

JUDGE OF THE COURT OF APPEAL