

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

CALA No. 467/2004

D.C.Embilipitiya No.8684/L

Ranjith Abeygunasena Basnayake

Bandurupuwatta, Galagama

Nakulugamuwa

Plaintiff-Petitioner

Vs

Gunapala Jayasekera

Thorakolayaya, Embilipitiya

And 4 others

Defendant-Respondents

BEFORE : Deepali Wijesundera J.,

M.M.A. Gaffoor J

COUNSEL : Ranjan Suwandarathne with A. Rajakaruna for the Plaintiff  
Petitioner

Anuruddha Dharmaratne with S.Samaranayake for the Defendant  
Respondents

ARGUED ON: 02.10.2015

DECIDED ON: 18.03.2016

Gaffoor J.,

The Plaintiff Petitioner (hereinafter sometimes referred to as "the Plaintiff") instituted this action bearing No. 8684/L in the District Court of Embilipitiya against the 1<sup>st</sup> to 5<sup>th</sup> Defendant Respondents (hereinafter sometimes referred to as "the Defendants") on 8.10.2004 seeking, inter alia, for a declaration of title and to prevent the Defendants from interfering and disputing his peaceful possession and in this connection the Plaintiff prayed for an interim injunction and till granting this interim injunction to issue an enjoining order against the Defendants.

The Plaintiff in his Complaint, has traced his claim of title from the original owner Charlie Wijekoon Dissanayake Marabana to one Babynona, who by Deed No, 7504 dated 27.07.1988 had sold the land to the Plaintiff. The Plaintiff states that after he bought the land, there was a dispute in relation to the property, over which there was a case filed by the Police in the Primary court of Embilipitiya and in that case, on 19.12.1987, the Judge of the Primary court made an order for the parties to observe peace until they settle that dispute in a civil action. But this order does not state which party has been placed in possession. In other words, no party has been placed in possession of the land. However, the Plaintiff says that on 01.10.2004 he took steps to prepare the land for the purpose of sugar cane cultivation, but his work was objected to by the Defendants and as such he filed this action and obtained an enjoining order against the Defendants.

On 23.10.2004, the Defendants had filed their objections to this enjoining order, and after considering the written submissions of both parties, on

30.11.2004 the learned District Judge made order dissolving the enjoining order and rejecting the application for the issue of interim injunction. In this order it is stated by the learned Judge that "the Defendants have been in possession of the land, the subject matter of the action for a long period of time, and therefore an interim injunction cannot be issued restraining the Defendants from entering the said land. Further, the Defendants have been cultivating the said land and issuing an interim injunction would cause the Defendants substantial loss."

The Plaintiff have sought leave to appeal to this court from the order of the learned District Judge made on 30.11.2004. As this application purely relates to the issue of an interim injunction, it is not necessary to go into the title of the parties but only to see who was in possession of the land, whether the Plaintiff or the Defendant. In the order dated 30.11.2004, the learned District Judge has come to the decision that the Defendants have been in possession of the land for a long period of time and the Plaintiff has failed to establish that he is in possession of the said land.

The Plaintiffs' position is that when he tried to prepare the land for the purpose of sugar cane cultivation on 1.10.2004 the Defendants came and disturbed his work. But he has not established his possession of the land. The Grama Sevaka has given a letter marked "V12" which state that the Defendants were cultivating the land. As such, the learned District Judge has come to a correct decision that the Defendants were in possession of the land and not the Plaintiff, and therefore issuing an interim injunction against the Defendants who are in possession of the land will cause substantial loss to them.

The counsel for the Plaintiffs, in his written submission filed before this court has misconceived the law relating to issue of injunction. It is a primary principle of law that an injunction can be issued to oust a person who is in possession of the land. Even a person who is in unlawful possession cannot be ousted by injunction. It must be borne in mind that injunction should not be used as a means to place in possession of the Plaintiff by ousting a person in possession of a land or property. Even if the Defendant is prevented from entering a land in dispute by an interim injunction, the Plaintiff cannot take possession of that land and do any act therein, until the final determination of the action.

In Kanagasabai vs Mylvaganam 78 NLR 280, Sharvananda J (as he was then) observed at page 285 that *"A court has no power (by way of interim injunction) to remove a defendant who is already in possession of the subject matter of the action on the strength of an order made by a Magistrate under Section 63 of the Administration of Justice Law No.44 of 1973 (now section 68 of the Primary Court Procedure Act No. 44 of 1979) and to place the Plaintiff in possession pending the result of the action."* (see also Seelawathie Mallawa vs Millie Keerthiratne – 1982 (1) SLR 384.

It appears, therefore, that the Plaintiff who was not in possession of the land had done some preparation to cultivate sugarcane in the land in dispute and when the Defendants objected to it, has filed this case and obtained an ex-parte enjoining order against the Defendants.

After inquiry, the District Judge has correctly come to the conclusion that issuing an injunction against the Defendants who are already in possession will

cause substantial loss to them. The order of the District Judge refusing the grant of interim injunction is hereby affirmed and the application for leave to appeal is refused.

**Application refused.**

**JUDGE OF THE COURT OF APPEAL**

**Wijesundera J.,**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**