

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

In the matter of an appeal under and in terms of the provisions of section 11 of the High Court of the provinces (special provision) Act No. 19 of 1990 read with article 138 of the constitution of the Republic, form the Judgement in case No. 613/04 (Revision) of the High Court of Balapitiya.

**Court of Appeal**

**Appeal No. (CA (PHC) 28/2006**

H.C. Balapitiya Revision No: 613/04

M.C. Elpitiya Case No: 11059

Vidana Mahadurage Premawathie,  
Anuradagama,  
Yatagala,  
Urugasmanhandiya.

**Applicant**

**Vs.**

Jayawardane Senaviratne,  
75, Anuradagama,  
Yatagala,  
Urugasmanhandiya.

**Respondent**

Jayawardane Senaviratne,  
75, Anuradagama,  
Yatagala,  
Urugasmanhandiya.

**Respondent - Petitioner**

**Vs.**

Vidana Mahadurage Premawathie,  
Anuradagama,  
Yatagala,  
Urugasmanhandiya.

**Applicant - Respondent**

**AND**

Jayawardane Senaviratne,  
75, Anuradagama,  
Yatagala,  
Urugasmanhandiya.

**Respondent - Petitioner -  
Appellant**

**Vs.**

Vidana Mahadurage Premawathie,  
Anuradagama,  
Yatagala,  
Urugasmanhandiya.

**Applicant – Respondent –  
Respondent**

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

**Counsel : Parties are absent and unrepresented.**

**Argued on : 30.11.2015**

**Decided on: 23.03.2016**

CASE- NO- CA (PHC) 28/2006- JUDGMENT- 23.03.2016

**P.R.Walgama, J**

When this matter was taken up for argument both parties were absent and unrepresented, therefore this will be a judgment of court.

The Respondent – Petitioner – Appellant has preferred the instant appeal to have the orders to be set aside of the Learned High Court Judge dated 17.01.2006 and the order of the Learned Magistrate dated 30.07.2004.

The Petitioner- Respondent- Respondent, by her plaint dated 30.07.2004 has instituted action in terms of Section 66(1)(b) of the Primary Court Procedure Act No. 44 of 1979, of a land dispute which has culminated to a breach of the peace or as there is

a likely hood of the breach of the peace is threatened.

It was the contention of the Petitioner that the house in suit was built by her and she had been living in this house since 1998. It is alleged by the Petitioner that at a time when she was not there the Respondent - Petitioner - Appellant has forcibly entered the house. But it is seen from the contention of the Appellant that he was living abroad and he had been coming to Sri Lanka and was living in the said disputed premises.

The Learned Magistrate has adverted to the fact that the National Housing Authority had cancelled the rights of the Respondent - Appellant, to the above land as it was not developed by the Respondent - Appellant, by document marked X2

In addition to the facts stated above the Learned Magistrate has observed that in the years of 2000 to 2002 the Petitioner - Respondent has got registered under the assessment number given to the premises in suit

It also salient to note that the subject land was given to the Respondent - Appellant by the Housing Development Authority on a loan, which was never settled by the Respondent - Appellant.

The Learned Magistrate was of the view that the evidence surfaced at the inquiry has fortified the position of the Petitioner Respondent, as such the Learned Magistrate by his order dated 30.07.2004, has placed the Petitioner – Respondent in possession.

Being aggrieved by the said order the Respondent – Petitioner – Appellant has come before the High court by way of revision to have the said order of the Learned Magistrate to be set aside or revised.

The Learned High Court Judge after analyzing the impugned order of the Learned Magistrate was convinced of the fact that the Petitioner – Respondent was in possession on the date in issue and she was dispossessed by the Respondent – Petitioner – Appellant and as a result of the above, the breach of the peace had occurred.

Further the Learned High Court Judge has considered all the material placed before him and had confirmed the order of the Learned Magistrate.

Being aggrieved by the said order the Respondent-Petitioner – Appellant has appealed to this Court to have the said orders of the Learned Magistrate and the Learned High Court Judge dated 17.01.2006.

It is abundantly clear from the facts emerged from the above that the Petitioner – Respondent – Respondent has been in possession and the Respondent – Petitioner

- Appellant has forcibly entered the said premises and had dispossessed the Petitioner – Respondent.

Hence in the said backdrop this court see no reason to interfere with the said orders and thus dismiss the appeal without costs.

Appeal is dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malinie Gunarathne, J

I agree,

**JUDGE OF THE COURT OF APPEAL**