

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

In the matter of an application under and in terms of the provisions of Section 11 of the High Court of the Provinces (Special Provisions) Act No 19 of 1990 read with article 138 of the Constitution of the republic, from the Judgement in case No.557/03 (Revision) of the High Court of Balapitiya.

Court of Appeal

Appeal No:CA(PHC) 84/2006

H.C. Balapitiya

Revision No: 557/03

M.C. Elpitiya

Case No: 5508

Inspector of Police,
Police Station,
Pitigala.

Complainant

Vs.

01.Chandrasiri Wickramathilake
Midigaspe,
Assistant Superintendent,
Ketandola State Plantation,
Elpitiya.

02. Karunakarage Sunil Shantha,
Pitigala Road,
Ketondola.

Respondents

Karunakarage Sunil Shantha,
Pitigala Road,
Ketondola.

**2nd Respondents -
Petitioner**

Vs.

Nanayakkara Daya Sujeewa
Anurada,
Asst. Superintendent,
Ketandola State Plantation,
Elpitiya.

**1st Respondent -
Respondent**

Nanayakkara Daya Sujeewa
Anurada,
Asst. Superintendent,
Ketandola State Plantation,
Elpitiya.

**1st Respondent -
Respondent - Appellant**

Vs.

Karunakarage Sunil Shantha,
Pitigala Road,
Ketondola.

2nd Respondent –

Petitioner – Respondent

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

**Counsel : Samantha Vithana with Thilina Fernando for the
Appellant.
: Udaya Bandara for the Respondent.**

Argued on : 13.11.2015

Decided on: 04.05.2015

CASE- NO-CA (PHC)-84/06/ JUDGMENT- 04.05.2016

P.R.Walgama, J

The instant appeal lies against the order of the Learned High Court Judge dated 26.04.2006 in Revision Application No.. 557/03 of the High Court of Balapitiya.

The facts germane to the instant application are as follows;

The inspector of Police station at Pitigala, filed an information in terms of Section 66(1)(a) of the Primary Court's Procedure Act No. 44 of 1979, in the Magistrate Court of Elpitiya, in the CASE BEARING No. 3508, of a land dispute, which is likely to occur or a threat to the breach of the peace.

As per information filed by the Police the following facts had emerged;

According to the complaint made by the 1st party Respondent, the 2nd Party Respondent had planted tea in the estate belonging to the 1st party Respondent's estate.

As per complaint made by the Superintendent of the Kantendola Estate on 16.06.2002, the 2nd party Respondent had on 25.05.2002 planted some king coconut trees and on 16.06.2002 had planted tea plants in the land belonging to the above estate.

It is the contention of the 2nd party Respondent that he is entitled to the paddy field and had been enjoying the thrashing floor, and he planted coconut an year ago.

The Police had also filed the observation notes which has not been challenged by the 2nd Party Respondent. According to the said observation notes 3 king coconut trees and 700 tea plants had been planted by the

2nd Respondent just a week ago prior to the alleged dispute.

Therefore the Learned Magistrate was of the view that there had not been a permanent cultivation as claimed by the 2nd party Respondent, and had disbelieved his version.

In the above setting the Learned Magistrate has arrived at the conclusion that alleged plantation was effected just before the complaint made by the 1st Party Respondent. Therefore it was the opinion of the Magistrate that two months prior to the information filed in Court it was the 1st Party - Respondent who was in possession of the disputed land and had placed the 1st Party - Respondent in possession of the said land.

Being aggrieved by the said order the 2nd party Respondent went by way of revision to the High Court of Balapitiya to have the said order of the Learned Magistrate set aside.

In the Revision application as stated above the 2nd party Respondent had stated the following;

That the said impugned order is contrary to law and it is ill-considered order, as the Learned Magistrate has failed to consider many important facts, documents relevant to this matter in issue, and had moved to

set aside the order of the Learned Magistrate accordingly.

The Learned High Court has adverted to the following facts.

That the complaint referred to was made by the 1st Party - Respondent to the effect that the 2nd Party Respondent had forcibly entered the disputed land and evicted the watcher.

The Learned High Court Judge in dealing with the evidence that surfaced had noted the fact that the police officer in his report had failed to mention the age of the three king coconut plants. Further the Learned High Court Judge has arrived at the conclusion that the 2nd Party Respondent had effected the tea plantation with good faith, and as such he has the right to possess the said disputed land.

The Learned High Court Judge has also considered the fact that there had been some banana trees in the disputed land.

Nevertheless the vital issue in the matter in hand is the fact that the 2nd Party- Respondent entering to plant, 700 plants of tea.

The Learned High Court Judge after analyzing the facts stemmed from the documents by his order dated 26.04.2006, set aside the order of the

Magistrate, and allowed the application of the 2nd Party Respondent.

Being aggrieved by the said impugned order of the Learned High Court Judge the 1st Party -Respondent has appealed to this Court to have the said order set aside or vacate.

It is the contention of the 1st Party Respondent that the disputed land is a portion of a larger land belonging to Ketandola State Plantation, Elpitiya, managed by Elpitiya Plantation Ltd.

The land in disputed is depicted as lot 1 in plan No. 26/2001 dated 28.5.2002, and is marked as P10. and it is categorically stated that the said plan has not shown any portion of the Respondent's land abutting the land of the Appellant.

Further it is the stance of the 1st Respondent that the 2nd Party Respondent had encroached the portion of the land in dispute which belongs the Ketandola Estate, and had used as his threshing floor .

When reviewed the impugned order of the Learned High Court Judge it is patently clear that the facts of this case has not been evaluated in the correct perspective and should be set aside accordingly.

In the above setting I am of the view that the order of the Learned High Court Judge should be set aside

and should the order of the Learned Magistrate should be affirmed.

Hence the appeal is accordingly allowed, I order no costs.

Registrar of this court shall communicate this order to the Learned Magistrate of Elpitiya.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL