

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

In the matter of an Appeal to the  
Court of Appeal from the order made  
by the Provincial High Court of the  
Northern Province sitting in Jaffna, in  
the exercise of its jurisdiction under  
Article 154P (3) (b) of the  
Constitution.

Savarian Sebamalai,  
99 (67), Bankshall Street,  
Jaffna.

**Respondent-Petitioner**

**VS.**

**CA Appeal No. 55/07  
H.C Jaffna (Revision)  
Application No. 952/05  
Primary Court Jaffna Case No. 330**

Soosaipillai Xavier Kulanayagam,  
99 (67), Bankshall Street, Jaffna.  
Presently of 16 (36), Martin Road,  
Jaffna.

**Informant-Respondent**

Savarian Sebamalai,  
99 (67), Bankshall Street,  
Jaffna.

**Respondent-Petitioner –Appellant**

**VS.**

Soosaipillai Xavier Kulanayagam,  
99 (67), Bankshall Street,  
Jaffna.  
Presently of 16 (36) Martin Road,  
Jaffna.

**Informant-Respondent-Respondent**

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

**COUNSEL** : **G. Jeyakumar  
for the Appellant**  
  
**Niran Ankesall  
for the Respondent.**

**Argued on** : **12.10.2015**

**Written submissions  
filed on** : **05.02. 2016 and 12.02.2016**

**Decided on** : **04.05.2016**

**Malinie Gunaratne, J.**

This is an Appeal filed by the Respondent – Petitioner- Appellant (hereinafter referred to as the Appellant) against the Judgment of the learned High Court Judge of Jaffna, dismissing a Revision Application by affirming the determination of the learned Magistrate, under Chapter VII of the Primary Court Procedure.

Pursuant to an information filed by the Informant – Respondent – Respondent (hereinafter referred to as the Respondent), in terms of Section 66 of the Primary Court Procedure Act, the learned Primary Court Judge held an inquiry into the dispute between Appellant and Respondent, in respect of the land called “Mathi Valavu” and the premises bearing No. 99 (67), held that the Respondent had been dispossessed by the Appellant and ordered that possession be restored to the Respondent.

Aggrieved by the said Order, Appellant sought to move in Revision against the said Order by Revision Application No. 952/05 filed before the High Court Jaffna. The learned High Court Judge having considered the submissions made by both parties affirmed the learned Magistrate’s Order and dismissed the Revision Application filed by the Appellant.

The Appellant being aggrieved by the aforesaid Judgment preferred an Appeal to this Court seeking to set aside the Order made on 22.08.2005 by the learned Magistrate and the Judgment of the learned High Court Judge dated 19.03.2007.

The Respondent initiated the proceedings in the Primary Court Jaffna by filing an affidavit dated 14.07.1997. It was averred in his affidavit that he

and his wife Phevasothy are the owners of the land and premises, which is the subject matter of the action by virtue of Deeds No. 13801 and No. 14430. Further stated, on 28<sup>th</sup> May 1997, the Appellant, wrongfully and unlawfully trespassed into the said land and is in unlawful and wrongful occupation. Further stated that he has been forcibly dispossessed from the said land and premises by the Appellant and prayed that the Appellant be evicted and that he be given vacant possession of the said land.

The case for the Appellant was that he occupied the land in dispute in April 1997 with the assistance of the army officers as he did not have a house to live in. Before he occupied the said house, there were some street line vendors. They were chased out by the Army officers. The Respondent and his wife were not in possession of the house since the displacement of 1995.

In this case, the Primary Court Judge was called upon to reach a decision on the affidavits and documents filed by the parties. After considering the contents in those affidavits, Magistrate of Jaffna sitting as Primary Court Judge made Order on 22.08.2005 restoring the Respondent to possession of the disputed land. The learned High Court Judge of Jaffna affirmed the order of the learned Magistrate and thereafter the Appellant has preferred an appeal to this Court.

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 of the Primary Court Procedure Act 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.

Thus, the duty of the Judge is to ascertain which party was or deemed to have been in possession on the relevant date, namely, on the date of the filing of the information under Section 66.

Hence, the duty of the Judge is to determine whether, the Respondent who had been in possession of the land was dispossessed by the Appellant within a period of two months immediately before the date of filing of the information. If the Primary Court Judge is satisfied that the Respondent had been in possession of the land and he had been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under Section 66, he should make an order directing the party dispossessed to be restored to possession.

In the instant case the learned Magistrate had made a finding that the Respondent was in possession of the land and had been dispossessed within a period of two months immediately before the date of filing of the information.

On perusal of the entirety of the Order, it is apparent that the learned Magistrate 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 Magistrate has considered the facts and the way in which he has applied the law in this instance.

Therefore, it is not necessary to interfere with the Judgment of the learned High Court Judge, who affirmed the Order of the learned Magistrate.

Accordingly, no ground exists which justifies the intervention of this Court to set aside the Judgment of the learned High Court Judge dated 19.03.2007. and the Order of the learned Magistrate dated 22.08.2005.

For the above reasons, I hold that there is no merit in this Appeal and dismiss it.

**JUDGE OF THE COURT OF APPEAL**

P.R. Walgama, J.

I agree

**JUDGE OF THE COURT OF APPEAL**

Appeal dismissed.