

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

Court of Appeal Case No. CA
(PHC) 241/2004

High Court OF Matara Case No.
196/2003

Magistrate Court of Morawaka
Case No. 77154

Pathirana Gamage Chandralatha,
Pilipanagewatta Panakaduwa,
Rotumba

Petitioner – Respondent – Appellant

Vs.

Manameidurage Jayaliyas,
Udapasgoda Pansala Road,
Pasgoda

Respondent – Petitioner - Respondent

Before : Malinie Gunarathne J.

L.T.B. Dehideniya J.

Counsel : D.M.G. Dissanayake with L.M.C.D. Bandara for the Petitioner -
Respondent - Appellant

Respondent – Petitioner – Respondent absent and unrepresented

Argued on : 08.12.2015

Decided on : 03.06.2016

L.T.B. Dehideniya J.

This is an appeal from the judgment of the High Court of Matara. The facts are briefly as follows. The Petitioner – Respondent – Appellant (the Appellant) filed an information in the Magistrate Court of Morawaka on 3rd March 2003 under section 66 (1) (b) of the Primary Procedure

Code Act stating that a dispute has arisen affecting land, a breach of the peace is threatened or likely. She pleaded that the land more fully described in the affidavit was in her possession and she has been dispossessed by the 1st Respondent – Petitioner – Respondent (the 1st Respondent) on 7th January 2003 and moved the Court to make a determination that she is entitled to possess and to place her in possession. The 1st Respondent filed an affidavit and pleaded that he owned and possessed the land in dispute and moved to dismiss the action. The 2nd Respondent intervened and filed affidavit stating that he was the previous owner and has transferred it to the 1st Respondent and denied that any breach of peace has taken place. The learned Magistrate pronounced a determination that the Appellant was in possession and he has been dispossessed within two months prior to the institution of the action and ordered to place him in possession. Being aggrieved by the order of the learned Magistrate, the 1st Respondent moved in revision to the High Court of Matara. The Learned High Court Judge set aside the order of the learned Magistrate and dismissed the action. This appeal is from that order.

The Learned High Court Judge dismissed the action on two grounds. The first ground is that the learned Magistrate has failed to consider whether the breach of the peace is threatened or likely before proceeding any further. Section 66 of the Primary Procedure Code Act empowers the Primary Court Judge to inquire into a land dispute only if the breach of the peace is threatened or likely. The section reads thus;

66. (1) Whenever owing to a dispute affecting land a breach of the peace is threatened or likely-

(a) the police officer inquiring into the dispute-

(i) shall with the least possible delay file an information regarding the dispute in the Primary Court or

(ii)

(b) any party to such dispute may file an information by affidavit in such Primary Court setting out the facts and the relief sought and specifying as respondents the names and addresses of the other parties to the dispute

Unless the breach of the peace is threatened or likely, the Court does not confer jurisdiction. Sub section 2 of the section 66 confer jurisdiction to Court only on an information filed under sub section 1, and the information can be filed only if the breach of the peace is threatened or likely. If the information is filed by the police under sub section 1, it is not necessary for the Court to satisfy that the breach of the peace is threatened or likely. It has been held in the case of [1994] 2 Sri L R 117 *Punchi Nona v. Padumasena and others* that;

Where the information is filed under section 66(1) (a) of the Primary Courts Procedure Act by a police officer a Primary Court is vested with jurisdiction to inquire into the dispute. The Police Officer is empowered to file the information only if there is a dispute affecting land and the breach of the peace is threatened or likely.

In the same case His Lordship Ismail, J. referred to the case of *Velupillai and Others v. Sivanathan* [1993] 1 Sri L. R. 123 at 126 with approval and held further that;

However, when an information is filed by a party to the dispute under section 66(1) (b) it is left to the judge to satisfy himself that

there is a dispute affecting land owing to which a breach of the peace is threatened or likely. As observed in Velupillai and Others v. Sivanathan (1)"...when an information is filed under section 66(1) (b) the only material that the Magistrate would have before him is the affidavit information of an interested person and in such a situation without the benefit of further assistance from a police report, the Magistrate should proceed cautiously and ascertain for himself whether there is a dispute affecting land and whether a breach of the peace is threatened or likely".

In the present case the learned Magistrate has failed to consider whether the breach of the peace is threatened or likely. The learned Counsel for the Appellant submitted that the objection to the jurisdiction was not taken at the earliest opportunity and therefore it is too late to raise in the appeal. This is an incorrect submission. The 2nd Respondent in paragraph (x) of his affidavit dated 12th May 2003 stated that there is no breach of the peace has taken place. In the proceedings under section 66, no issues were raised. The Primary Court Judge is expected to consider the affidavits and the documents (if any) before making his determination. This being an information filed by an interesting party under section 66(1)(b), and the alleged threat to the breach of the peace is being denied by the opposing party, the Magistrate should proceed cautiously and ascertain for himself whether there is a dispute affecting land threatening the breach of the peace or likely. Failure to do so vitiates the proceeding.

The other ground that the Learned High Court Judge dismissed the action is that the failure of the learned Magistrate to act under sub section 6 of section 66 which requires the Judge to make every effort to induce

the parties and the persons interested (if any) to arrive at a settlement of the dispute.

I think I need not to express any view on this matter because the case fails on the first ground, that is, the failure to consider whether the breach of the peace is threatened or likely.

Under these circumstances, I don't see any reason to interfere with the findings of the learned High Court Judge.

Accordingly, I dismiss the appeal. No costs.

Judge of the Court of Appeal

Malinie Gunarathne J.

I agree.

Judge of the Court of Appeal