

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

In the matter of an appeal under
Article 154P of the Constitution read
with Section 11 of the High Court of
the Provinces (Special Provisions)
Act, No: 19 of 1990.

IN THE PRIMARY COURT

Officer in Charge, Police Station,
Elpitiya.

Informant

Case No: C/A PHC 150/2008

HC Balapitiya No: 739/07 (Revision)

P.C. Elpitiya No: 43345

Vs.

01. Siripala Udugamasuriya
02. Dissanayake Wijesinghe
Jinapala.

Respondent

IN THE HIGH COURT

02. Dissanayake Wijesinghe
Jinapala.

2nd Respondent – Petitioner

Vs.

01. Siripala Udugamasuriya

1st Respondent – Respondent

NOW, IN THE COURT OF APPEAL

02. Dissanayake Wijesinghe

Jinapala.

**2ND Respondent – Petitioner –
Appellant**

Vs.

01. Siripala Udugamasuriya

**1st Respondent – Respondent –
Respondent**

Before : W.M.M.Malinie Gunarathne, J

: P.R.Walgama, J

Counsel : S.F.A. Coorey for the Petitioner.

: Sunil Abeyratne for the Respondent.

Argued on : 27.11.2015

Decided on: 03.06.2016

P.R.Walgama, J

The officer in charge of Elpitiya Police filed information in terms of Section 66(1)(a) of the Primary Court Procedure Act No. 44 of 1979. In the Magistrate Court of Elpitiya, in respect of land dispute (cutting of two jack trees) and as a result of which a breach of the peace is likely to occur and moved notice on both parties accordingly.

The said information was filed in pursuant to a complaint made by the 1st Party Respondent - Respondent as the 2nd Party - Respondent - Appellant had cut down two jack trees, in the land belonging to the 1st Party Respondent.

The 1st Party - Respondent made a complaint to the Elpitiya Police that, the 2nd Party - Respondent - Appellant had come with some unknown people and cut two jack trees in his land. The 1st party Respondent was in possession of a land over 21 years, which is of course a land belonging to State.

The 2nd Party - Respondent - Appellant in his statement has stated thus; that he bought this land in issue ten years ago from the father of the 1st Party- Respondent, for a sum of Rs. 40,000/, and he has a house in the land where the jack trees were, further it is to be noted that the said trees were

cut only after obtaining a permit, from the relevant authority.

The Learned Magistrate in arriving at the determination was of the view that, although the 2nd Party - Respondent - Appellant produced the deed on which he derived the title to the land in issue, the possession of the said land was handed over to the 1st Respondent's father only on 06.11.1997.

Nevertheless the Learned Magistrate has made a general comment as to the documents tendered without being specific as to the nature of the document, and had arrived at the conclusion that the 1st Party - Respondent was in possession of the subject land at the time the information was filed in Court. It was also the view of the Learned Magistrate that the 2nd Party - Respondent - Appellant although he possessed a deed to the land in issue, he has failed to establish possession at the time the complaint was made to the police.

In the above setting the Learned Magistrate determined by his order dated 18.05.2007, that the 1st Party - Respondent should be placed in possession of the disputed land.

Being aggrieved by the said order the 2nd Party - Respondent - Petitioner - Appellant made an application in revision to have the said order set aside.

The Learned High Court Judge in analyzing the documents tendered by both parties, was of the view that the 2nd Party Respondent - Petitioner - Appellant has failed to prove that he was in possession of this land when the 1st Respondent made the complaint to Elpitiya Police.

Further the Learned High Court Judge has adverted to the fact that by the document marked 1 V9 and the number of documents tendered by the 1st Party Respondent has established the fact that it was the 1st Party - Respondent was been in possession at the time the complaint was made, and was of the view that except for the title deed to establish his title to the disputed land the 2nd - Party - Respondent - Appellant has failed to prove possession to the said land on the date in issue.

But it is seen from the impugned orders of the Learned High Court Judge and the Learned Magistrate that they were of the view that the 2nd Party Respondent - Appellant had only produced the title deed and not any other proof to established his possession. But it is apparent from his statement to the police that he cultivated this land by tea plantation and had a house in the disputed land. On the contrary the 1st Party Respondent in his complaint to

the police has stated that he is in a State land for 21 years. He does not say how he possessed the disputed land. It is to be noted that he was evicted from the disputed land by his father in the District Court case, at the District Court at Balapitiya. Therefore after the said eviction how he deemed have possessed the land is not born out by any material facts.

Further the 1st Party- Respondent has not disputed the fact that the 2nd Party - Petitioner - Appellant, possessed the plantation in the land in issue.

Therefore it is abundantly clear that the 2nd party - Respondent - Appellant had been in possession, and jack trees standing thereon belonged to him. Besides he had obtained the permit from gramasewaka to cut the said jack trees.

In the said back drop it is abundantly clear that at the time the 1st Party - Respondent made the complaint to the Balapitiya police he did not have any possession to the land in dispute, but only stated that he is living in the State land.

Hence for the foregoing reasons this Court is of the view that the orders of the Learned High Court Judge and the Learned Magistrate

cannot stand, but should be set aside accordingly.

Thus the appeal is allowed.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J
I agree,

JUDGE OF THE COURT OF APPEAL