

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

Court of Appeal Case No.
CA (PHC) APN 17/2012
High Court of Kegalla Case
No. 3912/Rev.

1. Appu Hennadige Don Stephen de Silva,
96, Aranayake Waththa, Aranayake.
2. Gamaralalage Jayasinghe,
115, Aranayake Road, Mawanella.
3. Iriyagoda Manage Gnanathilaka
Padmala,
27, Mahaliyadda Watta, Makuluwa,
Galle.

Petitioner - Appellants

Vs.

1. The Officer In Charge
Police Station, Rambukkana.
2. Karunarathne Liyanage,
Belgodawatta, Deliwala, Rambukkana.
3. Biyagama Jayanetti,
105, Tilaka Road, Waththa.
4. Ranhoti Durayalage Premalatha Kusum
Kumari,
Belgodawatta, Deliwala, Rambukkana
5. Pahala Vithanage Devid Gorge,
410, Welivita, Kaduwela.
6. Appu Hennadige Don Milton de Silva,
115, Aranayake Road, Mawanella.
7. Gamaralalage Upul Priyantha
Abeyrathne,
115, Aranayake Road, Mawanella.

8. The Hon Attorney General,
Attorney General's Department,
Colombo 12.

Respondent – Respondent

Before : Malinie Gunarathne J.
: L.T.B. Dehideniya J.

Counsel : Mahendra Karunasinghe for the Petitioner Appellant.
W.D. Weerasekara for the 5th Respondent
D. Hewaliyanage for the 6th and 7th Respondents
V.Hettige for the Attorney General

Argued on : 12.01.2016

Decided on : 13.06.2016

L.T.B. Dehideniya J.

This is an appeal from the High Court of Kegalla. The O.I.C of the Police Station Rambukkana filed information in the Magistrate Court of Kegalla, under section 81 of the Criminal Procedure Code, informing Court that there is a breach of the peace is likely among the parties named in the information. The parties were directed to appear before the Magistrate Court by the police and most of them were present before the learned Magistrate. All parties were represented by Attorneys at Law. They appeared in Court as three groups of persons and were represented separately by three groups of Attorneys. All three groups of Attorneys separately informed Court that they

are willing to accept the advice of the Court to live in peace and pleaded to release the accused on a bond. On the application of the accused, the learned Magistrate ordered to release them on execution of a bond for keeping the peace for a period of two years. Further, the learned Magistrate ordered that if any of the parties executed the bond disturb the person in possession of the land during the pendency of the civil case, to be produced before Court.

Being aggrieved by this order the petitioners moved in revision in the Kegalla High Court and the Learned High Court Judge dismissed the application. This appeal is there from.

The Appellants submit that the procedure adopted by the learned Magistrate is in correct and the order is bad in law. They further submit that the information filed by the police was not made on oath and the Appellants were not made aware of the facts contained in it.

The Appellants are estopped from making any allegation against the papers filed or the procedure adopted because they admitted that there was a breach of the peace among the parties and on their own application they were ordered to execute a bond for keeping the peace. They can only challenge the order on the basis of an illegality. On the other hand, the operative period of the bond has already lapsed. The order was made on 21.07.2010, and the operative period of the bond executed for keeping the peace is two years from that day. Under section 90(1) of the Criminal Procedure Code, unless time has been allowed for the commencement of the operative period, it commences from the date of the order. The section reads;

90. The period for which security is required by an order made under the preceding sections of this Chapter shall commence –

(a) where time has not been allowed under section 89, on the date of such order;

In the case before us there is no order allowing time. Therefore, the operative period commenced from the date of the order and it has expired in two years time. Since the operative period has lapsed; the bond has become invalid now. As such, it is not necessary for this Court to make any order on the bond executed for keeping the peace.

The learned Magistrate has made an order to produce before Court any person who obstructs the person in possession of the land during the pendency of the civil case. This part does not come to an end with the expiry of the operative period of the bond. It is in operation until the civil case comes to an end.

Section 81 of the Criminal Procedure Code is enacted to prevent the breach of the peace. The section reads thus;

81. Whenever a Magistrate receives information that any person is likely to commit a breach of the peace or the Magistrate may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period not exceeding two years as the court thinks fit to fix.

Upon the inquiry, if it is proved that it is necessary to execute a bond for keeping the peace, under section 87 of the Code the Magistrate can order to execute such bond.

The marginal note of the section 91(1) reads “Contents of bond” and the section reads thus;

91. (1) The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour as the case may be; and in the latter case the commission or attempt to commit or the abetment of

any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

The legislature intended only to execute a bond for keeping the peace. Possession of a land cannot include in to a bond for keeping the peace. The legislature has provided a separate procedure for land disputes where the breach of the peace is likely or threatened, that is, the Part VII of the Primary Court Procedure Act. In an inquiry under that part, the Magistrate can determine the issue of possession or the right to possess and any violation of such order can be punished for contempt of Court. Any order under section 81 inquiry can only contain an order to execute a bond for keeping the peace for a period specified in that order.

Accordingly, the part of the learned Magistrate's order, that is, to produce any person in Court who disturbs the person who is in possession of the land, cannot stand. I order to delete that part from the order of the learned Magistrate dated 21.07.2010.

Subject to the above variation the appeal dismissed without costs.

Judge of the Court of Appeal

Malinie Gunarathne J.

I agree.

Judge of the Court of Appeal