

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

P.I. Chandrasena  
8<sup>th</sup> Post, Kandabuwawa,  
Madagama.

**Petitioner – Appellant**

**Case No: PHC 118/2010**

***Vs.***

1. Divisional Secretary,  
Madagama.
2. Attorney General,  
Attorney General's  
Department,  
Colombo 12.

**Respondents – Respondents**

**Before : P.R. Walgama, J  
: L.T.B. Dehideniya, J**

**Council : Appellant is absent and unrepresented.  
: Nayomi Kahavita PC for the Respondent.**

**Argued on : 11.05.2016**

**Decided on : 01.08.2016**

**P.R. Walgama, J**

The Petitioner- Appellant (in short the Appellant ) has preferred the instant appeal to impugned the order of the Learned High Court Judge dated 16.11.2010.

It is to be noted that on the date of argument the Petitioner- Appellant was absent and unrepresented, although the notices were served on him and the Registered Attorney. Therefore this Court had the opportunity of hearing the argument of the Counsel only for the Respondents.

The facts germane to the instant application emanates thus;

The Divisional Secretary of Madagama instituted action in the Magistrate Courts of Monaragala for an ejectment order in terms of State Lands (Recovery of Possession) Act No. 07 of 1979, amended by Act Nos. 29 of 1983, 50 of 1987, and 29 of 1997.

In the said case the said Competent Authority has moved for an order of ejectment of the Respondent as he was in an unauthorised occupation of the State Land.

Pursuant to the above application the Learned Magistrate by his order dated 04.06.2009, had ejected

the Respondent and everybody holding under him, acting in terms Section 10 of the said Act.

It is also considered in the said order that as per Section 9 of the said Act the burden is shifted to the Respondent to establish that he is in the subject land with a valid permit or he possesses a written document which authorises to be in the disputed land.

The Learned Magistrate has also considered the objection taken by the Respondent of the fact that the affidavit tendered by the Plaintiff and had arrived at the conclusion that the said affidavit is in accordance with the necessary requirements and had rejected the said objection thereto.

In the above setting the Learned Magistrate has arrived at the determination to issue an ejectment order to eject the Respondent.

Being aggrieved by the said order the Respondent-Petitioner had come by way Revision to have the said impugned order set aside.

The Learned High Court Judge after considering the facts placed before him, was of the view that the Learned Magistrate has made the above order in the correct perspective, and had upheld the same.

The instant appeal lies against the said order of the Learned High Court Judge and the above order is assailed on the following grounds;

That the Affidavit accompanying the above application for ejectment was not in accordance with the law and as it does not disclose the religion of the Affirmant. In the above setting the Appellant moves that the application for ejectment should be dismissed in limine.

But it is the contention of the Respondent that as per amendment to the State Land Recovery of Possession Act only insists to mention the place at which the Affidavit is signed and not the religion of the Affirmant.

The said requirement as a necessary element to be embodied was given mind to by Their Lordships in the case of TRICO FREIGHTS (PVT) LTD .VS. YANG CIVIL ENGINEERING LANKA PVT LTD 2000 2 SLR 136 wqhich has been observed thus;

“ therefore it is my view that an affirmation is not bad in law merely because the deponent has made an affirmation without stating that he is a Buddhist, Hindu, or Muslim”.

Further the said rationale was recognised and appreciated in the cases of MOHOMED FACY .VS MOHAMED AZATH SANOON AND OTHERS (case no.

4/2004( BASL law Journal 2006) and in the case of SENOK TRADE COMBINE LTD .VS. K.H.S. PUSHAPADEVI (decided on 04.09.2014) was in agreement of the above observation of the afore said case.

Therefore in the above setting this court will not up hold the objection of the Respondent- Petitioner- Appellant, and dismiss the appeal.

Therefore the appeal is dismissed accordingly.

**JUDGE OF THE COURT OF APPEAL**

L.T.B. Dehideniya, J

I agree.

**JUDGE OF THE COURT OF APPEAL**