

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

Peduru Hakuru Renuka Damayanthi,
Akkara 50,
Nanayakkara Mawatha, Talawa,
Elpitiya.

CA-PHC 136/2005

Petitioner

High Court of Balapitiya

Case No: Revision

596/2004

Vs.

Ratnayake Mendis,
Talawa, Elpitiya.

Elpitiya Case No:

94876

Respondent

AND

Peduru Hakuru Renuka Damayanthi,
Akkara 50,
Nanayakkara Mawatha, Talawa,
Elpitiya.

Petitioner – Petitioner

Vs.

Ratnayake Mendis,
Talawa, Elpitiya.

Respondent – Respondent

Peduru Hakuru Renuka Damayanthi,
Akkara 50,
Nanayakkara Mawatha, Talawa,
Elpitiya.

Petitioner – Petitioner – Appellant

Ratnayake Mendis,
Talawa, Elpitiya.

**Respondent – Respondent –
Respondent**

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

Council : Both parties are absent & unrepresented.

Argued on : 30.03.2016

Decided on : 08.08.2016

P.R. Walgama, J

At the very outset, it should be mentioned that the day on which this case was fixed for argument both parties were absent and unrepresented.

Nevertheless this court proceeded to conclude the argument, and fixed the case for judgment. Therefore this is a judgment of court.

The Petitioner- Appellant instituted action in the Magistrate Court of Balapitiya in the case bearing No. 94876, in terms of Section 66(1) (b) of the Primary Court Act No. 44 of 1979.

The Petitioner alleged that the Respondent has encroached her land and had erected a fence. Therefore in the above setting the Petitioner asserts that there is a likelihood of the breach of the peace.

It is common ground that the subject land described in the third schedule to the petition, containing in extent three roods is under the control of the Land Reform Commission.

The position of the Petitioner was that she was in possession of the disputed land for 20 years, but on the contrary Respondent avers that the said land was handed over to him by the Land Reform Commission in the year 1976, but in the year 1986 he has been away from the disputed land due to

the situation of the country, by the eruption of the warring situation. But after two years time the Respondent has come to the land and startlingly noted that the Petitioner has already built a house in the said land.

Nevertheless the Land Reform Commission held an inquiry and decided that the Petitioner be entitled to 10 perches and balance to be possessed by the Respondent. It is to be noted that the Petitioner has failed to disclose the above fact, and had filed a petition in the Magistrate Court of a land dispute which will erupt to a breach of the peace.

Further it is abundantly clear that the said issue has been already settled by the Land Reform Commission and therefore the Petitioner cannot resort to the instant course of action to resolve the instant dispute.

In the said back drop the Learned Magistrate has dismissed the Application of the Petitioner. Being aggrieved by the said order the Petitioner has moved the High Court in Revision to have the said order set aside. The Learned High Court Judge having considered the said impugned order and the reasons set out therein was of the view that there is no ground to set aside the above order.

Being aggrieved by the said order of the Learned High Court Judge the Petitioner has appealed to set aside the above order.

In the above exposition of the facts this court is compelled to dismiss the appeal.

Accordingly the appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J

I agree.

JUDGE OF THE COURT OF APPEAL