

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

Thangavelu Murugaiaya,
Mahawelamulla,
Wellawaya.

CA (PHC) 126/2003
H.C. Badulla Revision
Application No. 60/2003
M.C. Wellawaya Case No: 7637/03

Petitioner

Vs.

Mohamed Uwais
Mahawelamulla
Wellawaya.

Respondent

And

Mohamed Uwais
Mahawelamulla
Wellawaya.

Respondent-Petitioner

Vs.

Thangavelu Murugaiaya,
Mahawelamulla,
Wellawaya.

Petitioner-Respondent

Now Between

Mohamed Uwais
Mahawelamulla
Wellawaya.

**Respondent-Petitioner-
Appellant**

Vs.

Thangavelu Murugaiaya,
Mahawelamulla,
Wellawaya.

**Petitioner-Respondent-
Respondent.**

**Before : H.C.J. Madawala , J
&
L.T.B. Dehideniya, J**

**Counsel : Daya Gamage for the Respondent.
Appellant is absent and unrepresented.**

Decided on : 01 / 09 /2016

H. C. J. Madawala , J

This appeal is preferred by the Respondent-Petitioner-Appellant Mohamed Uwais against the Petitioner-Respondent-Respondent Thangavelu Murugaiaya to set aside and revise the order of the Learned High Court Judge of Badulla dated 30/4/2003 and for other relief prayed for in the prayer of the petition of appeal. Whereas the appellant was absent and unrepresented a fresh notice has been issued to the appellant Mohamed Uwais of Mahawelamulla, Wellawaya returnable on 26/ 06/2016. Notice of the date of argument has been dispatched to the appellant by registered post and on 28/6/2016. When this matter came up for argument the appellant was absent and unrepresented and the Respondent was represented by counsel. The appeal was heard and case for fixed for Judgment on 31/8/2016 and the counsel for the Petitioner-Respondent-Respondent tendered his written submissions.

The Petitioner Thangavelu Murugaiaya filed a notification dated 22/01/2003 in the Wellawaya Primary Court under Section 66 (1) (b) of the Primary Courts Procedure Act. In his petition he stated that he was in possession of the land described in the schedule since 1991. He further stated that the said land belongs to the Land Reform Commission and that all payments due to the commissioner have been paid by him from 1992 to 2003. The petitioner stated in paragraph 5 of the affidavit averred that Mohamed Uwais forcibly entered upon the land on or about 21/12/2002 and commenced to construct a house. The petitioner made a complaint to Wellawaya police on 22/12/2002. He averred in his affidavit that there would be a serious breach of the peace on account of the repeated threats and unlawful acts of the respondent. Thereafter the Learned Primary Court Judge issued notice on the said respondent and he filed his affidavit dated 6/3/2003 and stated that he and his predecessor possessed the said land and that the petitioners complaint is false. The Learned Primary Court Judge have evaluated and assessed the evidence placed before him made order on 4/4/2003 wherein he held that the petitioner who had possessed the land has been

unlawfully disposed by the respondent on 21/12/2002. Being aggrieved by the said order the Respondent filed an application in revision in the Provincial High Court of Uva holden at Badulla. The Learned High Court Judge made order on 30/4/2003 wherein he held that the Respondent-Petitioner has failed to show any exceptional circumstances in his petition and refused to issue notice on the Petitioner-Respondent. Being aggrieved by the said judgment the Respondent preferred this appeal to this court. Several notices were issued and served on the Respondent- Appellant by this court but he has failed to appear in person or retain counsel to argue to this appeal. Hence the counsel of the Petitioner- Respondent moves that this court be pleased to dismiss this appeal.

On a perusal and when considering the Learned High Court Judge's order dated 30/4/2003 the Learned High Court Judge has stated that this petition and affidavit is a private application he stated that there is likely hood of a breach of peace and that the Learned Magistrate has not been satisfied that there is a breach of peace or likely hood of a breach of peace. In the petition Paragraph 'A' to 'L' it was submitted that the Magistrate Order has been revised and the Petitioner-Respondent who has been ejected. He has stated that there is grave injustice Caused to him and grave loss had occurred to him. The Learned Counsel submitted that as the Magistrate has not come to a decision regarding dispute of the land his client has occupied the house and the botique and that grave prejudice will be caused to the Respondent-Petitioner. The Respondent-Petitioner by his complaint dated 27/12/2002 has made complained about the lavatory which is been irrected in the said premises. He has also submitted that the land owned by Uwais is situated to the south of the land owned by Siththi Fathima his mother and doctor Kethiswaram Pillei is residing on the temporary residence. On considering document 6 it is a letter preventing the building of the house. The Learned High Court Judge has stated that the Learned Magistrate has arrived at a correct decision and the petitioner respondent was residing on the building which has been built on 21/12/2000 and has been ejected.

We are of the view that there is no reason for us to interfere with the judgment of the Learned High Court Judge of Badulla and affirm the said judgment of the Learned High Court Judge and dismiss this appeal with cost.

Judge of the Court of Appeal

L.T.D.Dehideniya, J

I agree.

Judge of the Court of Appeal