

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

In the Primary Court

O.I.C.
Mannar Police Station,
Mannar.

C.A. Application

No. CA (PHC) 116/2010

Complainant

Vs.

Revision Application

No. HCV/REV/207/10

(High Court Vavuniya)

1. Abdul Careem Shabdeen
Tharapuram, Mannar.

Primary Court Mannar

No. 4073

Party of the first part

1. Murugesu Kathiragamanathan
Grand Bazar, Mannar.
2. Kappalar Pitchai Maharooof
Puthukudieruppu,
Mannar.

Parties of the Second part

1. Abdul Lathif Mohamed Ali
2. Abdul Lathif Abdul Jabaruth
3. Sulaiman Assan Naina
4. Sulaiman Ilmudeen
5. Sulaiman Abdul Ameer
6. Sulaiman Ussar

7. Abdul Lathif Mohamed Niyas
8. Abdul Lathif Abdul Jaleel
9. Abdul Lathif Mohamed Nihar
10. Abdul Lathif Abdul Azeez

**All of Tharapuram,
Mannar**

Other Intervenant Petitioners

IN THE HIGH COURT OF VAVUNIYA

1. Abdul Lathif Mohamed Ali
2. Abdul Lathif Abdul Jabaruth
3. Sulaiman Assan Naina
4. Sulaiman Ilmudeen
5. Sulaiman Abdul Ameer
6. Sulaiman Ussar
7. Abdul Lathif Mohamed Niyas
8. Abdul Lathif Abdul Jaleel
9. Abdul Lathif Mohamed Nihar
10. Abdul Lathif Abdul Azeez

**All of Tharapuram,
Mannar**

**Intervenant Petitioners -
Petitioners**

Vs.

O.I.C.
Mannar Police Station,
Mannar.

Complainant - Respondent

1. Abdul Careem Shabdeen
Tharapuram, Mannar.

**Party of the first part -
Respondent**

2. Murugesu Kathiragamanathan
Grand Bazar, Mannar.
3. Kappalar Pitchai Maharooof
Puthukudieruppu,
Mannar.

**Parties of the second part -
Respondents**

4. Katta Marikkar Jawmideen

**And others
All of Tharapuram,
Mannar.**

Others Intervenient

Petitioners - Respondents

NOW AND BETWEEN

1. Abdul Lathif Mohamed Ali
2. Abdul Lathif Abdul Jabaruth
3. Sulaiman Assan Naina

4. Sulaiman Ilmudeen
5. Sulaiman Abdul Ameer
6. Sulaiman Ussar
7. Abdul Lathif Mohamed Niyas
8. Abdul Lathif Abdul Jaleel
9. Abdul Lathif Mohamed Nihar
10. Abdul Lathif Abdul Azeez

**All of Tharapuram,
Mannar.**

**Intervenient Petitioners –
Petitioners – Appellants**

Vs.

O.I.C.
Mannar Police Station,
Mannar.

**Complainant – Respondent –
Respondent**

1. Abdul Careem Shabdeen
Tharapuram, Mannar.

**Party of the first part –
Respondent – Respondent
(deceased)**

**Abdul Kareem Inudeen
Kosuwadi, Tharapuram, Mannar,
presently at No. 1157,**

**Gunananda Mawatha,
Hunupitiya, Wattala.**

**Substituted Party of the first part –
Respondent – Respondent**

2. Murugesu Kathiragamanathan
Grand Bazar, Mannar.

3. Kappalar Pitchai Maharooof
Puthukudieruppu, Mannar.

**Parties of the second part –
Respondent – Respondent**

4. Kata Marikkar Jawmideen

And others

**All of Tharapuram,
Mannar.**

**Other Intervenient Petitioners –
respondents – Respondents**

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

**Council : Sabry Nikamdeen for the Appellant.
: K.S. Ratnavale with S.M.M. Samsudeen for the
2nd Respondent.**

Argued on : 30.03.2016

Decided on : 07.10.2016

P.R. Walgama, J

The instant appeal assails the orders of the Learned High Court Judge dated 29.11.2010 and Learned Magistrate dated 26.04.2010.

As stated in the petition of Appeal following are the facts in brief;

The above impugned orders were in respect of application made and information filed by the OIC in the Police Station of Mannar in the Magistrate Court of Mannar, in terms of Section 66(1) of the Primary Court Procedure Act No. 44 of 1979, regarding a land dispute which will climate to a breach of the peace.

Consequently to the filing of the said report the Learned Magistrate issued notices on all parties, and after affixing the said notices the intervenient-Petitioners -Appellants, also filed the affidavits and contended thus;

That the subject land belongs to the Appellants by way of paternal inheritance of their late father and who inherited from their deceased father Assan Naina Yoosuf, by virtue of Deed No. 534 dated 21.12.1928 attested by Mohideen Pitche Marikkar, Notary Public.

It is the stance of the 2nd party Respondent that he purchased the land in dispute from one Azeena, widow of Abdul Cassim Marikkar by virtue of Deed No. 7291 dated 02.05.2009 attested by M.B. Farook Notary Public.

After the inquiry the Learned Magistrate has by his order dated 26.04.2010 had placed the 2nd Respondent in possession.

Being aggrieved by the said order the Intervenient-Respondents- Appellants made a revision application to the High Court of Manner to have the said order vacated or revised.

The Learned High Court Judge by his order dated 29. 11.2010 had dismissed the said Revision application of the Petitioner-Appellants.

Being dissatisfied with the said order of the Learned High Court Judge the Petitioner- Appellants had lodged the instant appeal in this Court and impugned the said order inter alia on the permis as stated below;

That the Learned High Court Judge has failed to consider the preliminary objection raised by the Appellant as to the legality of the affidavit tendered by the 2nd party Respondent as the same is not in conformity with the Section 168 of the Civil Procedure Code, and as such moved the said affidavit to be rejected in limine.

It is further alleged by the Appellants that the day on which was fixed for order as to the restoration of the stay order the Learned High Judge has dismissed the revision application of the Petitioner-Appellants.

It is seen from the information filed by the officer in charge of the Manner police station in terms of Section 66(1) of the Primary Court Procedure Act, the relevant parties position has been that they have title to the disputed land. Therefore it is contended by the Petitioner-Appellants that the Learned Magistrate should have resolve the dispute under Section 69 (1) of the said Act as to the parties title to the land and not on the basis who was in possession of the land two months prior to the filing of the information report in court.

It is salient to note that the Learned Magistrate has at the request of the parties inspected the disputed land. At the said inspection the Learned Magistrate has observed the fact that the 2nd party Respondent has cleared a larger extent of land and the boundary stones had been fixed along the boundary of the disputed land without any objection either from the 1st Party-Respondent and the Petitioner-Appellants. Hence the Learned Magistrate has formed the opinion that 2nd Respondent had exercised his title to the land and cleared a large portion of the

land after purchasing the same as stated above. And was of the view that the 2nd Party Respondent has acted in such manner to asserts his title and the Learned Magistrate was of the view that in order to preserve peace that the status quo should be in tact and made order that the parties could vindicate their title by instituting an action in the District Court accordingly.

In the Revision application filed by the Petitioner-Appellants in the Provincial High Court holden in Manner, the Learned High Court Judge had made the following observation in the said order, viz a viz.

That as per judgment of Sharavananda J. In KANAGASABAI .VS. MAILVAGANAM- 78 NLR- 280. It is trite that the purpose of the order made in terms of Section 62 of the Administration of Justice Law relating to the land dispute is to avoid the breach of the peace, and as the order made under the above section is a tentative, and that the parties could resolve the matter finally in the District Court accordingly.

The Learned High Court in adverting to the case of RAMALINGAM .VS. THANGARAJAH 1982 2 SLR-693 has stated what emerged from the said case thus;

“ the scheme embodied in this part is geared to achieve the object of the prevention of a breach of the peace.”

Therefore it is abundantly clear that the Learned Magistrate has made the said impugned order in the correct perspective in order to prevent the breach of the peace, and had not decided the rights and the title of the parties to the action,

AND

Further the Learned High Court Judge has also commented that the Petitioners had instituted action in the District Court to vindicate their title, and had filed the instant revision application in the Provincial High Court in order to delay the process of justice.

In the above setting the Learned High Court Judge has affirmed the order of the Learned Magistrate and dismissed the application in revision.

Being aggrieved by the said order of the Learned High Court Judge the Petitioner-Appellants had filed the instant appeal to this Court to have the said order set aside or vacate.

In pursuant to the arguments made by the Counsel of both parties the Court allowed them to file written submissions.

The Counsel for the Respondent raised two preliminary objections as to the maintainability of the appeal on the grounds as stated below;

That the failure on the part of the Appellants to join the necessary parties to the action,

As the parties had instituted action in the District Court to proceed with the instant appeal will be purely academic.

It is intensely relevant to note that most of the parties intervened in the case filed in the Magistrate Court under the Primary Court Act have not been made parties to this appeal, and therefore it said that the said failure is fatal and the appeal should fail. To buttress the said proposition the counsel for the Respondent has adverted court to many legal pronouncements in the cases L.R. GUNASEKARA .VS. R.A.S. PERERA- 74. NLR.. 163, which has observed thus;

“Failure of the Appellant, in an appeal filed by him to join as a Respondent a party who will be adversely affected if the appeal were to succeed renders the appeal to be rejected if objection is taken by a party respondent”.

Therefore it is abundantly clear that the appeal cannot proceed without necessary parties are not being brought before court.

The above principle has been observed in the case of NADARAJAH .VS. IBRAHIM- BSLA Law Journal Report (1990).

Thus moves to recognised the effect of the failure to join necessary parties in the appeal.

It is also brought to the notice of Court that the land claimed by the 2nd Respondent, by virtue of deed marked 2R1 is a land containing in extent 20 acres and the land claimed by the Appellants is a land with 30 acres.

Therefore it is appropriate to resolve the dispute in the District Court, which is the competent court for the ultimate determination of the rights of the parties.

For the reasons expiated above the grounds of appeal raised by the Petitioner- Appellants are devoid of merits , and should stand rejected.

Accordingly we have dismissed the appeal, without costs.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J

I agree.

JUDGE OF THE COURT OF APPEAL