

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

*In the matter of an Appeal in terms of
Article 138 of the Constitution of
Democratic Socialist Republic of Sri
Lanka read with Section 9 and 10 of
the High Court of the Provinces
(Special Provisions) Act No. 19 of
1990.*

Officer in Charge

Police Station,

Kolonna.

Court of Appeal

Complainant

Case No. CA (PHC) 149/04

-Vs-

1. Hettiarachchige Dharmadasa

alias Pemadasa

2. Hettiarachchige Shantha

3. Ranasinghege Gnanawathi

Provincial High Court

Ratnapura Case No. Rev.132/2001

Party of the 1st Part

Magistrate Court of Embilipitiya

Case No. 56280

1. Konkaduwa Gamage Sumanasiri

Party of the 2nd Part

And

Konkaduwa Gamage Sumanasiri

No. 83, Galpoththa, Henyaya,

Yakunkanda, Ulliduwawa.

Party of the 2nd Part Petitioner

-Vs-

1. Hettiarachchige Dharmadasa

alias Pemadasa

Heyaswatta, Ulliduwawa.

2. Hettiarachchige Shantha

Heyaswatta, Ulliduwawa.

3. Ranasinghege Gnanawathi

Nasthanagahawatte, Ulliduwawa.

Party of the 1st Part Respondents

4. Officer in Charge

Police Station,

Kolonna.

Complainant – Respondent

And Now

Konkaduwa Gamage Sumanasiri

No. 83, Galpoththa, Henyaya,

Yakunkanda, Ulliduwawa.

Party of the 2nd Part Petitioner –

Appellant

-Vs-

1. Hettiarachchige Dharmadasa

alias Pemadasa

Heyaswatta, Ulliduwawa.

2. Hettiarachchige Shantha

Heyaswatta, Ulliduwawa.

3. Ranasinghege Gnanawathi
Nasthanagahawatte, Ulliduwawa.

**Party of the 1st Part Respondent –
Respondents**

4. Officer in Charge
Police Station,
Kolonna.

Complainant – Respondent

**Before : P.R. WALGAMA, J
: L.T.B. DEHIDENIYA, J**

**Council : Dr. Mahinda Ralapanawa with A.R.L. Jayantha for
the Respondent.
: Sudarshani Cooray for the Appellant.**

Argued on : 31.05.2016

Decided on : 21.10.2016

CASE- NO- CA (PHC)- 149/2004 - JUDGMENT - 21.10.2016

P.R. WALGAMA, J

The instant appeal lies against the orders of the Learned High Court Judge dated 03.06.2004 and the Learned Magistrate's order dated 21.11.2001.

The Officer in Charge of Elpitiya police has filed an information report in the Magistrate Court of Elpitiya, in terms of Section 66 (1) of the Primary Court Procedure Act, stating the fact of a dispute arising out of possession of a tea estate.

The 1st party – Respondent has lodged a complaint in the Elpitiya Police that he along with his uncle namely Hettyaratchi Kirigoris Appuhamy had plucked tea in the disputed land and after the death of his uncle one Gnanawathi has entered the land as she has taken a portion of the land on lease. Therefore the said dispute was settled between lessee and the 1st Party – Respondent.

The 2nd Party – Respondent made a complaint to the Elpitiya Police and alleged that the said Kirigoris Appuhamy is his father and he had been plucking tea for the last 34 years and after his father's death the 1st Party – Respondent has come to the possession of the subject land.

After the inquiry the Learned Magistrate has taken cognizance of the facts submitted by the 1st Party – Respondent, viz that the Kirigoris is his uncle and it was he who looked after him and he was not married and no had children.

But it is the stance of the 2nd Party – Respondent that he is the son of said Kirigoris and he had been cultivating the disputed land with his father.

The Learned Magistrate has considered the documents marked and was of the view that the documents concerned cannot be accepted in a court of law.

The Learned Magistrate has also considered the fact the 1st Party - Respondent has made a complaint much prior to the statement made by the 2nd Party - Respondent. Further it was observed by the Learned Magistrate that at the time of the death of the said Kirigoris it was the 1st Party - Respondent was in possession and more fully the 1st Party - Respondent has been in possession for 2 months prior to the filing of the information by the police in terms of Section 66 (1) of the Primary Court Procedure Act No. 44 of 1979.

The Learned Magistrate by his order dated 21.11.2001 has made the order placing the 1st Party - Respondent in possession of the disputed land.

Being aggrieved by the said order of the Learned Magistrate the 2nd Party - Respondent had made an application in Revision to have the said order set aside or vacated.

The Learned High Court Judge after analyzing the impugned order of the Learned Magistrate was of the view that the said order was made on the basis that the 1st Party - Respondent was in possession of the disputed land two months prior to the filing of the information report in court and held that the said order of the Learned Magistrate is unattended in error, and

had dismissed the application of the Petitioner accordingly.

Being aggrieved by the said order of the Learned High Court Judge, the 2nd Party – Respondent – Appellant appealed to this Court to have the said order set aside.

When reviewed the said impugned orders of the Learned High Court Judge and the Learned Magistrate in the above backdrop this court see no reason to interfere with the same.

Hence we affirm the above impugned orders and dismiss the appeal.

Accordingly appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J

I agree.

JUDGE OF THE COURT OF APPEAL