

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

Ranjith Hewawitharana,
No.253, Weralla Watta, Yakkala.

2nd Respondent Respondent Appellant

**Court of Appeal case no.
CA/PHC/09/2005**

Ronald Ashoka Hewawitharana,
No.253, Weralla Watta, Yakkala.

Added Respondent Respondent Appellant

**H.C. Negombo case no.
220/2004**

Vs.

**M.C. Wattala case no.
90478**

Warnakula Patabendige Rukshan Anthony Perera,
P.O.Box No.2, Dikovita, Hendala, Wattala.

1st Respondent Petitioner Respondent.

Officer in Charge,
Police Station, Wattala.

Informant Respondent Respondent

Before : P.R.Walgama J.

: L.T.B. Dehideniya J.

Counsel : Parties were absent and unrepresented.

Decided on : 22.11.2016

L.T.B. Dehideniya J.

This is an appeal from the High Court of Negombo.

The notices were issued to parties on several times but they did not take interest in participating at the hearing. The notices never returned undelivered. The Court presumed that the notices were served and fixed the case for judgment.

The police filed information in the Magistrate Court of Wattala under section 66(1) of the Primary Court Procedure Act informing that a land dispute threatening breach of the peace has arisen. After filing the affidavits, documents and the written submissions of the parties, the learned Magistrate pronounced her determination.

In her order the learned Magistrate has determined that the 1st party Respondent Petitioner Respondent (the Respondent) was in possession in the disputed land which was described in the in the affidavit of the Respondent and decided that the Respondent is entitle to possession until it is varied by virtue of an order or a decree of a competent Court and prohibited all disturbance or interference.

The learned Magistrate further ordered that the status quo shall be maintained until it is varied by a competent court and the Respondent and two other Directors of the Pegsaus Reef Hotel Ltd. were ordered to enter to a bond of Rs. 1,000,000.00 each to maintain the status quo. The Respondent being aggrieved by the said two additional conditions moved in revision in the High Court Negombo. The learned High Court Judge acting in revision set aside the said two conditions. The 2nd party and added 3rd party Respondents Respondents Appellants (the Appellants) appealed to this Court from the said order of the learned High Court Judge.

The determination that the Respondent is entitled to possession was not challenged in the High Court. That part was accepted by the Respondent. The Appellants did not move in revision against the order. Therefore we need not consider the part that was accepted by the parties.

The part that was disputed is the two conditions imposed by the learned Magistrate. This dispute being a dispute on possession the judge of the Primary Court (the Magistrate in this instant) has correctly decided that one party was in possession at the time of filing the information and no dispossession has been proved, ordered that party to be entitle to possession. Once the order on possession was made, any violation will be punished as a contempt of court. The

judge is empowered to make that determination under part VII of the Primary Court Procedure Act but not empowered to order any party to maintain the status quo indefinitely.

Under section 70 of the Act the Magistrate can order security on possession. The section reads;

70. An order made under this Part may also contain such other directions as the Judge of the Primary Court may think fit with regard to the furnishing of security for the exercise of the right of possession of the land or part of it or for the exercise of any right in such land or with regard to the sale of any crop or produce or the manner of exercise of any right in such land or the custody or disposal of the proceeds of the sale of any crop or produce.

This section does not give any authority to the Magistrate to order the status quo to be maintained. In this case the two Directors of the Hotel, who were not parties to the action, were also ordered to enter in to a bond. The title of the land may be with a third party or there may be a dispute with a third party, but without making him/they party/parties, and giving he/them a hearing, Court cannot make an order against him/them. Any such order is a violation of natural justice. The learned High Court Judge has correctly removed the violation of the natural justice.

We see no reason to interfere with the order of the learned High Court Judge.

The appeal is dismissed.

Judge of the Court of Appeal

P.R.Walgama J.

I agree.

Judge of the Court of Appeal