

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

In the matter of an appeal in terms of Article 154
(3)(b) of the Constitution of the Democratic Socialist
Republic of Sri Lanka read with section 11 of the
High Court of Provinces (Special Provisions) Act
No.19 of 1990

**Court of Appeal case no.
CA/PHC/109/2011**

**H.C. Balapitiya case no.
684/06**

**M.C. Elpitiya case no.
29491**

1. Maththaka Gamage Thilakarathne
Wijedasa
Bogahawita, Mattaka.
2. Piyasena Dissanayake
Polkoratuwa, Maduragoda Road, Mattaka
3. Maththka Gamage Albert
Maduragoda Road, Mattaka
4. G.P.Bebynona
Maduragoda Road, Mattaka
5. Perithanthri Wimalawathie
Maduragoda Road, Mattaka
6. Maththaka Gamage Mery Nona
Maduragoda Road, Mattaka
7. M.G.T.Chandra Priyanganie
Babarawana Road, Mattaka
8. Maththaka Gamage Hamina
Maduragoda Road, Mattaka
9. Maththaka Gamage Patty Abeyweera
Galle Gedara, Mattaka

Respondent Petitioner Appellant

Vs.

1. Maththaka Gamage Chandrawathie
Babarawana Road, Mattaka
2. Maththaka Gamage Kamalawathie
Gerakaduwa, Babarawana Road, Mattaka
3. L.G.Bantis
Mahagedara Watta, Mattaka

Respondent Respondent Respondents.

Before : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

Counsel : Darshana Kuruppu for the 1st, 7th and 8th Respondent
Petitioner Appellants.

: K. Asoka Frenando with L.U. Mallikaachchi instructed by
A.R.R. Srirwardhana for the 1st Respondent Respondent
Respondents.

Written submissions filed on: 21.10.2016

Decided on : 06.12.2016

L.T.B. Dehideniya J.

The Officer in Charge of police station Pitigala filed information in the Magistrate Court of Elpitiya under section 66 of the Primary Court Procedure Act on a land dispute where threatening breach of the peace has arisen. After filing the affidavits, documents and written submissions by the parties, the learned Magistrate determined that the 1st Respondent

Respondent (the 1st Respondent) was in possession and was dispossessed within two months prior to filing the information and ordered to place the 1st respondent in possession. Being aggrieved by the said order, the 1st, 7th and 8th Appellants moved in revision in the High Court of Balapitiya which was dismissed by the learned High Court Judge. The Appellants appealed against the said order of the learned High Court Judge to this Court. These facts are undisputed. (Since the appeal been withdrawn, the record has been remitted to the High Court. These facts were gathered from the petition filed by the 1st Respondent and the written submissions of the parties)

The appeal came up for argument on several days but on the application of the Appellants the argument had to postponed again and again and on 10.11.2014 the Counsel for the Appellants submitted to Court that the permanent house constructed in the disputed land cannot be demolished as per the authority of *Jamis v. Kannangara* [1989] 2 Sri L R 350. He further submitted that the (7th) Appellant is only claiming the house and not the balance land and moved for a date to convince his client to institute a civil action. This is a unilateral submission. On his application the argument was postponed to another date. On the next date, i.e. on 23.03.2013 the Appellant withdrew the appeal without cost. On that day also the Counsel for the Appellant made a submission and stated that *“the status quo of the dispute land can be maintained until a partition action file in the District Court by anyone who is interested to the dispute land.”* The learned Counsel *“in the circumstances, moved to withdraw the appeal”* and the Court has allowed the application to withdraw. The appeal has been dismissed without costs.

After the appeal had been dismissed, the order of dismissal was transmitted to the relevant High Court with the case record. The 1st Respondent being successful in the Magistrate Court, High Court, and the

appeal in this Court being withdrawn, made an application to the Magistrate Court to execute the order. The Appellants filed several motions in this Court stating that the 1st Respondent is violating the undertaking given to this Court that the status quo will be maintained until a partition action is filed. The 1st Respondent's contention is that there was no such undertaking given by the 1st Respondent and there was no necessity to give such an undertaking because the 1st Respondent was successful in Magistrate Court as well as in High Court. The Court directed both parties file written submissions regarding this issue.

The Appellant submitted that my predecessors, His Lordship Chitrasiri J. and Her Ladyship Malanie Gunarathne J. explained to the 1st Respondent that a permanent construction cannot be demolished under the Primary Court Procedure Act. The record does not bear that. Unless it can be established by reference to the case record, I cannot rely on a statement which is said to be made by the Judges. Especially, when the accuracy of the statement purported to be made by the judges is questionable as the authority of *Jemis v. Kannangara* (supra) was not followed in the subsequent judgments of *Tuder v. Anulawathie and others* [1999] 3 Sri L R 235 and *Gandhi v. Mubarak* [2003] 3 Sri L R 31.

The issue at the moment is whether the submission made by the learned Counsel for the Appellants on 23.03.2015 is binding on the Respondent. The learned Counsel for the Appellant made certain submissions on the previous day, on 10.11.2014, and made an application for a postponement. It was only an application for a postponement. He has given reasons for the application. Therefore, the submission made on 10.11.2014 has no binding effect on other parties. The submission made on 23.03.2015 is also a unilateral submission. The learned Counsel for the Appellant indicated to Court that the "*status quo can be maintained*". No

other party has agreed to this suggestion. Therefore, the 1st Respondent cannot be held is bound to maintain status quo.

The learned Counsel submits that the words “*in the circumstances*” used in giving reasons for withdrawal indicate the agreement of the parties. I do not agree with this submission. These words can be used for several reasons. The 1st Respondent being the successful party in the Magistrate Court as well as High Court, there is no reason for him to give up his victory and allow the Appellant to be in possession of the disputed land indefinitely. Therefore, unless there is a definite agreement to maintain the status quo by the 1st Respondent, Court cannot presume that the 1st Respondent has agreed to maintain the status quo. There is no definite agreement or undertaking given by the 1st Respondent to maintain status quo.

As the 1st Respondent has not given any undertaking to maintain the status quo, I hold that the 1st Respondent cannot be held liable for violating any undertaking by making an application to execute the writ of possession in the Magistrate Court.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal