

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

	Pahala Gamage Dharmasena
	Near Susila Hardware,
Court of Appeal case no.	Halwitigala, Malgalla, Thalangalla.
CA/PHC/144/2008	Complainant Petitioner Appellant
H.C. Galle case no.	
HC/Rev/636/08	Vs.
M.C. Udugama case no.	Pahala Gamage Ariyapala,
31404	“Banagala Kade”
	Halwitigala, Malgalla, Thalangalla.
	Respondent Respondent Respondent.

Before : P.R. Walgama J.

: L.T.B. Dehideniya J.

Counsel : Parties were absent and unrepresented.

Decided on : 10.01.2016

L.T.B. Dehideniya J.

This is an appeal from the High Court of Galle.

The parties were absent and unrepresented at the argument of the appeal. They were noticed several times but not responded. The Court received a letter purported to be sent by the Respondent stating that he is unable to attend Court due to his ill health and financial restraints that he is facing and moved Court to proceed to deliver judgment. The Appellant did not respond at all.

The Complainant Petitioner Appellant (the Appellant) filed first information in the Magistrate Court of Udugama under section 66(1) (b) of the Primary Court Procedure Act as a private plaint on a land dispute threatening breach of the peace. After filing the affidavits, documents and written submissions the learned Magistrate held that the Respondent Respondent (the Respondent) was in possession of the land in dispute on the date of filing the first information and ordered that the Respondent is entitled to possess. Being aggrieved by the said determination the Appellant moved in revision in the High Court of Galle where the order of the learned Magistrate was affirmed. This appeal is from the said order.

The first information was filed in the Magistrate Court on 24th May 2007 stating that the possession of the land was with the Appellant and the Respondent was disturbing possession. The Appellant prayed for an order to prevent the Respondent from disturbing the possession of the Appellant. The Appellant came to Court on the premise that he was in possession of the land on the date of filing the first information.

He has made a complaint to the police on 10.02.2007 stating that his labourer V.M. Sirpala was chased out by the Respondent and when he went to see the situation he was also threatened to assault with a knife. Thereafter he says that "I went home". This is a clear dispossession of the Appellant by the Respondent on 10.02.2007. The Appellant has not taken any action against it but has just gone home. There is no any evidence to show that the Appellant possessed the land thereafter. The Appellant made another complaint on 05.05.2007 stating that the Respondent had pruned about 3000 tea bushes. Pruning tea bushes is an essential step in tea cultivation.

The Appellant's own statements to the police establish that the land in dispute was in possession of the Respondent at least from 10.02.2007 and continued even on 05.05.2007. The first information filed on 24.05.2007. The Appellant had failed to establish that he was in possession on the date of filing of the first information.\

I see no reason to interfere with the finding of the learned High Court Judge.

The appeal dismissed without costs.

Judge of the Court of Appeal

P.R.Walgama J.

I agree.

Judge of the Court of Appeal