

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

In the matter of an appeal in terms of Article 138
read together with Article 154P of the Constitution
of the Democratic Socialist Republic of Sri Lanka

Court of Appeal case no. CA/PHC/168/97

H.C. Chilaw case no. H.C.A/50/97

M.C. Puttalam case no. 9729/96/P

1. Hameedu Abdul Muhuthar,
Principal, Muslim Vidyalaya,
Kadayamotte, Madurankuliya.
2. Seinul Abdeen Abdul Hassan,
Marikkar Chanal, Madurankuliya.
3. Sahul Hameed Mohamed Rafick,
Kadiyamottal, Madurankuliya.

Party of the First Part

Vs.

1. Mohomad Haniffa Subayar,
Marikkr Chanal, Madurankuliya.
2. Mohamed Haniffa Abdul Wahid,
Kadaiamottai, Madurankuliya.

Party of the Second Part

AND NOW

1. Mohomad Haniffa Subayar,
Marikkr Chanal, Madurankuliya.

2. Mohamed Haniffa Abdul Wahid,
Kadaiamottai, Madurankuliya.

**Party of the Second Part Petitioner
Appellants**

Vs

1. Hameedu Abdul Muhuthar,
Principal, Muslim Vidyalaya,
Kadayamotte, Madurankuliya.

2. Seinul Abdeen Abdul Hassan,
Marikkar Chanal, Madurankuliya.

3. Sahul Hameed Mohamed Rafick,
Kadiyamottal, Madurankuliya.

**Party of the First Part Respondent
Respondents**

Before : H.C.J.Madawala J.
: L.T.B. Dehideniya J.

Counsel : N.R.M.Daluwatta PC for the Party of the Second Part
Petitioner Appellants
: H.G.Hussain for the Party of the First Part Respondent
Respondents

Argued on : 03.11.2016

Decided on : 20.02.2017

L.T.B. Dehideniya J.

This is an appeal from the High Court of Chilaw.

The First Respondent of the First Party Respondent Respondents (the Respondents) is the Principal of the Muslim Vidyalaya of Kadayamotte, Madurankuliya and the 2nd and 3rd Respondents of the First Party Respondent Respondents are members of the school development society. The Respondents made a complaint to the police stating that the Second Party Respondent Petitioners Appellants (the Appellants) have started to construct a barbed wire fence across the school play ground and the school development society intervened and prevented the construction of the fence. The Appellants made a statement to the police in response to the said complaint that they owned the land in dispute and they started the construction of the fence on the strength of their ownership. The police filed information in the Magistrate Court of Puttalam under section 66 of the Primary Court Procedure Act. The learned Magistrate after considering the affidavits and documents determined that the Respondents were in possession within the two months prior to filing the information in Court. Being dissatisfied, the Appellants moved in revision in the High Court of Chilaw. The learned High Court Judge affirmed the order of the learned Magistrate. This appeal is from the said order of the High Court.

The Respondents stated that the land in dispute was donated to the school by a former Minister Mr. Naina Marikkar and since then the land was used by the students of the school as a play ground. The State has spent money on several occasions to develop the school play ground and all the time the play ground was in the possession of the school and the students used it as a play ground. During the civil war prevailed in the country, some of the displaced persons from Jaffna have temporarily

occupied a portion of the school play ground. The Appellants on or about 15.06.1995 tried to take over a part of the play ground forcibly. They produced the letters issued by the authorities in relation moneys spend to the development of the play ground in support. The Appellants contention is that the son of Mr. Naina Marikkar has transferred the land in dispute to the second party of the Appellant and another by a deed and the said land is depicted in the plan No. 75 marked 2 Pa 2. Their stand is that they possessed the land in dispute on the strength of the deed and they wanted to fence out the land.

In a case of a land dispute threatening a breach of the peace in the Primary Court under Primary Court Procedure Act section 66, the ownership of the land is not material but the possession of the land within two months prior to the filing of the information is the most relevant fact.

Ramalingam v. Thangarajah [1982] 2 Sri L R 693

That a Judge should in an inquiry under Section 66 confine himself to the question of actual possession on the date of filing information except in a case where a person who had been in possession of land had been dispossessed within a period of two months immediately preceding filing of information.

The Respondents clearly established that the land was in the possession of the school. Time to time the play ground has been developed by the authorities concern. It further strengthens the fact that the play ground was in the possession of the school.

The Appellants are relying on a plan made by them to show the possession. The southern boundary of the lot 2 depicted in the plan 2Pa 2 is the school play ground. All boundaries in the said plan are marked as undefined. The boundary separating the play ground and the lot 2 in the

plan is marked by the surveyor by positioning stakes on the ground. This fact establishes that there was no boundary there to separate the play ground and the Appellants were trying to construct/create a new boundary.

Under these circumstances I hold that the learned Magistrate and the learned High Court Judge have come to the correct finding that the Respondents were in possession of the land in dispute.

At this stage I like to point out another defect in the petition of appeal. In the prayer to the petition of appeal dated 25th November 1997 the main relief prayed for is to “set aside the order of the learned High Court Judge dated 13.11.1997.” There is no prayer to set aside the order of the learned Magistrate or to grant relief as prayed for in the petition filed in the High Court. Even if this Court set aside the order of the learned High Court Judge, the order of the learned Magistrate will remain in force. This Court cannot grant any relief which is not prayed for. Therefore granting relief prayed for in this petition of appeal will not serve any purpose.

Under these circumstances I see no reason to interfere with the findings of the learned High Court Judge.

Accordingly I dismiss the appeal subject to cost fified at Rs. 10,000/=

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal