

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

Court of Appeal case no. CA/PHC/30/2009

H.C. Kegalla case no. RA 2561

M.C. Mawanella case no. 99081

Senarath Mudalige Pabilis Singho

8th Mile Post, Ussapitiya

Petitioner

Vs.

K.D.Wijethunga

8th Mile Post, Ussapitiya

Respondent.

AND

K.D.Wijethunga

8th Mile Post, Ussapitiya

Respondent Petitioner

Vs

Senarath Mudalige Pabilis Singho

8th Mile Post, Ussapitiya

Petitioner Respondent

AND NOW

K.D.Wijethunga

8th Mile Post, Ussapitiya

Respondent Petitioner Appellant

Vs

Senarath Mudalige Pabilis Singho

8th Mile Post, Ussapitiya

Petitioner Respondent Respondent

Before : H.C.J. Madawala J.

: L.T.B. Dehideniya J.

Counsel : Kumari Dunusinghe for the Respondent Petitioner
Appellant.

: W.D.Weeraratne for the Petitioner Respondent Respondent.

Argued on : 06.09.2016

Written submissions filed on : 04.11.2016

Decided on : 29.03.201

L.T.B. Dehideniya J.

This is an appeal from the High Court of Kegalla.

The Petitioner Respondent Respondent (hereinafter sometimes called and referred to as the Respondent) filed information under section 66(1)(b) of the Primary Court Procedure Act, as a private plaint in the Magistrate Court of Mawanella, informing Court that a land dispute has arisen and the breach of the peace is threatened or likely. The Respondent stated to Court that he was in possession of the land described in the schedule to the plaint from 1992 on the strength of the ownership obtained by the deed marked as Pe 1. The Respondent Petitioner Appellant (hereinafter sometimes called and referred to as the Appellant) has filed an action in the District Court to partition the land described in the schedule to the plaint, was dismissed. On the date that the judgment was pronounced in the said partition action, the Appellant disturbed the possession of the Respondent by plucking coconut and destroying the vegetation cultivated

by the Respondent. The Respondent and his daughter have made two complaints to the police. The Respondent instituted this action seeking an order preventing the Appellant from disturbing his possession.

The Appellant admitted the partition action and denied the rest. He claimed the ownership to the land on a different pedigree and described the land in dispute differently. His contention is that though the partition action was dismissed, the land was identified by the learned District Judge as the land described by the Appellant. He further stated that he has not disturbed the Respondent possessing any land owned by the Respondent and moved to dismiss the application.

The learned Primary Court Judge, after completing the pleading and the written submissions, delivered the determination holding that the breach of the peace is threatened due to this land dispute and determined that the possession of the Respondent shall not be disturbed by the Appellant until the rights of the parties are determined by a competent civil court.

Being aggrieved, the Appellant moved in revision in the High Court of Kegalla without success. This appeal is from the said order of the High Court.

In an action filed under section 66(1)(b) of the Primary Court Procedure Act, the Primary Court Judge has to be satisfied that the breach of the peace is threatened or likely. In the present case the learned Magistrate has considered the two complaints made by the Respondent and the daughter regarding the incident. The Appellant contest the truthfulness of the contents of the statements on the basis that the Respondent has failed to tender any inquiry notes or details of charges filed against the Appellant by the police on this statements. I believe that the Court has to be mindful of the fact that the Respondent was not charged for making a false

statement to the police too. The application before the High Court being a revision application and not being an appeal, the learned High Court Judge need not consider the correctness of the conclusions of the Magistrate based on facts. Revision is not to correct the errors committed by the lower courts.

The learned Magistrate has identified the land described in the schedule to the information as the disputed land. The learned District Judge in the partition action has decided that the land which was to be partitioned was the land described by the Appellant and not the land described by the Respondent. In the present case the Respondent is claiming that he is in possession of the land described by him and not the land described by the Appellant. The Respondent's contention is that the Appellant disturbed his possession of the land described by him. The Appellant admits that he has no claim whatsoever to the Respondent's land. In these circumstances it is clear that the Appellant did not possess the land of the Respondent. The learned Primary Court Judge has correctly decided that the land in dispute is in the possession of the Respondent.

I do not see any reason to interfere with the findings of the learned Magistrate or the learned High Court Judge.

Accordingly I dismiss the appeal subject to costs fixed at Rs. 10,000/-

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal