

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

**Court of Appeal case no. CA/PHC/184/2005**

**H.C. Negombo case no. H.C.R.A. 118/2005**

**M.C. Wattala case no. 5420/66**

Ananda Paranawithana

No.156/41, Wajira Road, Nahena, Hunupitiya,  
Wattala.

**First Party Petitioner**

**Vs.**

Upali Jayasinghe,

No. 716, Baseline Road, Dematagoda,  
Colombo 09.

**Second Party Respondent.**

**AND**

Ananda Paranawithana

**First Party Petitioner**

**Vs.**

Upali Jayasinghe

**Second Party Respondent**

**AND NOW**

Upali Jayasinghe

**Second Party Respondent Respondent  
Appellant**

**Vs.**

Ananda Paranawithana

**First Party Petitioner Petitioner  
Respondent**

**Before** : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

**Counsel** : M.P.Maddumabandara for the Second Party Respondent  
Respondent Appellant.

: Chanaka Kulathunga for the First Party Petitioner Petitioner  
Respondent.

**Argued on** : 31.01.2017

**Written submissions filed on** : 2<sup>nd</sup> and 17<sup>th</sup> March 2017

**Decided on** : 16.05.2017

**L.T.B. Dehideniya J.**

This is an appeal from the High Court of Negombo.

The first party Petitioner Petitioner Respondent (hereinafter sometimes called and referred to as the Respondent) instituted action in the Primary Court of Wathala under section 66(1)(b) of the Primary Court Procedure Act on a land dispute threatening breach of the peace. After completing the pleadings, the learned Magistrate first inquired in to the matter of the threat or the likelihood of the breach of the peace and decided

that there is no threat or likelihood of the breach of the peace and dismissed the application. Being aggrieved, the Respondent filed a revision application in the High Court of Negombo where the learned High Court Judge held that the breach of the peace is likely and directed the learned Magistrate to accept the application and to proceed. This appeal is there from.

A threat or the likelihood to occur a breach of the peace due to the land dispute is a pre condition for the Primary Court to assume jurisdiction under Part VII of the Primary Court Procedure Act. Section 66 (1) (a) of the Act empowers a police officer to file information under the Act. In such a situation the police officer has to decide whether the breach of the peace is likely or threatened. Under subsection (b) of section 66(1), a private party can file information and it is the Court that has to decide whether the breach of the peace is threatened or likely due to the dispute.

*David Appuhamy V. Yassassi Thero [1987] 1 Sri L R 253*

*But, under section 66 of the Primary Courts' Procedure Act, the formation of the opinion as to whether a breach of the peace is threatened or likely is left to the police officer inquiring into the dispute and he is, in such circumstances, required to file an information regarding the dispute with the least possible delay. Where the information is thus filed in a Primary Court, subsection (2) of that section vests that court with jurisdiction to inquire into - and make a determination - or order on the dispute regarding which the information is filed. Hence, in the instant case, when the O. I. C. Morawaka Police filed the information under section 66: of the said Act, the court was thereby vested with the necessary jurisdiction. ,*

*Velupillai and others v. Sivanathan [1993] 1 Sri L R 123*

*Under section 66 (1)(a) of the Primary Courts Procedure Act, the formation of the opinion as to whether a breach of the peace is threatened or likely is left to the police officer inquiring into the dispute. The police officer is empowered to file the information if there is a dispute affecting land and a breach of the peace is threatened or likely. The Magistrate is not put on inquiry as to whether a breach of the peace is threatened or likely. In terms of section 66 (2) the Court is vested with jurisdiction to inquire into and make a determination on the dispute regarding which information is filed either under section 66 (1)(a) or 66 (1)(b).*

*However when an information is filed under section 66 (1)(b) the only material that the Magistrate would have before him is the affidavit information of an interested person and in such a situation without the benefit of further assistance from a police report, the Magistrate should proceed cautiously and ascertain for himself whether there is a dispute affecting land and whether a breach of the peace is threatened or likely.*

In the instant case, the parties have filed their respective pleadings by way of affidavits and counter affidavits and the documents relied on are also filed. The learned Magistrate inquired in to the matter of the threat to the breach of the peace after the affidavits have been filed. The acceptance of the application and ordering to issue notice does not preclude the learned Magistrate from inquiring in to the matter of the threat to the breach of the peace. The learned Magistrate can consider all the relevant material before coming in to the conclusion on the issue.

Every land dispute is not a threat to the peace. If there is a land dispute, the remedy is to litigate in the proper forum to vindicate the rights. The Primary Court Procedure Act provides only a temporary remedy to

prevent the breach of the peace until such time that a competent Court decides on rights of the parties. In the present case also no doubt that there is a land dispute. But the two complaints made by the Respondent to the police with regard to the said dispute, which are marked as Pe 7 and Pe 8, does not show that there is any threat to the peace due to the land dispute. Pe 7 says that certain activity has taken place in the land in his absence and Pe 8 says that on his request the wrong doers have left the land. There is a land dispute between the parties but there is no threat or likelihood of a breach of the peace. Since there is no threat to the peace, the Magistrate Court do not assume jurisdiction under section 66 of the Primary Court Procedure Act.

The learned Magistrate has correctly identified that there is no threat to the peace due to the land dispute in question. The learned High Court Judge misdirected himself and has come to the conclusion that there is a threat or likelihood of the breach of the peace without any evidence.

I set aside the order of the learned High Court Judge and affirm the order of the learned Magistrate.

Appeal allowed with costs fixed at Rs. 10,000.00

Judge of the Court of Appeal

**H.C.J.Madawala J.**

I agree.

Judge of the Court of Appeal