

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

In the matter of an application for Revision in terms of Article 138 and 154 (P) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Provisions of the High Court of the Province (Special Provisions) Act No. 19 of 1990 .

CA(PHC)APN 16/2016
HC Kandy case No-HC RA 49/2010
MC Helboda Case No-24799

Officer in Charge,
Police Station,
Kothmale.

Complainant

Vs.

01. K. Soundarajan,
No.263, Sea Street,
Colombo 11.
02. W. Dayalan
03. S. Pushparasa (S. Pushparaja)
04. A.L. Gurusinghe
05. R. Wimaladasa
06. S. Wickramasinghe
07. M.Mussammil
08. Ramboda Tea Estate (Pvt) Ltd.
No. 164/04/01,
Sri Rathnajoathy Sarawanamuttu
Mawatha,
Colombo 13.

Respondents

And

K. Soundarajan,
No.263, Sea Street,
Colombo 11.

Vs.

02. W. Dayalan (Deceased)
Substituted by
V.Raja Rajeshwari
03. S. Pushparasa (S. Pushparaja)
04. A.L. Gurusinghe
05. R. Wimaladasa
06. S. Wickramasinghe
07. M.Mussammil
08. Ramboda Tea Estate (Pvt) Ltd.
 No. 164/04/01,
 Sri Rathnajothy Sarawanamuttu
 Mawatha,
 Colombo 13.

Respondents-Respondents

Officer in Charge,
 Police Station,
 Kothmale.

Complainant-Respondent

Hon. Attorney General
 Attorney General's Department
 Colombo 12.

9th Respondent

And Now between

Ramboda Tea Estate (Pvt) Ltd.
 No. 164/04/01,
 Sri Rathnajothy Sarawanamuttu
 Mawatha,
 Colombo 13.

8th Respondent-Respondent-Petitioner

Vs.

01. K.Soundarajan
No.263, Sea Street,
Colombo 11.
02. W. Dayalan (deceased)
Substituted By
V. Raja Rajeshwari
03. S. Pushparasa (S. Pushparaja)
No. 164/04/01,
Sri Rathnajothy Sarawanamuttu
Mawatha,
Colombo 13.
04. A.Lalith. Gurusinghe
No. 78 B,
Sri William Gopallawa Mawatha,
Kandy.
05. Basnayaka Rankothge
Wimaladasa
Thuruliya, Nuwaraeliya Road,
Ramboda.
06. Shamalie Wickramasinghe
Kuda Oya, Labukele.
07. M.Mussammil
Greenfield Division,
Ramboda Estate, Ramboda.

**Respondents-Respondents-
Respondents**

**Before : H.C.J. Madawala , J
&
L.T.B. Dehideniya, J**

**Counsel : M. U. M. Ali Sabri PC with Shamitha Fernando for the 8th
Respondent-Respondent-Petitioner
S.B.Dissanayake for the 7th Respondent-Respondent-
Respondent
Faiz Musthapha PC with S. Amarasekara for the 1st Respondent-
Petitioner-Respondent**

Argued On : 10 /01 /2017

Written Submissions on : 21 /02 /2017

Decided On : 16 /05 /2017

Order

H. C. J. Madawala , J

This Revision Application has been filed by the 8th Respondent-Respondent-Petitioner to dismiss the revision application of the 1st Respondent and to set aside /vacate the impugned order dated 3/2/2016 of the High Court of Kandy in case bearing No. HC Rev 49/2010 and to restore the order of the Learned Magistrate of Helboda in case bearing No. 24799 and for further relief as prayed for in the prayer of the petition dated 18/2/2016.

The position of the Petitioner was that the Complainant-Respondent filed an information before Magistrates Court of Helboda bearing No. 24799 called RB Division, 50 Acres Division and New Division of Ramboda Estate against the 1st Respondent-Petitioner-Respondent, 2nd Respondent-Respondent, 3rd Respondent-Respondent in terms of section 66 of the Primary Courts Procedure Act No. 44 of 1978. This estate consist of about 837 Acres. This Estate had been taken over by the Land Reform

Commission, but later had been transferred back to the children of the original owner. The 4th, 5th, 6th, 7th Respondents-Respondents-Respondents and 8th Respondent-Respondent-Petitioner intervened in to the said Primary Court case. After the demise of the original owner the property had been managed by one Padmanadan and he had entered in to an agreement with the Ramboda Tea Estate (Pvt) Ltd and later he had created a false Power of Attorney and has transferred the title of the land to Ramboda Tea Estate (Pvt) Ltd. But later the Petitioner has filed action in the District Court and has got the power of Attorney canceled and the alleged deed declared null and void.

The 1st Respondent who is a contesting party in this matter purportedly claimed possession to the subject matter in the said action in the Magistrate Court. The 1st Respondent contention is that he has been in possession of the entirety of the subject matter since September 2007.

It was contended that the 1st Respondent is a power of Attorney holder of one Periyampillei Govindasamy who claimed to be the owner of the subject matter. The 1st Respondent further contended that he being the said power of Attorney holder of said Govindasamy instituted an action bearing No 2487/L in the District Court of Gampola against the Petitioner and Kaliappapillai Padmanadan where in the 1st Respondent and his principal were purportedly placed in possession of the entirety of the subject matter.

The subject matter consisted of two plots of lands respectively A:27, R:2, P:39 and A:24 R:0 P:17.30 the total estate consisting of 52 Acres as depicted in the second schedule to the ex parte decree in the said case No 2487/L.

The 1st, 2nd and 3rd Respondents and the Petitioner having obtained an ex-parte decree in the said District Court case bearing No 2487/L had executed the writ and obtained possession of the subject matter. However the 1st Respondent had not served the ex-parte decree against the Petitioner prior to the execution of the ex-parte decree. The rest of the subject matter of this application was delivered to the Petitioner through the 2nd Respondent who was then the director of the Petitioner subject to the following rights for possession of the other Respondents. 4th Respondent 14 Acres, 5th Respondent 25 Acres, 6th Respondent 58 Acres and 9 perches, 7th Respondent 65 Acres. Being aggrieved by the said order of the Learned Magistrate of Helboda dated 3/2/2010 the 1st Respondent after more than 6 months from the said order made an application by way of revision to the High Court of Kandy. While the matter was pending in the High Court the 2nd Respondent departed this life and his widow Raja Rajeshwari was substituted in the room of deceased 2nd Respondent.

It was contended that the Learned High Court Judge failed to consider the delay of the Petitioner in making the revision application. Further the 1st Respondent has failed to disclose exceptional circumstances in his application for revision which could warrant the High Court to exercise in revisionary jurisdiction.

Being aggrieved by the said order of the High Court of Kandy the Petitioner moved that this court exercise the revisionary jurisdiction and pleaded to set aside the order of the High Court of Kandy dated 3/2/2016 of the grounds stated in paragraph 28 of the petition.

The 1st Respondent-Respondent-Respondent's position was that the Petitioner has no locus standi to institute and maintain this application. Further the Petitioner has suppressed from and/or misrepresented material facts which were within his knowledge. The Learned Magistrate by his order dated 3/2/2010 had granted possession to several Respondents , but the Petitioner was not granted possessory rights whatsoever therefore he is not an aggrieved party to seek the revisionary jurisdiction. Further that the Petitioner has failed to give notice of this application to the 1st Respondent in terms of rule 2(1) and 2(2) of the Court of Appeal (Appellate Procedure) Rules 1990 and as the averments contained in the Petition of the Petitioner are diametrically opposite to the prayer of the petitioner pertaining to possession and as such the Petitioner cannot maintain the said application.

It was the position of the 8th Respondent of Ramboda Tea Estate (Pvt) Ltd that the Learned Magistrate had not granted possession in the 66 application to the 8th Respondent-Respondent-Petitioner or Pushparasa Sathasivam (the 3rd Respondent) who is a Director of Ramboda Tea Estate. It was contended that the 8th Respondent-Respondent-Petitioner being aggrieved party has filed this revision application. However neither Ramboda Tea Estate nor is director Pushparasa Sathasivam sought to revise the order of the Magistrate. In the circumstances it was submitted that the Ramboda Tea Estate (Pvt) Ltd has no locus standi to revise the order of the Learned High Court Judge of Kandy.

The Ramboda Tea Estate (Pvt) Ltd in Helboda case No 2487/L and the Gampola DC case No. 3534/L sought orders from court that it is Ramboda Tea Estate (Pvt) Ltd that had possession. However both the Magistrate Court in section 66 case as well as the District Judge in DC Gampola in case No 3534/L did not come to the findings that the Ramboda Tea Estate (Pvt) Ltd was in possession. Neither Ramboda Tea Estate (Pvt) Ltd seek to revise the order in case no. 3534/L and in fact the said action had now been dismissed. In the section 66 case the Learned Magistrate erroneously handed over possession to Dayalan, but did not hand over possession to Ramboda Tea Estate (Pvt) Ltd who did not seek to revise the said order at any stage of the High Court revision application and now in this application

before the Court of Appeal. Ramboda Tea Estate (Pvt) Ltd is seeking to argue that possession to Dayalan (2nd Respondent) is in fact possession given to Ramboda Tea Estate (Pvt) Ltd.

It was submitted that the 8th Respondent-Respondent-Petitioner was managing the subject matter and it was the company that was in control and was in possession of the estate. The 2nd Respondent and the 3rd Respondent were only involved in the management under the 8th Respondent-Respondent-Petitioner Company.

It was submitted that the Learned Magistrate in his order held as follows,

“.....”

Therefore, the learned Magistrate should have given possession to the company that is the 8th Respondent and if he wanted to give it to the directors personally he should have given it to the 2nd Respondent as well as the 3rd Respondent-Respondent.

It was submitted that the final order directing the 1st Respondent not to interfere with the possession of the Respondent seems to have been made by an oversight. Even pursuing the body of the order, it became very clear that the intention of the Learned Magistrate was to give the possession to the company that is the 8th Respondent-Respondent-Petitioner. But

inadvertently in the final conclusion the Learned Magistrate has mentioned the 2nd Respondent only. As the result of this mistake now certain complications have developed. It was submitted the original 2nd Respondent-Respondent has passed away and his wife has been substituted in her personal capacity. The wife who is not a director of the company is now trying to get hold of the control of the estate by using the order made by the Learned Magistrate. This has created another dispute with regard to the management of the estate. It was submitted that the 3rd Respondent-Respondent and the 8th Respondent-Respondent-Petitioner that the final order of the Learned Magistrate should be varied to the extent declaring that it was the 8th Respondent-Respondent-Petitioner company which was entitled to the possession and the 2nd Respondent- Respondent and the 3rd Respondent-Respondent's entitlement was only under the 8th Respondent-Respondent-Petitioner company. However it was submitted that Dayalan (wife-Vaithalingam Rsjeshwari), Wimaladasa, Shamali Wickramasinghe and Muzzamil has taken up the position that possession was given to them in their personal capacity by the Magistrate.

The 7th Respondent in their objections and written submissions in the High Court has taken up the position that they are holding independently and in their personal capacity and was not holding under Ramboda Tea Estate

(Pvt) Ltd. It was also submitted in the case of L/3534 aforesaid no possession has been given to Ramboda Tea Estate (Pvt) Ltd the Plaintiff. In any event Dayalan ceased to be a Director of Ramboda Tea Estate (Pvt) Ltd after 19th June 2008. In the Magistrates Court inquiry Ramboda Tea Estate (Pvt) Ltd and its Director Pushparaj Sathasivam the 3rd Respondent acted jointly and sought possession for Ramboda Tea Estate (Pvt) Ltd. However the Learned Magistrate in MC Helboda case No. 24799 handed over possession to Dayalan (2nd Respondent) and Ramboda Tea Estate (Pvt) Ltd. For the first time in the High Court took up the position that Dayalan's possession is same as possession of Ramboda Tea Estate (Pvt) Ltd as he was a Director of Ramboda Tea Estate (Pvt) Ltd.

It was submitted this cannot be as Dayalan ceased to be a Director of Ramboda Tea Estate (Pvt) Ltd on 19th June 2008 well before the dispute. This position has been taken up by Ramboda Tea Estate (Pvt) Ltd in DC Colombo case No. DLM/160/2015 at paragraph 16 of the Plaintiff which was annexed to the petition of Ramboda Tea Estate (Pvt) Ltd. Similarly, Dayalan widow substituted in his place as well as all the other Parties who were given possession by the Learned Magistrate have clearly taken up the position that Dayalan's possession was independent and separate to that of Ramboda Tea Estate (Pvt) Ltd.

It was submitted that in the circumstances Ramboda Tea Estate (Pvt) Ltd did not get possession by the order of the Learned Magistrate in MC Helboda case No. 24799 dated 3rd February 2010. Ramboda Tea Estate (Pvt) Ltd neither took any steps to seek to revise the order of the Learned Magistrate. It was submitted that Ramboda Tea Estate (Pvt) Ltd has no locus standi to challenge the order of the High Court of Kandy which granted possession to Soundararajan the 1st Respondent.

When considering the locus standi of the 8th Respondent-Respondent-Petitioner and the 3rd Respondent-Respondent we find that the said Pushparaj Sathasiwam who is a director of a 8th Respondent-Respondent-Petitioner company and 3rd Respondent-Respondent-Respondent together with 4th,5th,6th and 7th Respondent-Respondents has intervened in the primary Court case.

Thereafter the Ramboda Tea Estate (Pvt) Ltd failed to get possession by order dated 3rd February 2010 in the Magistrate Court of Helboda in case No 24799. We find that this order has been revised by the High Court of Kandy in n case no. 49/2010. Although Ramboda Tea Estate (Pvt) Ltd has been defendants in case No. 24799 we find that it has lost his rights and possession by order dated 7/1/2013 in Gampola DC case No 3534. The enjoining order was suspended by court on 28/3/2008 on the finding that Soundarajan the 1st Respondent was in possession subsequently on 7th

January 2013 action dismissed due to no instructions from the Plaintiff. Ramboda Tea Estate (Pvt) Ltd was not successful in obtaining possession of the estate despite the above actions. Two months after the refusal of the enjoining order in case no. 3534/L several instigated and attempted to disrupt the possession of Soundrajan all attempts and actions by Ramboda Tea Estate (Pvt) Ltd and Dayalan clearly show that neither Ramboda Tea Estate (Pvt) Ltd nor Dayalan had possession of the land in dispute two month prior to the in dispute.

At the stage of the High Court revision application and now, in the application before the Court of Appeal the Ramboda Tea Estate (Pvt) Ltd sought to argue that possession to Dayalan (2nd Respondent) is in fact given to Ramboda Tea Estate (Pvt) Ltd. In section 66 case no. 3534/L the Learned Magistrate did not find that Ramboda Tea Estate (Pvt) Ltd was in possession. Agreement to sell bearing No 852 dated 12th December 2007 Ramboda Tea Estate (Pvt) Ltd entered into an agreement with Sivasambo (Pvt) Ltd and has placed in possession of the estate .This deed bearing No. 852 has been executed by Dayalan (2nd Respondent) and Pushparaja (3rd Respondent) on behalf of the Ramboda Tea Estate (Pvt) Ltd. The Commissioner of Labour delivered his order dated 13th December 2007 Ramboda Tea Estate (Pvt) Ltd and its Director Dayalan were no longer in possession of the estate.

The Petitioner has failed to disclose that it had instituted the aforesaid case bearing No DC Gampola case No 3534/L against the 1st Respondent and Govindasamy. The 1st Respondent stated that the Petitioner had instituted the said rei vindicatio action after the ex-parte decree and execution of the writ in DC Gampola case No 2487/L.

In the two cases the courts has refused to recognize the title of this Petitioner after the 1st Respondent as well as Petitioner himself put the Petitioner's title in issue before the said court. At the commencement of the proceedings in the Magistrate Court the 2nd Respondent was no longer a director of the Petitioner Company as evidenced by form 20 dated 19 June 2008 of the Petitioner Company. Accordingly we are of the view that the Petitioner had suppressed from / and / or misrepresented material facts which were in his knowledge.

The only claim and/or interest Ramboda Tea Estate (Pvt) Ltd to have deed no 927. However Ramboda Tea Estate (Pvt) Ltd lost his rights by virtue of the judgments entered in DC Gampola 2487/L as well as 3534/L. In addition to the above Ramboda Tea Estate (Pvt) Ltd by agreement bearing no 852 dated 12/12/2007 has placed Sivasambo (Pvt) Ltd in possession of the estate on 12/12/2007. This fact has been affirmed by deed of renunciation bearing no 008 dated 28 April 2012. The Ramboda Tea

Estate (Pvt) Ltd by deed of exchange bearing No 1027 and attested by T.S. Weliana has transferred all his right title and interest of the entire estate to the aforesaid Sivasambo (Pvt) Ltd vide para 24 of the plaint in DC Colombo Case No. DLM/160/2015 marked as "E22" and annexed to the application of Ramboda Tea Estate (Pvt) Ltd to this court.

soundarajan obtain 52 Acres in terms of decree in case No. 24799/L there was a finding in case no 3534/L that Saundaraj possessed the entire estate soon after the time he obtained possession of 52 acres.

We find that there is a delay of 6 months to file action in the High Court by the Petitioner. We find that the Learned High Court Judge has not considered same too.

Accordingly we hold that the 8th Respondent-Respondent-Petitioner Company has no locus standi any longer to institute and maintain the present revision application.

As such we dismiss this Revision Application with costs of Rs.50,000/- each.

Judge of the Court of Appeal

L.T.B.Dehideniya, J

I agree.

Judge of the Court of Appeal