

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

In the matter of an appeal under Article 154P(6) of  
the Constitution of the Democratic Socialist  
Republic of Sri Lanka read with section 9 of the  
High Court of the Provinces (Special Provinces)  
Act No. 10 of 1990

**Court of Appeal case no. CA/PHC/46/2006**

**H.C. of Galle case no. Revision 520/ 2005**

**M.C. of Galle case no. 52939**

Officer in Charge,  
Police Station, Habaraduwa.

**Informant**

**Vs.**

1. Andigoda Gamage Amarapala de Silva  
Katukurunda, Haabaraduwa.
2. Hewa Geeganage Ramyawathie,  
Ambagahawatta, Katukurunda, Habaraduwa.
3. Dadallage Damith Chamara,  
Ambagahawatta, Katukurunda, Habaraduwa.

**Respondents.**

**In the High Court**

2. Hewa Geeganage Ramyawathie,  
Ambagahawatta, Katukurunda, Habaraduwa.
3. Dadallage Damith Chamara,  
Ambagahawatta, Katukurunda, Habaraduwa.

**2<sup>nd</sup> and 3<sup>rd</sup> Respondent Petitioners**

**Vs.**

1. Andigoda Gamage Amarapala de Silva  
Katukurunda, Habaraduwa.

**1<sup>st</sup> Respondent Respondent**

Officer in charge

Police Station, Habaraduwa.

**Informant Respondent**

**AND NOW**

2. Hewa Geeganage Ramyawathie,  
Ambagahawatta, Katukurunda, Habaraduwa.
3. Dadallage Damith Chamara,  
Ambagahawatta, Katukurunda, Habaraduwa.

**2<sup>nd</sup> and 3<sup>rd</sup> Respondent Petitioner**

**Appellants**

**Vs.**

Andigoda Gamage Amarapala de Silva  
(deceased)

**1<sup>st</sup> Respondent Respondent Respondent**

Karuna Widanagama,

Katukurunda, Habaraduwa.

**Substituted 1A Respondent Respondent  
Respondent**

Officer in charge

Police Station, Habaraduwa.

**Informant Respondent**

**Before** : P.R.Walgama J.

: L.T.B. Dehideniya J.

**Counsel** : Dr. Sunil Cooray for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent Petitioner  
Appellants.

: Anura Gunarathne for the Respondent Respondent  
Respondent.

**Argued on** : 06.06.2016

**Written submissions filed on:** 13.03.2017

**Decided on** : 26.05.2017

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

This is an appeal from the High Court of Galle.

The 1<sup>st</sup> Respondent Respondent Respondent (the 1<sup>st</sup> Respondent) states that he was prevented from plucking the coconut from the land which was in his possession by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent Petitioner Appellants (Appellants) without any reason. He submits that the land was in his possession for a long time. On a complaint made by him to the police the OIC has made inquiries and found that this land dispute is threatening the breach of the peace and reported the facts to the Magistrate Court Galle under section 66 of the Primary Court Procedure Act. The learned Magistrate after filing the relevant affidavits and documents made a determination that the land in dispute was in the possession of the 1<sup>st</sup> Respondent. Being dissatisfied by the order of the learned Magistrate, the Appellant moved in revision in the High Court of Galle. The learned High Court Judge dismissed the application on the basis that there are no exceptional circumstances. This appeal is from the said order.

The 1<sup>st</sup> Respondent in his affidavit to filed in the Magistrate Court has stated that he was in possession of a land of 4.19 perches depicted as lot 6 of the plan 145A and a land of 3.38 perches depicted as lot 3 in the plan 142A and these lands were situated closely. He says that he bought them by deed no. 5281. The Appellants stated that they co-owned a land of 19 perches and described the land with metes and boundaries but went on to state that they were in possession of 40 perches land instead of 19 perches. The Appellants failed to describe the land of 40 perches. The 1<sup>st</sup> Respondent and the Appellants admitted that there was a partition action pending for the land of 19 perches but the stance taken by the 1<sup>st</sup> Respondent is that the land in dispute is not the land involved in the partition action. The 1<sup>st</sup> Respondent is also a party to the said partition action. Both parties have failed to submit the preliminary plan of the partition action. Since the Appellants have not described the 40 perches land that they say they were in exclusive possession, the Court is unable to consider whether they were in possession. The 1<sup>st</sup> Respondent has described the land they were in possession and explained the basis of their possession that is that they were the owners of the said land.

The prayer of the Appellants in their first affidavit as well as the counter affidavit cannot be granted by a Primary Court under the Primary Court Procedure Act. The first prayer is to make a determination that the 1<sup>st</sup> Respondent has no right to pluck coconut.

Under section 68 of the Primary Court Procedure Act, the Court can determine who was in possession at the time of filing the information and whether there is a dispossession within the two months immediately prior. The section reads thus;

68.(1) *Where the dispute relates to the possession of any land or part thereof it shall be the duty of the Judge of the Primary Court holding the inquiry to determine as to who was in possession of the land or the part on the date of the filing of the information under section 66 and make order as to who is entitled to possession of such land or part thereof.*

(2) *An order under subsection (1) shall declare any one or more persons therein specified to be entitled to the possession of the land or the part in the manner specified in such order until such person or persons are evicted there from under an order or decree of a competent court, and prohibit all disturbance of such possession otherwise than under the authority of such an order or decree.*

(3) *Where at an inquiry into a dispute relating to the right to the possession of any land or any part of a land the Judge of the Primary Court is satisfied that any person who had been in possession of the land or part has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under section 66, he may make a determination to that effect and make an order directing that the party dispossessed be restored to possession and prohibiting all disturbance of such possession otherwise than under the authority of an order or decree of a competent court.*

(4) *An order under subsection (1) may contain in addition to the declaration and prohibition referred to in subsection (2), a direction that any party specified in the order shall be restored to the possession of the land or any part thereof specified in such order.*

Under sub section (1) the duty of the judge is to determine “as to who was in possession of the land or the part on the date of the filing of the information under section 66” and thereafter he has to “make order as to who is entitled to possession”. The section does not empower the judge to decide negatively.

Under section 69 the Court can determine as to who is entitle to the right. The section 69 reads;

*69.(1) Where the dispute relates to any right to any land or any part of a land, other than the right to possession of such land or part thereof, the Judge of the Primary Court shall determine as to who is entitled to the right which is the subject of the dispute and make an order under subsection (2).*

*(2) An order under this subsection may declare that any person specified therein shall be entitled to any such right in or respecting the land or in any part of the land as may be specified in the order until such person is deprived of such right by virtue of an order or decree of a competent court, and prohibit all disturbance or interference with the exercise of such right by such party other than under the authority of an order or decree as aforesaid.*

Under this section the Court can “as to who is entitle to the right” and make a declaration that a person is entitle to that right. But the Court cannot declare that a person is not entitled to a certain right.

Section 217 of the Civil Procedure Code is difference from the Primary Court Procedure Act in this respect. Under section 217 of the Civil Procedure Code reads;

*217. A decree or order of court may command the person against whom it operates-*

*(A) to pay money;*

- (B) to deliver movable property;*
- (C) to yield up possession of immovable property;*
- (D) to grant, convey, or otherwise pass from himself any right to, or interest in, any property;*
- (E) to do any act not falling under any one of the foregoing heads; or it may enjoin that person-*
- (F) not to do a specified act, or to abstain from specified conduct or behaviour;*
- or it may, without affording any substantive relief or remedy-*
- (G) declare a right or status.*

Under section 217 G, the District Court can declare a “right or status” where a non entitlement can be included. This section does not limit the declaration only to an entitlement like in the section 69 of the Primary Court Procedure Act. 69(1) says “*the Judge of the Primary Court shall determine as to who is entitled to the right*” and 69(2) says “*may declare that any person specified therein shall be entitled to any such right*”.

Under both this sections the Court has to make a positive determination, not a negative determination. The Court can make an order not to disturb the possession of a certain party or it can make order prohibiting all disturbance or interference with the exercise of such right, but cannot make a declaration that a party is not entitle to a certain right. Therefore the first prayer of the Appellants cannot be maintained.

The second prayer is to make an order not to disturb the possession of the Appellants until the partition action no. P. 15409 concludes. A determination under section 68 of the Primary Court Procedure Act is only operative until a competent Court makes an order or a decree. But the Primary Court cannot make an order in a case under Primary Court

Procedure Act against a person not to disturb the possession or not to do certain things until a partition case in a District Court is concluded. That is a matter for that District Court to decide in the said partition action.

On the other hand, the Counsel for the 1<sup>st</sup> Respondent submitted that the said partition action was concluded and not appealed against. Therefore the second prayer has become futile.

Under these circumstances, I don't see any reason to interfere with the findings of the learned High Court Judge.

The appeal is dismissed subject to costs fixed at Rs. 10,000.00

Judge of the Court of Appeal

**P.R.Walgama J.**

I agree.

Judge of the Court of Appeal