

**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 23/16**  
**Primary Court Case No.**  
**Gampola(Helboda) 24799**  
**HC Kandy case No-HC RA 49/2010**

Officer in Charge,  
Police Station,  
Kothmale.

**Complainant**

Vs.

01. K. Saundarajan,  
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. Saundarajan,  
No.263, Sea Street,  
Colombo 11.

**The 1<sup>st</sup> Party Respondent-  
Petitioner**

Vs.

02. W. Dayalan A.K.A. Prabhu  
Dayalan  
Wellasamy Dayalan Vaithilingam  
Vellasamy,  
No.28 A, 5<sup>th</sup> Lane,  
Colombo 03.  
And also Ramboda Estate,  
Ramboda.

**The 2<sup>nd</sup> Party Respondent-  
Respondent (Deceased)**

Vithilingam Raja Rajeswari  
No. 28A, 5<sup>th</sup> Lane,  
Colombo 03.

And also

Karunathanpathy  
Manmanoor (post)  
Sivatamagai, Taluk  
P.M. District,  
India.

**Substituted 2A Party  
Respondent-Respondent**

02. Sathasivam Pushparajah

No. 164/04/01,  
Sri Rathanajothy Sarawanamuttu  
Mawatha,  
Colombo 13.

And also at  
No. 15, Rajasinghe Mawatha,  
Wellawatte, Colombo 6.

03. A.Lalith. Gurusinghe lewke  
No.78 B, Sir William Gopallawa  
Mawatha, Kandy.
04. Basnayake Rankothge  
Wimaladasa,  
“Thuruliya”, Nuwara Eliya Road,  
Ramboda.

**The 5<sup>th</sup> Party Respondent-  
Respondent**

05. Mudalige Shamalie  
Wickramasinghe,  
Kudaoya, Labukele

And also at Ramboda Estate,  
Ramboda.

**The 6<sup>th</sup> Party Respondent-  
Respondent**

06. M.Mussammil,  
“Greenfield Division”  
Ramboda Estae,  
Ramboda.

**The 7<sup>th</sup> Party Respondent-  
Respondent**

07. Ramboda Tea Estate (Pvt) Ltd.  
Appearing through S. Pushparajah,

No. 164/04/01,  
Sri Rathnajothe Sarawanamuttu  
Mawatha,  
Colombo 13.

**The 8<sup>th</sup> Party Respondent-  
Respondent**

08. Officer in Charge,  
Police Station,  
Kothmale.

**The Complainant-Respondent**

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

**9<sup>th</sup> Respondent**

And Now between

01. Vithilingam Raja Rajeswari  
No. 28A, 5<sup>th</sup> Lane,  
Colombo 03.

And also

Karunathanpathy  
Manmanoor (post)  
Sivatamagai, Taluk  
P.M. District,  
India.

02. M.Mussammil,  
"Greenfield Division"  
Ramboda Estate,  
Ramboda.

**Substituted 2A Party Respondent-  
Respondent-Petitioner and the 7<sup>th</sup>  
Party Respondent-Respondent-  
Petitioner**

Vs.

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

**The 1<sup>st</sup> Party Respondent-  
Petitioner-Respondent**

02. Sathasivam Pushparajah  
No. 164/04/01,  
Sri Rathanaiothy Sarawanamuttu  
Mawatha,  
Colombo 13.

And also at  
No. 15, Rajasinghe Mawatha,  
Wellawatte, Colombo 6.

**The 3<sup>rd</sup> Party Respondent-  
Respondent-Respondent**

03. A.Lalith. Gurusinghe lewke  
No.78 B, Sir William Gopallawa  
Mawatha, Kandy.

Also at Ramboda Estate, Ramboda.

**The 4<sup>th</sup> Party Respondent-  
Respondent-Respondent**

04. Basnayake Rankothge  
Wimaladasa,

“Thuruliya”, Nuwara Eliya Road,  
Ramboda.

**The 5<sup>th</sup> Party Respondent-  
Respondent-Respondent**

05. Mudalige Shamalie  
Wickramasinghe,  
Kudaoya, Labukele

And also at Ramboda Estate,  
Ramboda.

**The 6<sup>th</sup> Party Respondent-  
Respondent-Respondent**

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

**The 8<sup>th</sup> Party Respondent-  
Respondent-Respondent**

07. The Officer in Charge  
Sri Lanka Police,  
Kothmale.

**The Complainant-Respondent-  
Respondent**

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

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

Argued On : 10 /01 /2017

Written Submissions on : 21 /02 /2017

Decided On : 02 /06 /2017

## **Order**

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

This Revision Application dated 26<sup>th</sup> February 2016 has been filed by the Substituted 2A Party Respondent-Respondent-Petitioner and 7<sup>th</sup> Party Respondent-Respondent-Petitioner to set aside the order of the Provincial High Court of Central Province holden in Kandy delivered on 03/02/2016 and uphold the order dated 03/02/2010 made by the Learned Magistrate of Gampola (Helboda) in case No. 24799 on 03/02/2010 and/or to dismiss the said action No. 24799.

The position of the Substituted 2A Respondent-Respondent-Petitioner and 7<sup>th</sup> Respondent-Respondent-Petitioners were that the Officer in Charge of the Police Station of Kothmale, the Complainant-Respondent-Respondent above

named filed information under section 66(1) of the Primary Court Procedure Act on 19/11/2008 in the Primary Court of Gampola (Helboda) in case No. 24799 citing the 1<sup>st</sup> Party Respondent-Petitioner-Respondent, the deceased 2<sup>nd</sup> Party Respondent-Respondent in whose place the Substituted 2A Party Respondent-Respondent-Petitioner was Substituted and the 3<sup>rd</sup> Party Respondent-Respondent-Respondent.

It was submitted that the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>,7<sup>th</sup> and 8<sup>th</sup> Party Respondents intervened in this case and that except the 1<sup>st</sup> Party Respondent-Petitioner-Respondent the aforesaid parties were in possession of separate lots of the estate called “Ramboda Estate” which is in extent about 837 acres for many years as owners thereof. The 1<sup>st</sup> Party Respondent-Petitioner-Respondent claimed title to the said estate and/ or part thereof. Thereafter all parties filed their respective counter affidavits and documents and their respective written submissions. The Learned Magistrate of Helboda having considered same delivered his order on 03/02/2010 holding that the following parties are entitle to possession of the following extents of the said estate. Namely,

- a. The 1<sup>st</sup> Party Respondent-Petitioner-Respondent to an extent of 52 acres which possession had been handed over to him in the Gampola Court in case No. 2487/L.
- b. 4<sup>th</sup> Party Respondent-Respondent-Respondent to an extant of 15 acres.



- c. 5<sup>th</sup> Party Respondent-Respondent-Respondent to an extent of 25 acres
- d. 6<sup>th</sup> Party Respondent-Respondent-Respondent to an extent of 58 acres and 9 perches
- e. 7<sup>th</sup> Party Respondent-Respondent-Petitioner to an extent of 65 acres
- f. 2<sup>nd</sup> Party Respondent balance portion of the entire land.

Thereafter lapse of 8 months or so the 1<sup>st</sup> Party Respondent-Petitioner-Respondent sought to revise the said order by petition dated 30/8/2010 producing numerous documents, which were not a part of the Primary Court proceedings. The Respondents filed their objections praying that the said application be dismissed for the reasons set out therein. The 1<sup>st</sup> Party Respondent-Petitioner-Respondent filed his counter objections and all parties filed their respective written submissions.

The Learned Judge of the High Court delivered in his order on 03/02/2016 allowing the said revision application and has granted possession of the entire estate to the 1<sup>st</sup> Party Respondent-Petitioner-Respondent contrary to the facts established by evidence.

The Petitioners pleaded that the order of the Learned High Court Judge is wrong in law and should be set aside inter-alia for the following reasons.

- a. The Learned High Court Judge's order is against the law, and the weight of evidence,
- b. The Learned High Court Judge has failed to consider the preliminary objections raised by the Appellant in his objection specially in respect of violation of Rule 3(1) (b) of the Supreme Court Rules,
- c. The Learned High Court Judge has erred and misconceived the law applicable to section 66 under the Primary Court Procedure Act namely to the concept of possession,
- d. The Learned High Court Judge has not considered at all, the objections, documents and the written submissions tendered by these Petitioners specially with regard to the civil cases pending in the District Court of Gampola and has stated that those cases are finally adjudicated,
- e. The Learned High Court Judge has totally failed to consider the long and continued possession throughout by these Petitioners and the other Respondent's in delivering the said judgment,
- f. The Learned High Court Judge has not given reasons for the decision specially on what ground that the 1<sup>st</sup> Respondents-Petitioner-Respondent had been awarded possession of the

entirety of the estate whereas 2<sup>nd</sup> to 8<sup>th</sup> Respondents documents per se proves possession of their portions of the corpus,

- g. The Learned High Court Judge has not given reasons to set aside the order of the Learned Primary Court Judge and on what grounds that it should be set aside it is not clear,
- h. The Learned Judge of the High Court has failed to consider and/or ascertain the portion, if any from which the 1<sup>st</sup> Party Respondent-Petitioner-Respondent claims to and/ or have in fact been dispossessed from in delivering the said judgment.
- i. The Learned High Court Judge has made the said order under the erroneous belief that decisions made by the District Court has a bearing on the Primary Court Proceedings.
- j. It is respectfully submitted that the said order is contrary to the Provisions of the Primary Court Procedure Act as the 1<sup>st</sup> Party-Respondent-Petitioner-Respondent was never in possession of the entirety of the said estate,
- k. The Learned High Court Judge seriously misdirected herself when she took into consideration certain documents pertaining to civil cases and even found fault with the Learned Primary Court Judge for not considering them when they were totally irrelevant for the purpose of the determining the right of possession in terms of section 68 of the Primary Court Procedure Act.

1. It is respectfully submitted that the said judgment of the Learned High Court Judge is erroneous and/ or is perverse and therefore is liable to be set aside.

These Petitioners further stated that they have appealed against the order of the High Court exercising their right of appeal in terms of Article 154 P (6) of the Constitution of the Republic of Sri Lanka.

The 1<sup>st</sup> Party Respondent-Petitioner-Respondent has by way of motion filed in the Magistrates Court of Gampola and Nawalapitiya moved for the issuance of writ of execution of the said order of the said High Court despite the appeal made by the those Petitioners as well as by the other Respondents to the revision application.

The Petitioners further pleaded that the said order of the Learned High Court Judge allowing the said revision application and setting aside order made by the Learned Magistrate and directing the Registrar in the court is wrong in law and will result in a grave miscarriage of justice to these Petitioners.

It was contended that the circumstances set out above constitute exceptional circumstances to invoke the revisionary jurisdiction of this court

and that the said order would be executed pending the appeal lodged by these Petitioners in the exercise of their right of appeal provided for by article 154P (6) of the Constitution of the Republic of Sri Lanka. The Petitioners had pleaded for interim order staying all execution of the said order of the High Court and the Magistrate Court pending the hearing and determination of this application and / or the appeal made by the Petitioners, grave and irreparable loss and damage would be caused to the Petitioners and/ or miscarriage of justice would be caused to them and/ or their right of appeal would be rendered nugatory.

The Petitioners tendered a true copy of the statement of objections filed on behalf of the 7<sup>th</sup> Party Respondent-Respondent-Petitioner and the Substituted 2A and 7<sup>th</sup> Respondent-Respondent-Petitioners prayed for the relief in their petition. The 1<sup>st</sup> Party Respondent-Petitioner-Respondent took up the following preliminary objections and moved that the Petitioners application should be dismissed *in limine* for the following reasons,

- a. The Petitioners do not have the locus standi to have and maintain this application;
- b. The Petitioners have suppressed from, and/or misrepresented to the court, material facts which were within their knowledge; and

- c. The Petitioners have failed to give notice of this application to the 1<sup>st</sup> Party Respondent in terms of Rule 2 (1) and 2(2) of the Court of Appeal (Appellate Procedure) Rules of 1990.

The objections of the 6<sup>th</sup> Party Respondent-Respondent-Respondent was that the order of the Learned High Court Judge should be set aside the *inter alia* for the following reasons,

- a. The Learned Judge of the High Court has erred in holding that the Civil cases pending in the District Court of Gampola has been finally adjudicated and has wrongly concluded that in the said cases the entirety of the estate has been handed over to the 1<sup>st</sup> Party Respondent-Petitioner-Respondent ( hereinafter referred to as the 1<sup>st</sup> Party Respondent)
- b. The Learned Judge of the High Court has erred in law in failing to consider the affidavit tendered to the Primary Court by the 2<sup>nd</sup> Party 1<sup>st</sup> Respondent admitting the possession of the Respondent in respect of the subject property.
- c. The Learned Judge of the High Court has misdirected herself in law in failing to consider the documentary evidence in support of the Respondent's possession of the subject property.

- d. The Learned Judge of the High Court has erred in law in taking into consideration fresh material which were not available before the Magistrate's Court, in making the said order.
- e. The Learned Judge of the High Court has erred in law and fact in concluding that exceptional circumstances existed in the matter warranting the exercise of the revisionary jurisdiction of the court.
- f. The Learned Judge of the High Court has erred in law and fact in failing to take the delay and laches on the part of the Petitioner in her court in the exercise of the revisionary jurisdiction of the court.

The Respondent whilst admitting the averments contained in paragraph 15 of the petition, the Respondent further states that –

- a. The order by the Learned Judge of the High Court dated 03/02/2016 merely allows the revision application of the Petitioners and set aside the order of the Learned Magistrate of the Primary Court of Helboda.
- b. In effect the order of the Learned Judge of the High Court only set aside the scheme of allocating the estate amongst the 1<sup>st</sup> Party Respondent, 4<sup>th</sup> Party Respondent, 5<sup>th</sup> Party Respondent, 6<sup>th</sup> Party Respondent, 7<sup>th</sup> Party Respondent and 2<sup>nd</sup> Party Respondent made by the Learned Magistrate of the Primary

Court of Helboda, without any reference to the possession of the property.

On considering the objections taken up by the parties one of the main objections was that the Petitioner has no locus standi to institute and maintain this application and that the Petitioner has suppressed and / or misrepresented material facts which were within his knowledge.

On a perusal of the record we find that the 2<sup>nd</sup> Party Respondent-Respondent Dayalan who was a director of Ramboda Tea Estate (Pvt) Ltd ceased to be a director on 19 June 2008. It was a contention of Ramboda Tea Estate (Pvt) Ltd that the 2<sup>nd</sup> Party Respondent-Respondent was holding possession of the said property on behalf of the Ramboda Tea Estate (Pvt) Ltd since he was a Director of the company and not in his personal capacity. However after the death of the 2<sup>nd</sup> Party Respondent-Respondent Dayalan his wife was substituted in her personal capacity. The said wife is not a director of company and it was the contention of the 7<sup>th</sup> Party Respondent-Respondent that the 2<sup>nd</sup> Party Respondent-Respondent's wife is now trying to get hold of the remaining of the estate by using the order made by the Learned Magistrate.



It was the position of the Substituted 2A Party Respondent-Respondent-Petitioner and that the 7<sup>th</sup> Party Respondent-Respondent-Petitioner Ramboda Tea Estate (Pvt) Ltd for the first time in the High Court took up the position that Dayalan possession is same as possession of Ramboda Tea Estate (Pvt) Ltd as he was a Director of the Ramboda Tea Estate (Pvt) Ltd.

On a perusal of the documents produced in this case in the Magistrate Court namely the affidavit of the 2<sup>nd</sup> Party Respondent-Respondent Dayalan has claimed the property in his personal capacity. He has stated that the said property in accordance to the Company Act No. 17 of 1987 Nirmala Wellasami, Waithyalingam Wellasami, Dayalan Waithyalingam Wellasmi, Niranjana Waithyalingam Wellasami and Jayalakshmi Nagarathnam was under the management and control of the said board of directors.

Thereafter by virtue of Deed No. 927 marked as 2 ⊖ 1 and Gramasewa certificate marked as 2 ⊖ 2 and 2 ⊖ 3 of the document marked by the duly appointed board of directors and letter marked as 2 ⊖ 4 issued by the Labour Commissioner and the order in case no. 2487 and other document marked 2 ⊖ 6 to 2 ⊖ 11 that possession of the land was held by the 2<sup>nd</sup> Respondent-Respondent Dayalan. Accordingly after the death of Dayalan we hold that the Substituted 2A Respondent-Respondent-Petitioner also held the said

premises in her personal capacity. As such we reject the view that the 2<sup>nd</sup> Respondent has no locus standi to maintain this application. The application of the Plaintiff for interim relief being supported ex-parte in the District Court of Gampola made order issuing an Enjoining Order, Notice of Interim Injunction and Summons to be served on the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Defendant had stated as he is aware no summons have been served on the 5<sup>th</sup> Defendant. The 2<sup>nd</sup> Defendant Petitioner defendant by petition dated 23/02/2008 made under in terms of section 664(3) moved to have the enjoining order set aside on the basis that the Plaintiff is wrongfully seeking to dispossessed the 2<sup>nd</sup> Defendant from the land describe in 1<sup>st</sup> to 11<sup>th</sup> schedule to the plaint. After supporting this application the court made a bench order suspending the enjoining order issued forthwith and direct the 2<sup>nd</sup> Defendant to file objections. It was also submitted that the Plaintiff has suppressed from court the judgment and decree entered in DC Gampola case No 2487/2 the purported deed no. 927 dated 24/03/1992 marked as A20 upon which the Plaintiff purportedly claims rights to the land describe aforesaid has been declared null and void and no affect or force in law. The Plaintiff suppressed from court that in terms of the judgment and decree entered in DC Gampola case no 2487/L, the purported power of Attorney dated 07/02/1992 based on which the purported power of Attorney holder of the owners of the land described in the 1<sup>st</sup> to 11<sup>th</sup> schedules to the plaint executed the purported deed of transfer no. 927 has been declared null and void.

It was also submitted that the Plaintiff has suppressed to the court that at the time of the execution of the purported agreement to sell no. 852 dated 12/12/2007 marked A24 with the plaintiff Mrs. Nirmala Wellasami was in prison. Hence it was submitted that purported agreement to sell is null and void and no force or no avail in law and no right or claim whatsoever flows from the said purported agreement to sell. The 2<sup>nd</sup> Defendant contended that the Plaintiff is not in possession of the land describe as aforesaid.

The 2<sup>nd</sup> Party Respondent-Respondent-Appellant has taken up the position that the Respondent has filed this revision application causing inordinate delay and guilty of laches. On a perusal of the record we find that the Primary Court Judge has given his order dated 03/02/2010.

The Officer in Charge of the Police Station of Kothmale had filed information with the Magistrate of Helboda on 19/11/2008. The Learned Magistrate has delivered his order on 03/02/2010 the 1<sup>st</sup> Party Respondent-Petitioner-Respondent thereafter on or about 30/08/2010 has filed a revision application in the High Court of Kandy and the Learned High Court Judge has delivered her order on 03/02/2016. Thereafter the present application for revision has been filed in the Court of Appeal on 26/02/2016. We find that there is no inordinate delay in filing action in the Magistrate as well as in the

Appeal Court. Hence we reject this argument that there is an inordinate delay by the Appellant to take steps in filing the present revision application has been filed on 15<sup>th</sup> February 2016. The 1<sup>st</sup> Party Respondent-Petitioner has taken about 5 months to file the revision application in the High Court.

Therefore we find that there is no inordinate delay and the Respondent is not guilty of laches.

Further it has been contended by the Appellant Respondent that number of new documents which are not tendered to court has been filed of record that there by application cannot be maintained. The Primary Court has given a temporary order and this dispute should be referred to a competent jurisdiction. When perusing the order dated 03/02/2016 the Learned High Court Judge had stated that new material has been filed and by order of the Primary Court Judge not having considered the decisions in the Civil cases cited by the Petitioner and the statements and the police observations filed before him in the interest of justice, that the High Court is of the view that even if new material cited by the Petitioner, the Respondent had ample time to challenge the said material before the High Court and that the Respondents have failed to do so. However the Learned High Court Judge has not indicated what the new material placed before court.

Further it was contended that there are exceptional grounds to invoke the extraordinary jurisdiction of the High Court. On a perusal of the revision

application we find that there are exceptional circumstances which has been pleaded by the Respondents-Petitioners.

We are of the view that the Respondent revision application has been filed causing without inordinate delay and that there are exceptional grounds to invoke the extraordinary jurisdiction has been pleaded in the petition of appeal.

Further the 2<sup>nd</sup> Party Respondent-Respondent-Appellant has possessed this land the courpus in his private capacity and not in the capacity as a director of the company of Ramboda Tea Estate (Pvt) Ltd.

**In the case of Oliver Millous of France V. M.H.A Haleem and others reported in the Bar Association Law Journal 2001 Vol IX part 1 in the Bar Association Law Report page 8 it was held that ;**

- a) it is not the function of a Primary Court to go into the question of legal title of the parties to the land in dispute in an application under section 66 of the Primary Court's Procedure;
- b) the central matter to be decided by the Primary Court is whether the parties had possession of the land and had been forcibly dispossessed within a period of two months immediately before the date on which information was filed under the section 66;

- c) it is the apprehension of a breach of the peace and not infringement of a private right or dispossession of any of the parties which determines the jurisdiction of the Primary Court.

In this application the Petitioner among other relief is seeking to set aside the order of the High Court of Kandy dated 03/02/2016 and to uphold the order dated 03/02/2010.

The central matters to be decided by the Primary Court is whether the Respondents had possession of the land and had been forcibly dispossessed within a period of two months. Immediately before the date on which information was filed under section 66. Besides it has been held that even a squatter or a trespasser is entitled to possession if he had two months possession prior to the date of filing information.

Vide the decision of **Sharvananda ,J in Ramalingam Vs. Thangarajah (1982) 2 SLR 694 at page 698** where he observed that under section 68 the Judge is bound to maintain the possession of such person even if he be a rank trespasser as against any interference even by the rightful owner. This section entitles even a squatter to the protection of law, unless his possession was acquired within two months of the filing of the information.

Further in the case of **Velupillai and others Vs. Sivanathan (1993) 1 SLR 123** it has been held that the scope of the inquiry under the special jurisdiction (Primary Courts Procedure Act) is of a purely preventive and provincial nature pending the final adjudication of the rights of the parties in a Civil Court. The Magistrate is not involved in the investigation into title or right to possession which is the function of a Civil Court.

Further the Learned High Court Judge has failed to consider the preliminary issue that there was an absence of circumstances to warrant the conclusion that there was a likelihood of a breach of the peace. In this case the police had filed an information informing the Magistrate that there is a dispute affecting land and a breach of the peace is threatened or likely then the Primary Court will have jurisdiction to inquire into the matter. The Court has to consider whether the dispute is such that it is likely to cause of breach of the peace which the Primary Court Judge of Helboda has most correctly looked into. It is the apprehension of a breach of the peace not any infringement of a private right or dispossession of any of the parties which determines the jurisdiction of the Primary Court Judge. It is sufficient for a Primary Court Judge to exercise the powers under the section if he is satisfied on the material on record that there is a present fear that there will be a breach of the peace stemming from the dispute unless proceedings are taken under the section. Primary Court Judge should however proceed with great caution

where there is no police report and the only material before him are the statements of interested parties.

The Officer in Charge of the Police Station of Kothmale, the Complainant-Respondent-Respondent filed information under section 66(1) of the Primary Court Procedure Act on 19/11/2008 in the Primary Court of Gampola (Helboda) in case No. 24799 citing the 1<sup>st</sup> Party Respondent-Petitioner-Respondent, the deceased 2<sup>nd</sup> Party Respondent-Respondent in whose place the Substituted 2A Party Respondent-Respondent-Petitioner was Substituted and the 3<sup>rd</sup> Party Respondent-Respondent-Respondent. Thereafter the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Party Respondents intervened in the said case. The said Parties except the 1<sup>st</sup> Party Respondent-Petitioner-Respondent were in possession of separate lots of the Ramboda Estate which is in extent about 837 acres for many years as owners thereof. The 1<sup>st</sup> Party Respondent-Petitioner-Respondent claimed title to the said estate and/ or part thereof. Thereafter all parties filed their respective counter affidavits with documents and their respective written submissions. The Learned Magistrate of Helboda delivered her order on 03/02/2010 holding that the parties aforesaid are entitle to possession of the aforesaid extents of the said estate.

Thereafter lapse of 8 months or so the 1<sup>st</sup> Party Respondent-Petitioner-Respondent sought to revise the said order dated 30/08/2010 by producing



numerous documents, which were not a part of the Primary Court proceedings. The Parties filed their respective objections to the said application praying that the application be dismissed for the reasons set out therein. The 1<sup>st</sup> Party Respondent-Petitioner-Respondent filed his counter objections and all parties filed their respective written submissions.

The Learned Judge of the High Court delivered her order on 03/02/2016 allowing the said revision application and has granted possession of the entire estate to the 1<sup>st</sup> Party Respondent-Petitioner-Respondent contrary to the facts established by evidence.

In the order of the Learned High Court Judge she has not given any reasons whether there is a breach of peace or likelihood of breach of peace. As regards possession the Learned High Court Judge had only indicated that it is observed that the possession had been prior to the institution of the 66 application.

However, she has stated that the Primary Court Judge had failed to consider the long and continued possession through out of the Substituted 2A Respondent-Respondent-Petitioner and the other Respondents in delivering the said judgment.

According to law fresh evidence could be brought before the High Court by a party. However the High Court Judge has not indicated the new material

that was before her. The Respondents-Respondent-Petitioners had been in possession of the said estate. The Learned High Court Judge has not considered whether there is a breach of peace or likelihood of breach of peace. When she had granted the possession of the entire estate amounting the 837 acres to the 1<sup>st</sup> Party Respondent-Petitioner which in law a person is not entitle to possess.

Accordingly we are of the view that the order of the Learned High Court Judge is erroneous and cannot stand. Hence we set aside the order of the Learned High Court Judge dated 03/02/2016 and uphold the order of the Learned Magistrate as there is breach of peace and likelihood of breach of peace and the Substituted 2A Respondent-Respondent-Petitioner and 7<sup>th</sup> Respondent-Respondent-Petitioner had been in possession of the portion of the estate.

Accordingly appeal is allowed with costs of Rs.25,000/- each.

**Judge of the Court of Appeal**

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

**I agree.**

**Judge of the Court of Appeal**