

IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal against
judgment of Provincial High Court
exercising its revisionary jurisdiction.

C A (PHC) / 21 / 2008

High Court of Hambantota

Case No. HCA 136 / 2005

Magistrate's Court Tissamaharama

Case No. 71579

Tellambure Gamage Jinapala

697/2,

Ranakeliya,

Pustholamulla,

Tissamaharama.

RESPONDENT - PETITIONER -

APPELLENT

-Vs-

1. Mihindukulasuriya Patabendige

Antoni Upali Sarath Fernando,

Conservator General,

Department of Forests,

Colombo.

APPLICANT - RESPONDENT -

RESPONDENT

2. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

RESPONDENT - RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Harendra Perera for the Respondent – Petitioner - Appellant.

R Kulasuriya SASA for the Applicant – Respondent –
Respondent.

Decided on : 2017 - 08 - 03

JUDGMENT

P Padman Surasena J

Learned counsel for all the Parties when this case came up on 2017-06-30 before us, agreed to have this case disposed of by way of written submissions, dispensing with their necessity of making oral submissions. They agreed that this Court could pronounce the judgment after considering the written submissions they had filled. Therefore, this judgment would be based on the material that have been adduced by parties in their pleadings and the contents of the written submissions filed by the parties.

The Conservator General of Forests, who has been named in this petition as the Applicant Respondent - Respondent (hereinafter sometimes referred to as the Respondent) had issued a quit notice on the Respondent - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant), in terms of section 3 of the State Lands (Recovery of Possession) Act (hereinafter sometimes referred to as the Act).

As the Appellant had failed to respond to the said quit notice the Respondent had thereafter made an application under section 5 of the Act in the Magistrate's Court of Tissamaharama seeking an order to evict the Appellant from the relevant land.

Learned Magistrate after an inquiry had pronounced the order dated 2005-09-30 evicting the Appellant from the said land.

Being aggrieved by the said order made by the learned Magistrate, the Appellant had made a revision application to the Provincial High Court of Southern Province holden at Hambantota.

The Provincial High Court after hearing parties, pronounced its judgment dated 2008 -03-31 affirming the learned Magistrate's order and dismissed the said revision application.

It is against that judgment that the Appellant has filed this appeal in this Court.

Learned counsel for the Appellant has conceded that Yala Forest is a state land. What he has challenged is the fact whether the Appellant is in possession of the said specified land. This means that it is the position of the Appellant that he is not occupying the said land. In these circumstances, this Court is unable to understand as to why the Appellant takes so much of trouble to prosecute a revision application in the Provincial High Court and another appeal to this Court against the impugned order because this order cannot affect him if he is not occupying this land.

In these circumstances, it is not at all difficult for this Court to conclude that the Appellant has failed to establish that he is in possession or occupation of the said land upon any written authority of the State granted in accordance with any written law and that such authority is in force and not revoked or otherwise rendered invalid as required by section 9 of the Act.

It is therefore the view of this Court that there is absolutely no merit in this appeal.

Thus, this Court affirms the judgment dated 2008-03-31 of the Provincial High Court and proceed to dismiss this appeal with costs.

Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL