

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) / 151 / 2011

High Court of Embilipitiya

Case No. HCE RA 22 / 2010

Magistrate's Court Embilipitiya

Case No. 33022 / 2010

Karunamunige Rohana Jagath

Wasantha Kumara,

Keselwaththa,

Buluthota.

2ND PARTY - RESPONDENT -
APPELLANT

Vs

1. Aparekke Jayasundera Mudiyansele
Lankasiri Mangalarathna,
Egberth Estate,
Suriyakanda.

1ST PARTY RESPONDENT -
PETITIONER - RESPONDENT

2. Officer-in-Charge
Police Station,
Kolonna.

COMPLAINANT – RESPONDENT -
RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Parties are absent and unrepresented.

Decided on : 2017 - 08 - 03

JUDGMENT

P Padman Surasena J

This Court observing that the parties were absent and unrepresented on several occasions had issued notices on them at the said occasions. It is clear from the journal entry dated 2016-09-13 that the Appellant had been present and was represented by a counsel in court when this Court fixed this case for argument on that date. On that date this Court had fixed the

argument of this case for 2017-02-14. On 2017-02-14, the counsel who appeared for the Appellant had moved for a postponement on personal grounds and then this Court had re-fixed the argument for 2017-06-28. This Court having observed the absence of parties in Court when it was first called in the morning kept down the case to enable the parties or any of their representatives to make some arrangement even to appear before this Court late in the day. However neither party was present in Court when this Court took the case up for argument later on 2017-06-28. Thus this Court then reserved its judgment for 2017-08-03 to enable it to consider the merits of the case.

The Complainant - Respondent - Respondent (hereinafter sometimes referred to as the 2nd Respondent) had filed an information in the Magistrate's Court of Embilipitiya under section 66 (1) (a) of the Primary Courts Procedure Act, complaining to the learned Primary Court Judge about an existence of breach of peace between 2nd Party – Respondent-Appellant (hereinafter sometimes referred to as the Appellant) and the 1st Party Respondent - Petitioner-Respondent (hereinafter sometimes referred to as the 1st Respondent) .

Learned Primary Court Judge having inquired into this complaint, had pronounced his order dated 2010-08-19, holding that the Appellant was entitled to the possession of the land in dispute.

Being aggrieved by the said order made by the learned Magistrate, the Respondent had filed an application for revision in the Provincial High Court of Sabaragamuwa holden at Embilipitiya urging the Provincial High Court to revise the order made by the learned Magistrate.

The Provincial High Court after hearing parties, revised the order of the learned Primary Court Judge by its judgment dated 2011-08-03. The Provincial High Court had held that it is the Respondent who is entitled to the possession of the said land.

It is against the said judgment of the Provincial High Court that the Appellant has filed this appeal in this Court.

Perusal of the judgment pronounced by the learned Magistrate shows clearly that he was misdirected in law when he had erroneously assumed his task to be to find out as to who was in possession on the date of filing the information in Court.

Thus, the learned High Court Judge had correctly revised the impugned order made by the learned Magistrate. It is to be noted that this Court has no difficulty at all to agree with the reasoning given by the learned High Court Judge when he proceeded to revise the said order of the learned Magistrate. The evidence, the learned High Court Judge had referred to, are vital to decide this case correctly and the learned Magistrate unfortunately had overlooked them.

For the aforesaid reasons this Court is of the view that the learned High Court Judge was correct when he held that it is the Respondent who is entitled to the possession of this land. Thus, we see no merit in this appeal.

In these circumstances, this Court decides to affirm the judgment dated 2011-08-03 made by the learned Provincial High Court Judge and proceed

to dismiss this appeal. Further this Court makes order that the 1st
Respondent is entitled to costs.

Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL