

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 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

C A (PHC) / APN 21 / 2016

High Court of Colombo

Case No. HCRA 09 / 2016

Primary Court Kaduwela

Case No. 72985

Sudharma Neththikumara,

79/2,

Horton Place,

Colombo 07.

1ST PARTY- PETITIONER -

PETITIONER

Vs

1. Officer-in-Charge

Police Station,

Thalangama.

COMPLAINANT - RESPONDENT -

RESPONDENT

2. Hewapathirana Chandrani Perera,

233/16,

Rathnayake Mawatha,

Pelawatta.

2ND PARTY - RESPONDENT -

RESPONDENT

3. Hewapathirana Chaminda Perera,

233/16,

Rathnayake Mawatha,

Pelawatta.

INTERVENIENT PARTY OF THE 2ND

PARTY- RESPONDENT -

RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Riency Arasacularatne PC for the 1st Party - Petitioner -
Petitioner.

Anura B Meddegoda PC with Saumya Hettiarachchi and
Nadeesha Kannangara for the 2nd Party Respondent -
Respondent.

Argued on: 2017 - 06 - 22.

Decided on : 2017 - 08 - 03

JUDGMENT

P Padman Surasena J

The Complainant - Respondent - Respondent (hereinafter sometimes referred to as the 1st Respondent) had filed an information in the Primary Court of Kaduwela under section 66 (1) of the Primary Courts Procedure Act, complaining to the learned Primary Court Judge about an existence of breach of peace between two parties. The said two parties are 1st party-Petitioner-Petitioner (hereinafter sometimes called and referred to as the Petitioner) and the 2nd Party- Respondent-Respondent (hereinafter sometimes called and referred to as the 2nd Respondent).

The said report was filed by the Officer in Charge of Thalangama Police Station on 2015-08-07.

Learned Primary Court Judge having inquired into this complaint, had by his order dated 2016-01-26, and ordered that the 2nd Respondent is entitled to the possession of the house in dispute.

Being aggrieved by the said order made by the learned Primary Court Judge, the Petitioner had filed an application for revision in the Provincial High Court of Western Province holden at Colombo seeking a revision of the order made by the learned Primary Court Judge.

The Provincial High Court after hearing the learned President's Counsel who appeared for the Petitioner, by its order dated 2016-02-02 had refused to issue notices on the Respondents and proceeded to dismiss the said revision application affirming the order of the the learned Primary Court Judge.

The Petitioner has chosen to canvass the said order of the learned High Court Judge as well as the order of the learned Primary Court Judge in this revision application before this Court.

Petitioner who is a daughter of the 2nd Respondent claims that she had purchased this property from the 2nd Respondent on deed of transfer No. 8648 attested by K Jegadeesan notary Public on 2006-07-25.

The fact that the 2nd Respondent had purchased this property on deed No. 8340 attested by K Jegadeesan Notary Public on 2005-09-14 is not disputed by the Petitioner.¹

On 2015-08-02, the 2nd Respondent making a statement to Thalangama Police Station had complained that the Petitioner who had come with another male person threatened her to vacate the house. On 2015-08-04 the 2nd Respondent making another statement had also complained to Police that the Petitioner had assaulted her and dragged her out of the house on that date (i.e. on 2015-08-04).

The 2nd Respondent on 2015-08-08, making yet another statement to police had requested the assistance of Police to take her personal belongings and the medicines which she had been regularly using from the house as by that time she had been suddenly ousted from the house.

¹ The Petitioner claims that she has purchased this property from the 2nd Respondent subsequently.

The Grama Niladhari of the area by the document marked **P 25 (2 @ 22)** has certified that it is the 2nd Respondent who had lived in this address for about 11 years. The said report had been issued on 2015-08-06.

The Electoral Register marked **2 @ 25** establishes that there are two occupants in this house as at the year 2014. The said occupants are named as Hewa Pathiranage Chandrani Perera (2nd Respondent) and Hewa Pathiranage Chaminda Perera (nephew of the Respondent). The said Chaminda Perera had been an intervenient party in these proceedings before the Primary Court and has been named in this application as the Intervenant Party of the 2nd Party Respondent Respondent. It transpired during the submissions of learned counsel for the parties during the argument that the said Chaminda Perera is now deceased.

The bank Statements such as **2 @ 27**, invoices sent by Dialog Television (Pvt) Ltd such as **2 @ 28** have all been sent to the address of this house in the name of the 2nd Respondent. These facts establish that the 2nd Respondent had been occupying this house.

Although the Petitioner too had produced some documents such as **P 11**, **P 13 A**, **P 13 B**, **P 13 C** and several affidavits of several persons, fact remains that the Petitioner has admitted in her affidavit filed before the Primary Court;

1. that she resides at No. 79/2, Horton Place Colombo 07,
2. that the 2nd Respondent being her mother temporarily lived there as her licensee,
3. that she had removed some of the 2nd Respondent's clothes and essential items from this house in April 2015 for preparing this house for sale to another person,

Further, the Petitioner in the statement made to Police on 2015-08-03², has admitted that the 2nd Respondent along with her nephew Chaminda Perera looked after this house.

This Court is of the view that the cumulative effect of all the material adduced before the Primary Court is that it is none other than the 2nd Respondent who had been in possession of the impugned property and has been forcibly dispossessed within a period of two months immediately

² Produced marked at the Primary Court as **1 D 24**.

before the date on which the information was filed by Police in Court under section 66 of the Primary Courts Procedure Act No. 44 of 1979 as amended.

Thus learned Primary Court Judge has correctly determined that the 2nd Respondent is entitled to the possession of this house.

It must also be noted that the 2nd Respondent has denied having sold this house to the Petitioner. She is reported to have complained to the Fraud bureau about an alleged forged deed being made for the said transfer.

It was also revealed before this court in the course of the argument that there is a case filed in the District Court with regard to the same dispute. Hence the rights of the parties could finally be decided as has been provided for in section 68 (2) and section 74 of the Primary Courts Procedure Act No. 44 of 1979 as amended.

In these circumstances this Court is of the view that the learned High Court Judge was correct when she decided not to issue notices on the Respondents as one cannot reasonably find a basis to make a decision to issue notices on the Respondents in this case.

This Court sees no merit in this application.

Thus, this Court decides to refuse this application and proceed to dismiss the same. The order dated 2016-01-26 made by the learned Primary Court Judge as well as the order dated 2016-02-02 made by the learned High Court Judge are hereby affirmed.

The Petitioner is directed to pay to the 2nd Respondent a sum of Rs. 75,000/= as costs of this application.

Application is dismissed with costs fixed at Rs. 75,000/=.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL