

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

In the matter of an Application for
revision of an order of the Provincial
High Court in the exercise of its
revisionary jurisdiction.

C A (PHC) / APN 95 / 2015

Provincial High Court of

Sabaragamuwa (Rathnapura)

Case No. HCRA 99 / 2008

Magistrate's Court Balangoda

Case No. 22153

1. Kahangamage Samantha Pushpakumara

No. 11,
Kalawana Road,
Nivithigala.

2. Angamma Ranpanhida

Samaradiwakara Illangakoon

Senanayake Rajapaksha

Rajakaruna Wasala Mudiyanse

Ralahamilage Ananda Wijaya

Angamma,

Doloswala Walawwa,

Nivithigala.

2ND PARTY – RESPONDENTS -

PETITIONERS

Vs

1. Rev. Mahamalage Nicolas Joseph

Fernando,

St. Joseph Church,

Kiridigala,

Balangoda.

2. Illekuttige Godfrey Hedivipssu

Noel Fernando

No. 01 / 114,

Barnes Ratwatte Mawatha,

Balangoda.

1ST PARTY – PETITIONERS –

RESPONDENTS

3. Officer-in-Charge

M O Branch,

Police Station,

Balangoda.

COMPLAINANT – RESPONDENT -

RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Ranil Samarasuriya with D Rajapaksha for the 2nd Party –
Respondents - Petitioners.

Dr. Sunil Cooray with Sudarshani Cooray for the 1st Party
Petitioners Respondents.

Argued on: 2017-06-20.

Decided on : 2017 - 09 - 13

JUDGMENT

P Padman Surasena J

The Complainant - Respondent - Respondent (hereinafter sometimes referred to as the 3rd Respondent) had filed an information in the Primary Court of Balangoda 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 2nd Party – Respondents-Petitioners (hereinafter sometimes referred to as the 1st and 2nd Petitioners or Petitioners) and the 1st Party Petitioners-Respondents (hereinafter sometimes referred to as the 1st and 2nd Respondents or Respondents) .

Learned Primary Court Judge having inquired into this complaint, had by his order dated 2008-09-09, concluded that the Petitioners are entitled to the possession of the land in dispute.

Being aggrieved by the said order made by the learned Primary Court Judge, the Respondents had filed an application for revision in the Provincial High Court of Sabaragamuwa Province holden at Ratnapura urging the Provincial High Court to revise the order made by the learned Primary Court Judge.

The Provincial High Court after hearing parties pronounced its judgment dated 2015-07-15 revising the order of the learned Primary Court Judge.

The Provincial High Court in that judgment had held that it is the Respondents who are entitled to the possession of the impugned land.

It is against that judgment that the Petitioners have filed this revision application in this Court.

It is admitted by the parties that;

- i. the impugned land was not cultivated for some period of time owing to the then ongoing Badulla – Ratnapura road widening activities,
- ii. the Petitioners first started cleaning this land on 2008-05-11¹,
- iii. the information under section 66 (1) was filed in Court by the Police on 2008-05-26.

The 1st Petitioner has stated in his statement to Police as well as in his affidavit filed in the Primary Court that he had commenced cultivating this land after he purchased this land on 2008-04-25. 1st Petitioner claims to

¹ 1st Petitioner's statement to Police (පෙ 1 ආ)

have purchased this land from the 2nd Petitioner and the father of the 2nd Petitioner after doing a search of title at the relevant land registry.²

It is the 2nd Petitioner's position in the affidavit filed by him in the Primary Court that he had inherited this land from his mother.

It is the Respondents' position;

- i. that this land being a property donated to the church by one of its parishioners, was being harvested for a long time on behalf of the church,
- ii. that owing to the road widening activities harvesting could not be done for several years,
- iii. that the Petitioners entered this land when the preliminary activities such as spraying weedicides were being done as preparations for cultivation,
- iv. that this land is situated adjoining to the elders home run by the church.

² Paragraphs 5 and 6 of the affidavit filed by the 1st Petitioner in the Magistrate's Court.

Indeed the fact that weedicide had been sprayed is corroborated by the observations made by Sub Inspector Jayaweera on 2008-05-15. Further neither of the Petitioners has ever taken up the position that they sprayed weedicide in their claimed run up to cleaning this land for cultivation. Thus the fact that it is the Respondents who had first commenced cleaning activities for cultivation has been established before Courts.

The fact that the name of the church is registered as the owner in the agricultural land register maintained in the Agrarian Services Centre also corroborates the position of the Respondents and would militate against the Petitioners' positions.

In these circumstances, this Court is of the view that the learned High Court Judge was correct when she held that it is the Respondents who are entitled to the possession of this land.

Learned counsel for both parties submitted before this Court that there is a case fixed for trial in the District Court with regard to this land. Hence, the rights of the parties could finally be adjudicated as has been provided for in section 74 of the Primary Courts Procedure Act.

In these circumstances this Court sees no merit in this application.

Thus, this Court decides to refuse this application and proceed to dismiss the same. The Respondents are entitled to costs.

Application is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL