

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

In the matter of an Appeal against an  
order of the Provincial High Court in the  
exercise of its revisionary jurisdiction.

C A (PHC) / 49 / 2006

Provincial High Court of

Southern Province (Galle)

Case No. HC (Rev) 372 / 2004

Magistrate's Court Udugama

Case No. 94879

Nishshanka Wickramanayake,

Karunarathne,

Ampagodawatta,

Hiniduma.

**COMPLAINANT - RESPONDENT -**

**APPELLANT**

Vs

Hemasiri Jayawardhane,

No. 360,

Kanaththegoda,

Yatalamatta.

**RESPONDENT - PETITIONER -**

**RESPONDENT**

**Before: K K Wickremasinghe J**

**P. Padman Surasena J**

Counsel; Rasika Dissanayake with Chandrasiri Wanigapura for the  
Complainant - Respondent - Appellant.

Sandamal Rajapaksha for the Respondent - Petitioner -  
Respondent.

Decided on : 2017 - 10 - 04

### JUDGMENT

## **P Padman Surasena J**

Learned counsel for both Parties, when this case came up before us on 2017-07-11, 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 already filed. Therefore, this judgment would be based on the material adduced by parties in their pleadings and the contents of their written submissions.

The Complainant - Respondent - Appellant (hereinafter sometimes referred to as the Appellant) had instituted this case against the

Respondent - Petitioner - Respondent (hereinafter sometimes referred to as the Respondent) in the Magistrate's Court of Udugama under section 66 (1) (b) of the Primary Courts Procedure Act, as a private information. The Appellant had sought an order declaring that he be entitled to have the possession of the impugned land.

Learned Magistrate having inquired into this complaint, pronounced his order dated 2004-01-29, holding that the Appellant is entitled to have the possession of the land, which is the subject matter of the dispute.

Being aggrieved by the said order of the learned Magistrate, the Respondent had filed an application for revision in the Provincial High Court of Southern Province holden in Galle seeking a revision of the order made by the learned Magistrate.

The Provincial High Court after hearing parties, revised the said order made by the learned Magistrate on the basis that existence of a breach of peace had not been established before the learned Magistrate could proceed to inquire in to the said case.

It is against that judgment that the Appellant has appealed to this Court.

It would be helpful, at the outset, to refer to the case of Kanagasabai V Mylvaganam.<sup>1</sup> It is a case under section 62 of the Administration of justice law, which had conferred special jurisdiction on the Magistrate to make orders to prevent a dispute affecting lands causing a breach of peace. It has been held in that case that the said section requires the Magistrate to be first satisfied before initiating the proceedings, that a dispute affecting lands exists and that such a dispute is likely to cause a breach of peace.

In this regard the following passage from a judgment of this Court in the case of Punchi Nona V Padumasena and others<sup>2</sup> would also be relevant. It is as follows;

" ... The jurisdiction conferred on a primary Court under section 66 is a special jurisdiction. It is a quasi - criminal jurisdiction. The primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land. The Court in exercising this jurisdiction is not involved in an investigation into title or the right to possession which is the function of a civil Court. He is required to take

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<sup>1</sup> 78 NLR 280

<sup>2</sup> 1994 (2) Sri. L R 117.

action of a preventive and provisional nature pending final adjudication of rights in a civil Court. It was therefore incumbent upon the Primary Court judge to have initially satisfied himself as to whether there was a threat or likelihood of a breach of peace and whether he was justified in assuming such a special jurisdiction under the circumstances. The failure of the judge to satisfy himself initially in regard to the threat or likelihood of the breach of peace deprived him of the jurisdiction to proceed with the inquiry and this vitiates the subsequent proceedings. ... ”

The Appellant has made his first statement to police on 2003-01-25. He had stated that the Respondent along with few others were preparing the land to put up a house in the impugned land. He had however not complained any breach of peace in that statement. The Appellant had thereafter (on 2003-01-27), had made yet another statement to Police. He had stated in that statement that two unidentified persons threatened him to withdraw the complaint he had earlier made. However he had categorically stated that he does not wish the Police to proceed to inquire into his complaint.

In the light of the material including the above facts, adduced before Court, this Court is unable to find any basis to interfere with the

conclusions arrived at by the learned Provincial High Court Judge that breach of peace has not been established.

In these circumstances, this Court decides to dismiss this application without costs.

**JUDGE OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**