

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 79 / 2016

Provincial High Court of

Southern Province (Balapitiya)

Case No. Rev 879 / 2013

Magistrate's Court Balapitiya

Case No. 53498

1. Somalatha Kumarage,
Thalgaswatta,
Athuruwella,
Induruwa.

2. Gorakanage Sumanawathi Alwis,
Thalgaswatta,
Athuruwella,
Induruwa.

2ND PARTY RESPONDENT -
RESPONDENT - PETITIONERS

Vs

Jayantha Parakrama Akuratiyagama,
Athuruwella,
Induruwa.

1ST PARTY RESPONDENT-
PETITIONER – RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Tenny Fernando for the 2nd Party Respondent - Respondent -
Petitioners.

Vinod Wickramasuriya with Nadeesha Waduge for the 1st Party
Respondent – Petitioner - Respondent.

Argued on: 2017-09-04.

Decided on : 2017 - 10 - 23

JUDGMENT

P Padman Surasena J

The Officer in Charge of Kosgoda Police Station 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 Respondent - Respondent - Petitioners (hereinafter sometimes referred to as the 1st and 2nd Petitioners or Petitioners) and the 1st Party Respondent – Petitioner - Respondents (hereinafter sometimes referred to as the 1st and 2nd Respondents or Respondents). This information had been filed on 2012-10-17.

Learned Primary Court Judge having inquired into this complaint, by his order dated 2013-06-19, had 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 Southern Province holden in Balapitiya 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 2016-05-11 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.

This Court considered the material adduced by the parties, the order of the learned Primary Court Judge dated 2013-06-19 and the judgment of the Provincial High Court dated 2016-05-11.

This Court too agrees with the finding of the Provincial High Court that the learned Primary Court Judge had erred when he had understood the nature of the dispute to be a dispossession and applied the provisions in section 68 (3) of the Primary Courts Procedure Act No. 44 of 1979.

In this regard, the following passage from a judgment of this Court in the case of Punchi Nona V Padumasena and others¹ would be relevant. It is as follows;

“ ... Section 68 (1) of the Act is concerned with the determination as to who was in possession of the land on the date of the filing of the information to Court. Section 68 (3) becomes applicable only if the Judge can come to a definite finding that some other party had been forcibly dispossessed within a period of 2 months next preceding the date on which the information was filed. ... ”

Learned Primary Court Judge had clearly erred when he had applied provisions in section 68 (3) when the Respondent has not even complained of a dispossession. All what he had complained was that the Petitioners had disturbed his peaceful possession.

¹ 1994 (2) Sri. L R 117.

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

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 Petitioners are directed to pay Rs. 40,000/= to the Respondent as costs.

Application is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL