

**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.

CA (PHC) / 224 / 2011

Provincial High Court of

Central Province (Kandy)

Case No. (Rev) 19 / 2009

Magistrate's Court of Matale

Case No. 68036

Subramaniam Thyagaraja,

Ukuwela Estate,

Ukuwela.

**PETITIONER - PETITIONER -**

**APPELLANT**

-Vs-

Vipula Ekanayake,

No 32 / B 1,

Kalalpitiya Road,

Ukuwela.

Now residing at:

No 15,

Egodawatte Road,

Ukuwela.

**RESPONDENT - RESPONDENT -**

**RESPONDENT**

**Before: P. Padman Surasena J (P/CA)**

**K K Wickremasinghe J**

Counsel; Asoka Fernando for the Petitioner - Petitioner - Appellant.

Mahinda Nanayakkara with Aruna Jayathilake for the Respondent  
- Respondent - Respondent.

Argued on : 2017 - 11 - 06

Decided on : 2018 - 02 - 02

### JUDGMENT

#### **P Padman Surasena J (P/CA)**

The Petitioner - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant) had instituted this case against the Respondent - Respondent - Respondent (hereinafter sometimes referred to as the Respondent) in the Primary Court of Matale under section 66 (1) (b) of the Primary Courts Procedure Act No. 44 of 1979, as a private information, seeking an order declaring that he be entitled to have the possession of the impugned property.

Primary Court having inquired into the said dispute by its order dated 2008-06-16, had concluded that the Appellant and the Respondent should continue to possess the respective premises each one of them had up until that time been possessing separately.

Subsequently upon an application made by the Respondent, the Primary Court had ordered enforcement of the said order.<sup>1</sup> Accordingly the fiscal of the Court had handed over to the Respondent the possession of the portion of the land he is entitled to.

Being aggrieved by the said enforcement the Appellant had moved the Primary Court to inquire into the said enforcement action. However the learned Primary Court Judge by his order dated 2008-11-20 refused to reconsider the said enforcement action.

Perusal of the submission made by the learned counsel who appeared for the Appellant in the Magistrate's Court shows that he had merely made a statement from the Bar table that there was prejudice caused to his client as a result of the enforcement action taken by the fiscal. He had moved Court to conduct an inquiry into that matter. It could however be seen that

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<sup>1</sup> Order dated 2008-06-16

the Appellant had not placed any plausible basis before the Primary Court. Further he has been silent as to what the learned Primary Court Judge should do to redress his grievance.

Perusal of the order of the learned Primary Court Judge dated 2008-11-20 shows that an assistance of a surveyor also had been obtained to identify the boundaries.

Perusal of the order of the learned Provincial High Court Judge also shows that the Appellant had been present at the time of the impugned enforcement action although he had not made any protest to the enforcement. It is on that basis that the learned Provincial High Court Judge had refused the revision application.

The learned counsel for the Appellant in the course of the submissions was not able to satisfy this court that any basis exists for this Court to intervene in this case. Further there is no basis for this Court to infer that there has been any illegality, impropriety or irregularity in the proceedings. Such basis is necessary to warrant the intervention of the Provincial High Court exercising its revisionary powers. This court has to be mindful that the

proceedings had before the Provincial High Court was revisionary proceedings and not appellate proceedings.

After the argument was concluded learned counsel for the Appellant has undertaken to file further written submissions if necessary. However he has not filed any written submissions thereafter. Respondent has however filed his written submissions.

Learned Provincial High Court Judge had taken the view that there is no exceptional circumstance to warrant his intervention.

It is the observation of this Court that the orders made under part VII of the Primary Courts Procedure Act No.44 of 1979 are temporarily orders which are issued pending final determination of the relevant dispute by a competent civil court. This is specifically mentioned in section 74 of the said Act.

As has been held in the case of Punchi Nona V Padumasena and others<sup>2</sup> the Primary Court exercising special jurisdiction under section 66 of the Primary Courts Procedure Act, is not involved in an investigation into title or the right to possession, which is the function of a civil Court. What the

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

Primary Court is required to do is to take a preventive action and make a provisional order pending final adjudication of rights of the parties in a civil Court.

It is always open for the Parties to go before the District Court to have their respective rights adjudicated in civil proceedings. Therefore, this Court is of the view that it would not be necessary to make any order with regard to the Appellant's complain. For the above reasons this Court decides to dismiss this appeal without costs.

Appeal is dismissed without costs.

**PRESIDENT OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**