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

1. Lasanthi Rangana Malalasena
2. Sangapala Arachchige Krishantha Kumara
3. Sangapala Arachchige Nayana Swarnamali

All of Mangalapura, Eluwankulama.

2nd Party 3rd, 4th and 5th Respondents-Respondents-Appellants

Case No. CA (PHC) 49/2012

Provincial High Court of Puttlam

Case No. HCR 11/10

Primary Court of Puttlam Case No. 40445/P

Vs.

Mahathelge Sudath Krishan Dias

No.69/10,1st lane,

Alexandra Road ,Kanuwana,

Ja-ela.

1st Party 2nd Respondent – Petitioner - Respondent

Mahathelge Meril Wickrema Dias,

No.69/10,1st lane,

Alexandra Road ,Kanuwana,

Ja-ela.

1st Party 1st Respondent – Respondent - Respondent

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Thusitha Weerakoon for 2nd Party 3rd, 4th and 5th Respondents-1st, 2nd and 3rd Respondents-Appellants

Sudarshani Cooray with A.W.D.S. Rodrigo for 1st Party 2nd Respondent-Petitioner-Respondent

Written Submissions tendered on:

2nd Party 3rd, 4th and 5th Respondents-Respondents-Appellants on 28th March 2017

1st Party 2nd Respondent-Petitioner-Respondent on 12th March 2018

Argued on: 12th February 2018

Decided on: 9th May 2018

Janak De Silva J.

This is an appeal preferred by the 2nd Party 3rd, 4th and 5th Respondents-Respondents-Appellants (Appellants) against the judgement of the learned High Court Judge of Puttlam dated 23rd May 2012 where, exercising revisionary jurisdiction, the learned High Court Judge of Puttlam set aside the judgement of the learned Additional Magistrate of Puttlam dated 17th September 2010 by which possession of the land in dispute had been given to the Appellants. The learned High Court Judge of Puttlam further ordered that possession of the land in dispute should be given to the 1st Party 2nd Respondent-Petitioner-Respondent (Respondent).

This matter arises out of an information filed by the Officer-in-Charge of the Wanathavilluwa Police under section 66(1)(a) of the Primary Courts Procedure Act (Act). Information was filed on 25.05.2010. The parties were permitted to file affidavits, counter affidavits and documents. The Respondent claimed that he was in possession of the land in dispute from 27.08.2009 whereas the Appellants contended that they were in possession of the land in dispute from August 2009. The land in dispute A.3 R.2 P. 31.27 in extent is admittedly state land.

The learned Additional Magistrate of Puttlam held that possession of the land in dispute should be given to the Appellants. The learned Additional Magistrate did so after concluding that the Appellants were in possession of the land in dispute on 20.12.2009.

In doing so, the learned Additional Magistrate completely overlooked the scope of an inquiry under Part VII of the Act. In *Ramalingam v. Thangarajah*[1] Sharvananda J. (as he was then) stated as follows:

> "In an inquiry into a dispute as to the possession of any land, where a breach of peace is threatened or is likely under Part VII of the Primary Courts Procedure Act, the main point for decision is the actual possession of the land on the date of the filing of the information under section 66, but where forcible dispossession took place within two months before the date on which the said information was filed the main point is actual possession prior to the alleged date of dispossession."

Neither party alleged that they were forcibly dispossessed. Both parties in their affidavits and counter affidavits took up the position that they were in possession of the land in dispute on the date of filing of information. Therefore, it was incumbent upon the learned Additional Magistrate to ascertain as to who was in possession of the land in dispute on 25.05.2010 the date on which information was filed. The only finding that the learned Additional Magistrate has made on this point is that the Appellants were in possession of the land in dispute on 20.12.2009. Given that neither party alleged forcible dispossession, it could be argued that this amounts to a finding that the Appellants did have possession of the land in dispute even on the date of filing of information. However, an evaluation of the documentary evidence before court does not support such a conclusion.

[1] (1982) 2 Sri.L.R. 693

Document dated 20.12.2009 (වි2ඉ) issued by the Grama Niladhari of Mangalapura Wasama states that Sangapali Arachchige Nayana Swarnamali, one of the Appellants and her son have possession of the lands depicted in plans nos. 141/2009 and 140/2009 and that the land division of the Divisional Secretariat was entrusted to formalize the said possession on 2009.12.12. The learned Additional Magistrate has held that the land depicted in plans no. 141/2009 and 140/2009 is in fact the land in dispute. He then refers to letter marked 1ඔ31 dated 2010.07.16 issued by the same Grama Niladhari who states therein that the letter marked වි2ඉ was issued in relation to two different lands and not for the land in dispute. The learned Additional Magistrate states that the Grama Niladhari has in issuing letter marked 1ඔ31 acted collusively with the Respondent and concludes that as at 20.12.2009 the Appellants were in possession of the land in dispute. He further refers to the letter marked වි2ඇ and plans marked වි2ඈ and වි2ඌ and concludes that they support his conclusion. The two plans marked වි2ඈ and වි2ඌ had been prepared after a survey on 2009.12.10 and the learned Additional Magistrate concludes that such a survey could not have been possible by the surveyor unless the Appellants were in possession of the land in dispute on that day.

However, the learned Additional Magistrate has failed to consider survey plan no. වනා/38 prepared by D. Juan Pullai, Surveyor, P.L.C. Dept (N.W.P.) after a survey on 30.12.2009, twenty days after the survey for plans marked වි2ඈ and වි2ඌ. It has been drawn to facilitate a long-term lease of state land to the 1st Respondent. Applying the same reasoning of the learned Additional Magistrate it can be also argued that such a survey could not have been possible unless the Respondent was in possession of the land from 29.08.2009 as contended by him. In stating that letter marked 1ඔ31 was issued by the Grama Niladhari acting collusively with the Respondent, the learned Additional Magistrate overlooks the fact that the Divisional Secretary of Wanathavilluwa has in letter dated 04.03.2010 (1ඓ12) informed the O.I.C. of Wanathavilluwa Police that a larger portion of land A.11 R.2 R.31.27 including the land in dispute was possessed by one Ranatunga Arachchige Wijesinghe who had sold and given possession of it to the Respondent. There is no finding by the learned Additional Magistrate that the Divisional Secretary of Wanathavilluwa had acted collusively with the Respondent. Therefore, the learned High Court Judge of Puttlam was correct in placing considerable reliance on this document.

The learned High Court Judge of Puttlam has made a detailed evaluation of the evidence submitted by both parties. It is a well-considered judgement and the only complaint that can be made is that the High Court also has erred in not making a specific finding as to the party having possession of the land in dispute on the day the information was filed namely 25.05.2010. However, based upon the evaluation of the evidence by the learned High Court Judge of Puttlam the only reasonable conclusion that can be arrived at is that the Respondent was in possession of the land in dispute on 25.05.2010. Accordingly, I see no reason to interfere with the judgement of the learned High Court Judge of Puttlam dated 23rd May 2012.

The primary object of the special jurisdiction conferred by section 66 of the Act is to enable a Magistrate to make orders to prevent a dispute affecting land escalating and causing a breach of the peace. It enables the Magistrate to temporarily settle the disputes between the parties before court and maintain the status quo until the rights of the parties are decided by a competent civil court. Section 68 of the Act entitles even a squatter to the protection of the law, unless his possession was acquired within two months of the filing of the information.[2] The judgment of the learned High Court Judge of Puttlam achieves this object.

However, there remains a matter of concern. Both parties admit that the land in dispute is state land. The evidence before court shows that both parties had applied for formal approval to possess the said state land but neither was granted any such approval. There is also evidence that the said state land was the subject of a purported sale between private parties. In these circumstances, the Registrar of the Court of Appeal is directed to send a certified copy of this judgement to the Hon. Attorney General for his information and any action deemed necessary by him according to law.

[2] Ibid. page 698

The court record also indicates that there is an inquiry pending against the former Grama Niladhari of Mangalapura Wasama for submitting a false report relating to a land dispute. We have not made any finding on whether the former Grama Niladhari of Mangalapura Wasama had submitted a false report relating to a land dispute. That is a matter to be gone into in the said inquiry.

Subject to the above and for the reasons set out above, the appeal is dismissed with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal