

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

In the matter of an application for
revision against judgment of Provincial
High Court exercising its revisionary
jurisdiction.

C A (PHC) APN / 115 / 2015

Provincial High Court of

Central Province (Kandy)

Case No. Rev 93 / 2013

Magistrate's Court Matale

Case No. 9850

1. Mohamed Kamil Jaid,

No.17,

Rose Street,

Matale.

2. Mohamed Musin Haniffa,

No. 33/22,
Royal Gardens,
Somasunderam Road,
Matale.

1ST AND 2ND RESPONDENT -

PETITIONERS

-Vs-

1. Sithy Ayesha Rizvi,

No. 74/01,

King's Street,

Matale.

PETITIONER - RESPONDENT

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

K K Wickremasinghe J

Counsel; Ikram Mohamed PC with M I M Ramees for the 1st and 2nd
Respondent - Petitioners.

Asoka Fernando for the Petitioner - Respondent.

Argued on : 2017-10-30

Decided on : 2018 - 05 - 14

JUDGMENT

P Padman Surasena J

The officer in charge of Matale Police Station had filed an information in the Primary Court of Matale under section 66 (1) of the Primary Courts Procedure Act No. 44 of 1979 (hereinafter referred to as the Act), reporting to the learned Primary Court Judge about an existence of a breach of peace between two parties over a dispute relating to the possession of the shop relevant to the dispute in this case.

1st and 2nd Respondent - Petitioners (hereinafter sometimes called and referred to as the 1st and 2nd Petitioners) and the Petitioner - Respondent (hereinafter sometimes called and referred to as the Respondent) were named respectively as the 1st Party and the 2nd Party. (Two rival parties in the said information).

Learned Primary Court Judge having inquired into the said complaint, by her order dated 2013-06-10, had directed that the Petitioners be restored in possession of the shop in dispute.

Being aggrieved by the said order of the learned Primary Court Judge, the Respondent had filed a revision application in the Provincial High Court of Central Province holden in Kandy, urging the Provincial High Court to revise the order made by the learned Primary Court Judge.

The Provincial High Court, by its order dated 2015-09-23, had decided to revise the said order of the learned Primary Court Judge and directed that the Respondent be restored in possession of the disputed shop.

It is the said order that the Petitioners seek to canvass in this application before this Court.

It would be relevant at this stage to reproduce section 68 (1) of the Primary Courts Procedure Act No. 44 of 1979 to enable this Court to focus on the issues to be decided in this case.

Section. 68

(1) Where the dispute relates to the possession of any land or part thereof it shall be the duty of the Judge of the Primary Court holding the inquiry to determine as to who was in possession of the land or the part

on the date of the filing of the information under section 66 and make order as to who is entitled to possession of such land or part thereof.

It is clear from the above provision that the Primary Court Judge is obliged first to determine as to who was in possession of the land or the part on the date of filing of the information under section 66. There is no doubt that it was the Respondent who was in possession of this shop as at the date of filing of the information.

Once the above determination has been made, learned Primary Court Judge has a second obligation as per section 68 (3). The said provision is as follows.

(3) Where at an inquiry into a dispute relating to the right to the possession of any land or any part of a land the Judge of the Primary Court is satisfied that any person who had been in possession of the land or part has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under section 66, he may make a determination to that effect and make an order directing that the party dispossessed be restored to possession and prohibiting all disturbance of such possession otherwise than under the authority of an order or decree of a competent court.

Thus, the second task according to the above provision is to determine whether any person who had been in possession of the land or part has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under section 66.

Perusal of the statement made on 2012-10-21 by the 1st Petitioner Mohammed Muzim Hannifa, shows clearly that he had not gone to occupation of this shop even though he had obtained the said shop on lease from the 2nd Petitioner. In any case, the said lease had been operative only until 2012 December. In these circumstances, there is no material for the Court to conclude that the 1st Petitioner was in possession of this shop at any time during the period of 2 months prior to filing of the information relevant to this case in the Primary Court.

It is the claim of the Petitioners that the 2nd Petitioner had leased out this shop to the 1st Petitioner. Therefore, the 2nd Petitioner in any case could not have been in possession of this shop.

Thus, Court could be satisfied that no person who had been in possession of the relevant shop has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed in Court under section 66.

It is to be noted that the position of the Respondent is that this shop belongs to her husband who is the brother of the 2nd Petitioner.

In these circumstances, it is the view of this Court that the Petitioners have failed to prove that they were in occupation of this shop and were dispossessed forcibly within a period of 2 months immediately before a date on which the information was filed in the instant case.

Therefore, in terms of the provisions of section 68 of the Act the Respondent is entitled to the possession of this shop.

It is relevant to note as has been held by this Court in the case of Punchi Nona V Padumasena and others¹ that section 68 (1) of the Act is concerned with the determination as to who was in possession of the land on the date of filing of the information in Court and that 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 02 months next preceding the date on which such information was filed.

Therefore, the conclusion arrived at by the learned High Court Judge in the instant case that the Respondent is entitled to the possession of this shop has to be upheld.

¹ 1994 (2) Sri. L R 117.

The primary object of proceedings under part VII of the Primary Courts Procedure Act is to prevent any breach of peace amongst the parties disputing the claims for possession of lands. The Court when exercising this jurisdiction would take only a preventive action. The order that would be made is of a provisional nature pending final adjudication of rights in a civil Court.

For the foregoing 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