

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

In the matter of an appeal made in terms of Article 138 read with Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A.(PHC) No. 156/2014
Central Provincial High Court
No. Rev. 13/11
M.C. Gampola No. 70687

National Housing Development
Authority,
Sir Chittampalam Gardiner
Mawatha,
Colombo 02.

1st Appellant

S.A.J. Samaraweera,
Chairman,
National Housing Development
Authority,
Sir Chittampalam Gardiner
Mawatha,
Colombo 02.

Applicant-Respondent-Appellant

Vs.
Balangoda Wajiradeva Thero,
Gangasirigama Adarsha
Gammanaya,
Dalpitiya, Atabage.

Respondent-Petitioner-Respondent

BEFORE : JANAK DE SILVA, J. &
ACHALA WENGAPPULI, J.

COUNSEL : Ganga Wakishta Arachchi S.S.C. for the
Applicant-Respondent-Appellant and the 1st
Appellant.
Respondent – Petitioner-Respondent is absent
and unrepresented.

ARGUED ON : 17th May, 2018

DECIDED ON : 22nd June, 2018

ACHALA WENGAPPULI,

The Applicant-Respondent-Appellant (hereinafter referred to as the “Appellant”) invokes appellate jurisdiction of this Court, seeking to set aside the order dated 05.12.2014 pronounced by the Provincial High Court holden in Kandy in Case No. Rev/13/11 by which it has allowed an application for revision by the Respondent-Petitioner-Respondent (hereinafter referred to as the “Respondent”).

The Appellant has made an application for an order of eviction under Section 5(1) of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended against the Respondent, in respect of four blocks of State

land described in the schedule. Learned Magistrate after an inquiry has issued an order of eviction against the Respondent on 11.02.2011.

Thereafter, the Respondent sought to revise the said order of eviction on the basis that the description of the boundaries in respect of the block of State land described as lot No. 3 depicted in the plan No. 3595 by Superintendent of Surveys A.L.S. Kobewatta of 24.09.1989 in the application to Court conflicts with the description of the same land in the quit notice issued on him.

In his objection to the application, the Appellant clearly stated that the disparity in the description was the result of an error which had crept in through the certified copy of the proceedings of the Magistrate's Court, relied upon by the Petitioner. However, the learned High Court Judge has held that the description of the boundaries to lot No. 3 in the application is different to that of the quit notice and therefore to execute a defective quit notice is unjust but made no reference to the assertion of the Appellant of an error in the certified copy.

In support of its conclusion, the Provincial High Court reproduced the boundaries of the lot No. 3 as follows;

North: Lot Nos. 5, 3 and Road
East : Road
South: Road and lot No. 8 of Sankuhar Estate
West : Lot Nos. 8 and 5

In extent of land 0.0516 Hectares

The quit notice which was served on the Respondent describes the boundaries to Lot No. 3 as follows;

North: Lot No. 2 and Road

East : Road and Lot No. 4

South : Lot Nos. 4 and 5

West : Lot Nos. 5 and 2

In extent of land 0.0865 Hectares

In the application to the Magistrate's Court, the Appellant has described the boundaries to the said land as follows;

North: Lot No. 2 and Road

East : Road and Lot No. 4

South : Lot Nos. 4 and 5

West : Lot Nos. 5 and 2

In extent of land 0.0865 Hectares

Thus, it is clear upon perusal of the order, that the learned High Court Judge was in error when he relied on a wrong description of the boundaries to Lot No. 3 in the certified copy to arrive at his finding that the description of boundaries is incompatible. The Appellant in his objections brought this fact to the notice of Court and in the circumstances, the High Court should have called for the record from the relevant Magistrate's Court, acting under Section 364 of the Code of Criminal Procedure Act No.15 of 1979, to verify this claim of the Appellant. This position was taken up by the Respondent for the 1st time in the Provincial High Court. The Respondent only challenged the validity of the affidavit filed by the Appellant before the Magistrate's Court.

The Respondent, in his written submissions to this Court repeated his position.

The learned Magistrate, having considered the question whether the Respondent has a "valid permit or other written authority of the State granted in accordance with any written law and this such permit or authority is in force and not revoked or otherwise rendered invalid", and proceeded to answer it in the negative before issuing the order of eviction as prayed for by the Appellant. This Court Concurs with this conclusion reached by the learned Magistrate.

In the circumstances, this Court sets aside the order of the Provincial High Court and affirm the order of eviction issued by the Magistrate's Court on 11.02.2011 by allowing the appeal of the Appellant.

Appeal is allowed. No costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL