

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

In the matter of an Appeal against the order made in respect of Case bearing No.52/2012 by the Provincial High Court of the Southern Province in terms of Article 154(6) of the Constitution of the Republic of Sri Lanka read with High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

C.A.(PHC) No. 46/2014.
PHC Galle No. (Rev) 52/2012 .
M.C. Galle No. 84310

N.K. Sunil
Palagala Kanda,
Kithulampitiya,
Uluvitike
Respondent-Petitioner-Appellant

Vs.

1. Divisional Secretary,
Bope Poddala,
Divisional Secretariat Office,
Labuduwa.
2. Hon. Attorney General
Attorney General's Department,
Colombo 12.
Applicant-Respondent-
Respondents

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

COUNSEL : Nivantha Satharasinghe for the Respondent-
Petitioner-Appellant.
Manohara Jayasinghe S.C. for the Applicant-
Respondent-Respondents.

ARGUED ON : 05th June, 2018

WRITTEN SUBMISSIONS

TENDERED ON : 02.05.2018 (by the appellant)
08.05.2018 (by the respondent)

DECIDED ON : 13th July, 2018

ACHALA WENGAPPULI, J.

The Applicant-Respondent-Respondent (hereinafter referred to as the "Respondent") made an application to the Magistrate's Court of Galle, under Section 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended, seeking an order of ejection of the Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellant") upon his failure to quit from the land described in its schedule.

The appellant was noticed to show cause by the Magistrate's Court and he tendered an affidavit annexed with documents marked R1 to R3. In his show cause, the Appellant stated to Court that he is in possession of the land upon title he inherited from his father. The Appellant further claims that his father was conferred with title by its original owner one *L.B. Gunatilleke* under whom his father was employed. In addition, he further stated that the land is yet to be acquired by the State by placing reliance on a plan No. GA/BPP/11/558 which was placed before by the Respondent which has described the land in question as "අත්කරගැනීම සඳහා මහින්ද ලද මු.පි.ග. 1324 හි කැබලි අංක 1හි කොටසක්".

Having considered the material placed before it, the Magistrate's Court of Galle concluded that he has failed to satisfy Court that he has "a valid permit or other written authority of the State granted in accordance with any written law" and proceeded to issue order of ejection on 08.11.2012.

The Appellant thereafter invoked revisionary jurisdiction of the Provincial High Court holden at Galle to set aside the said order of ejection. After an inquiry the Provincial High Court refused the Appellant's application to set aside the order of ejection and proceeded to dismiss his petition.

Being aggrieved by the said order of dismissal, the Appellant now invokes the appellate jurisdiction of this Court to set aside the order of the Provincial High Court and in addition prays for an order directing a re-inquiry into the question of ejectment.

In support of his appeal, the Appellant submitted to this Court that the plan GA/BPP/11/558 clearly described the land as “ අත්කරගැනීම සඳහා මනින ලද මු.පි.ග. 1324 හි කැබලි අංක 1හි කොටසක්” and that he has clear title to the land he possessed well over 30 years, derived from his paternal inheritance and the Courts below has failed to consider this vital information when making the respective orders. Based on these grounds the Appellant contended that the land is not properly identified by the Respondent.

Learned State Counsel in his submissions referred to the plan GA/BPP/11/558 and invited attention of Court that it had been drawn in September 2011 and under the column titled “ownership” it is clearly stated as the “State”.

The basis of the Appellant’s submission is that the land in dispute is not properly identified by the Respondent and that it is not State land as he has independent title to it. If this submission is accepted then it places a duty on the Magistrate’s Court to inquire into the question whether the

land in dispute is in fact a State land or not. Clearly the applicable relevant statutory provisions do not support such a proposition.

Once an application is made to the Magistrate's Court by a Competent Authority in compliance with the relevant statutory provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979, it has no jurisdiction to inquire into the question whether the land in dispute is in fact a State land or not. It has been held by this Court in *Farook v Gunewardene, Government Agent, Amparai*(1980) 2 Sri L.R. 243 that;

"Section 9(2) is to the effect that the Magistrate cannot call for any evidence from the Competent Authority in support of the application under Section 5, which mean the Magistrate cannot call upon the Competent Authority to prove that the land described in the schedule to the application is a State land (Section 5(1)(a)(ii)). Therefore, the Petitioner will not have an opportunity raising the question whether the land is a State or private land before the Magistrate."

It was further held that the *"structure of the act also make it appear that where the Competent Authority had formed the opinion that any land is State land, even the Magistrate is not competent to question his opinion."*

Thus, it is clear that the both Courts have employed the relevant statutory provisions in determining the dispute presented before them and have arrived at legally valid determinations at the end.

In view of this conclusion, we are unable to accept the validity of the submission of the Appellant. Therefore, we affirm the orders made by both Courts.

The appeal of the Appellant is accordingly dismissed without costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL