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

In the matter of an Appeal under Article 154(ග)(3)(ඇ)of the Constitution of Democratic Socialist Republic of Sri Lanka read with Section 5 of the High Courts of the Provinces (Special Provisions) Act No.19 of 1990.

Thalagaha Arawe Karunasena
Jayaweera
Rassagala,
Balangoda

Respondent-Petitioner-Appellant

C.A.(PHC)Appeal No. 253/2005

P.H.C. Ratnapura No. HCR/RA 69/2005

M.C. Balangoda CaseNo. 95811

Vs.

01. J.M.C. Priyadarashani
Competent Authority,
Plantation Management Monitoring Division,
Ministry of Plantation & Industries,
11th Floor, Sethsiripaya,
Stage II

Baththaramulla.

Applicant -Respondent-Respondent

02. Samantha Ranawaka,
The Superintendent,
Rassagala Plantation,
Rassagala,
Balangoda.

Respondent-Respondent

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

COUNSEL : Rajitha Hathurusinghe for the Respondent-Petitioner-Appellant
Maithiree Wickremasinghe P.C. with Rakitha Jayatunga Applicant–Respondent-Respondent and the Respondent-Respondent

WRITTEN SUBMISSIONS TENDERED ON : 14-08-2018(by the Appellant)
04-09-2018 (by the Respondents)

DECICED ON : 05th October, 2018

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ACHALA WENGAPPULI, J.

The Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellant") invokes the appellate jurisdiction of this Court, seeking to set aside an order dated 18.10.2005 by the Provincial High Court holden in Rathnapura in H.C.R.A. 69/2005 and an order of ejectment issued by the Balangoda Magistrate's Court on 15.06.2005 in case No. 95811.

The 1st Applicant-Respondent-Respondent (hereinafter referred to as the "1st Respondent") made an application, supported by an affidavit, to Balangoda Magistrate's Court under Section 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended, seeking an order of ejectment of the Appellant from the portion of State land described in its schedule.

After affording an opportunity for the Appellant to show cause, an inquiry was held by the Magistrate's Court. The Appellant did not produce any permit or other lawful authority to justify his continued possession of the said land, instead, relied on a preliminary objection as to the validity of the affidavit, filed by the 1st Respondent in support of his application.

The basis of the objection is that the 1st Respondent had not deleted the inappropriate words whereby it is not clear that whether he had affirmed to or sworn as to the correctness of the facts stated therein.

After the inquiry, the Magistrate's Court has issued the impugned ejectment order by rejecting the said preliminary objection and thereafter the Appellant invoked revisionary jurisdiction of the Provincial High Court, challenging its legality. At the conclusion of the hearing, the

Provincial High Court affirmed the order of ejection prompting the Appellant to prefer this appeal against the said order.

In support of his appeal, the Appellant has raised a solitary ground of appeal on the basis that both Courts have erroneously rejected his objection as to the validity of the affidavit and have thereby failed to appreciate the failure of the 1st Respondent to fulfill the statutory requirements imposed by the State Lands (Recovery of Possession) Act.

The Appellant heavily relied on the reasoning of the judgment of ***Kandiah v Abeykoon*** Sriskantha L.R. Vol. IV, p.96. He also relied on the judgments of CA(PHC) 175/2008 -·C.A.M. of 10.11.2016 and CA (PHC) 102/2011 - C.A.M. of 01.10.2014, to emphasis the point that conditions stipulated in the said Act should be followed.

In addition, he relied on a series of judgments where the defects in the affidavit in relation to the affirmation or oath and jurat are considered.

The 1st Respondent, in his reply invited this Court to the judgment of the Supreme Court in ***Facy v Sanoon and 5 Others*** *2006 [B.L.R.] 58*, in support of the decisions of the lower Courts to overrule the preliminary objection.

Upon examination of the affidavit of the 1st Respondent filed before the Magistrate's Court it is observed that there is no clear unambiguous averment in it indicating whether there was an instance of swearing or of affirming to. This uncertainty as to whether he has sworn or affirmed as to the truthfulness of its contents is due to the fact that the inappropriate words as appeared in the affidavit "ක්‍රිස්තු භක්තිකයකු වශයෙන් දිවුරා ප්‍රකාශ

කර සිටිමි/බෞද්ධාගමිකාරයකු වශයෙන් ගාම්භීරතා පූර්වකවද අවංකවද සත්‍ය ලෙසද මෙයින් ප්‍රකාශකර සිටිමි." remain undeleted.

However, the Commissioner of Oath, who placed his signature at the end of the affidavit, states that "ප්‍රකාශක විසින් 2004-02-24 දින බලන්ගොඩදී මා ඉදිරිපිට සහතික කරන ලදී".

In consideration of the reasoning of the judgment of ***Kandiah v Abeykoon*** (supra), it is clear that the order of eviction was challenged on the basis of "legality of the proceedings" before the Magistrate's Court. This submission had two components in it.

Firstly, the learned Counsel submitted before their Lordships that there was no valid application which complies with the requirements of Form B in the schedule to the State Lands (Recovery of Possession) Act.

Secondly, it was submitted that there is no valid affidavit in support of the application, in compliance of Form C of the schedule to the said Act, as the said affidavit is defective since it had not indicated the place of deposition and " ... *according to the body of the affidavit and the jurat, one does not know whether the deponent took an oath or made an affirmation and for that reason as well this affidavit was defective."*

It is thus clear that the second component had two parts in it. The first part dealt with the deficiency of the affidavit as to the place it was affirmed/sworn to while the second part deals with the ambiguity of *"whether the deponent took an oath or made an affirmation".*

It is on this second part of the second component that the Appellant before us, seeks to challenge the validity of the order of ejectment, claiming that there was no valid affidavit in support of the statements of facts

contained in the application filed by the 1st Respondent since the said affidavit is defective as to *"whether the deponent took an oath or made an affirmation"* is not clearly evident.

In ***Kandiah v Abeykoon*** (supra), the Respondent sought to counter the challenge mounted on the validity of the affidavit by placing reliance on Section 9 of the Oaths and Affirmations Ordinance.

H/L Goonewardene J, in delivering the judgment of Court, rejected this argument by holding that Section 9 applies to judicial proceedings and not to affidavits. Further His Lordship held that;

> *"One must I think be guided in this regard by the form of affidavit as contained in the schedule to the Act (Form C) and it must indicate on its face whether it was, that the deponent took an oath or made an affirmation, before it could be said that it was capable of "verifying to the matters set forth in such application"*

The Appellant's contention solely based on the above quoted judicial precedent of ***Kandiah v Abeykoon*** (supra) which had been decided on 02.09.1986, in its support.

Learned President's Counsel for the 1st Respondent, seeking to counter the submissions of the Appellant, in relation to the instant appeal placed reliance of the judgment of the apex Court in ***Facy v Sanoon and 5 Others*** (supra) decided on 31.03.2006.

In that instance, the contention before the Supreme Court was that the affidavit was defective due to the fact that;

> *" ... the Appellant has commenced his purported affidavit by stating that he is a Muslim and proceeded to take oath and swear to the truth of certain facts from his personal knowledge and documents at his disposal and the Justice of Peace or Commissioner for Oaths has purported to attest the said affidavit stating in the jurat clause therein that the Appellant affirmed to the purported affidavit before him, there is no affidavit valid in the eyes of the law."*

In determining the validity of this submission, their Lordships, having considered several judicial precedents which dealt with similar issues, concluded thus;

> *"There is no doubt that the jurat clause is the most crucial part of an affidavit, and as G.P.S. de Silva, CJ pointed out in D. Silva v L.B. Finance (1993) 1 SLR 371 at page 373, if that jurat expressly set out the place and date on which the affidavit was signed before a Justice of Peace that affidavit is in fact valid. It is relevant to note that in this case the Supreme Court was not inclined to uphold a purely technical objection to the affidavit on the ground that the jurat clause did not expressly state that the affidavit was affirmed before the Justice of Peace when that fact could reasonably be inferred from the statement contained in the jurat*

that the affidavit was read over and explained to the "within-named affirmants".

Returning to the affidavit before us, it is noted at the outset that the facts are slightly different in this particular instance to that of ***Kandiah v Abeykoon*** (supra) to the extent that, in the appeal before us, it is clearly stated in the jurat clause that the place where the affidavit was affirmed to whereas in ***Kandiah v Abeykoon*** (supra) it is stated that there was no indication of the place of the "deposition". In relation to the appeal before us, there is a pronouncement by the apex Court that *"if that jurat expressly set out the place and date on which the affidavit was signed before a Justice of Peace that affidavit is in fact valid"*. This is relation to the first part of the second segment as noted above.

At the time of ***Kandiah v Abeykoon*** (supra), their Lordships did not have the benefit the reasoning of the authoritative judgment of ***Facy v Sanoon and 5 Others*** (supra).

It has already been observed that in the instant appeal the jurat clause clearly states that the affidavit of the 1st Respondent was "affirmed" to before a Commissioner for Oath on 24th February 2004 at *Balangoda,* thus fulfilling the necessary requirements as per ***Facy v Sanoon and 5 Others***(supra)making it a valid affidavit, since their Lordships have held;

"... the Supreme Court was not inclined to uphold a purely technical objection to the affidavit on the ground that the jurat clause did not expressly state that the affidavit was affirmed before the Justice of Peace when that fact could reasonably be inferred

from the statement contained in the jurat that the affidavit was read over and explained to the "within-named affirmants".

This would result in the applicability of the reasoning in ***Kandiah v Abeykoon*** to be adopted subject to the above quoted segment of the reasoning of the judgment in ***Facy v Sanoon and 5 Others.***

Section 5(2) of the State Lands (Recovery of Possession) Act reads as follows;

"Every such application under subsection (1) shall be supported by an affidavit in the Form C set out in the Schedule to this Act verifying to the matters set forth in such application and shall be accompanied by a copy of the quit notice."

Upon a plain reading of the said sub section it is seen that the purpose of an affidavit to be tendered along with an application under Section 5 of the State Lands (Recovery of Possession) Act is for"... *verifying to the matters set forth in such application...*". In this sense, the emphasis of strict compliance to Forms B and C of the said Act by a Competent Authority, as per the judgment of ***Kandiah v Abeykoon*** (supra) is to be understood in the context that they apply to the contents of the application and the affidavit which had the character of "... *verifying to the matters set forth in such application...*"and not to the jurat clause of the affidavit in view of ***Facy v Sanoon and 5 Others***(supra).

The impugned orders of the Magistrate's Court as well as the Provincial High Court, though pronounced before ***Facy v Sanoon and 5 Others*** (supra) was decided, nonetheless adopted a similar reasoning in

rejecting the preliminary objections raised by the Appellant on the validity of the supporting affidavit to the application under Section 5 of State Lands (Recovery of Possession) Act.

The judgments of CA (PHC) 102/2011 - C.A.M. of 01.10.2014 relied upon by the Appellant re-emphasises the mandatory compliance of the requirements of Form B and C in applications and affidavits. The judgment of CA (PHC) 175/2008 - C.A.M. of 10.11.2016 is an instance where the original of the affidavit bears deletion of the inappropriate words affirmed/swear, and as such no disqualification is attributable to the affidavit.

In view of the reasoning contained in the preceding paragraphs, it is our considered view that the solitary ground of appeal of the Appellant fails. Accordingly, we make order that the appeal of the Appellant stands dismissed.

In consideration of the nature of the ground of appeal, no cost is ordered.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL