

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

In the matter of an Appeal in terms of
Article 138 read with Article 154P of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Officer-in-Charge,
Police station,
Chilaw.

Complainant

C.A. Case No: CA (PHC) 177/2012

H.C. Chilaw Revision Application No:
HCR 24/2009

M.C. Chilaw Case No: **15967/66**

Vs.

Ponnambalam Muththukumaran,
No. 49, Palam Street,
Chilaw.

1st Party Respondent

1. Egodagamage Harischandra
Premaratne,
Colombo Road, Maikkulama,
Chilaw.
2. Deguruge Karunaratne,
Bandarahena,
Arachchikattuwa.

2nd party Respondents

AND BETWEEN

Ponnambalam Muththukumaran,
No. 49, Palam Street,

Chilaw.

**1st Party-Respondent-
Petitioner**

Vs.

1. Egodagamage Harischandra
Premaratne,
Colombo Road, Maikkulama,
Chilaw.
2. Deguruge Karunarithne,
Bandarahena,
Arachchikattuwa.

**2nd party Respondents-
Respondents**

Officer-in-Charge,
Police station,
Chilaw.

Complainant-Respondent

AND NOW BETWEEN

1. Egodagamage Harischandra
Premaratne,
Colombo Road, Maikkulama,
Chilaw.
2. Deguruge Karunarithne,
Bandarahena,
Arachchikattuwa.

**2nd party Respondent-
Respondent-Appellants**

Vs.

Ponnambalam Muththukumaran,

No. 49, Palam Street,
Chilaw.

**1st Party Respondent-
Petitioner-Respondent**

Officer-in-Charge,
Police station,
Chilaw.

**Complainant-Respondent-
Respondent**

BEFORE : K. K. Wickremasinghe, J.
Janak De Silva, J

COUNSEL : M.U.M. Ali Sabry, PC with AAL Ruwantha
Coorey, AAL Nuwan Bopage, AAL M.S.
Shamsudeen and AAL N. Nawaz for the 2nd
party Respondent-Respondent-Appellants
AAL Chandana Wijesooriya with AAL
Wathsala Dulanjani for the 1st Party-
Respondent-Petitioner-Respondent

ARGUED ON : 11.05.2018

WRITTEN SUBMISSIONS : The 2nd party Respondent-Respondent-
Appellants – On 06.07.2018
The 1st party Respondent-Petitioner-
Respondent – On 16.10.2018

DECIDED ON : 04.12.2018

K.K.WICKREMASINGHE,J.

The 2nd party respondent-respondent-appellants have filed this appeal seeking to set aside the order of the Learned High Court Judge of Chilaw dated 22.11.2012 in Case No. HCR 24/2009 and seeking to affirm the order of the Learned Magistrate of Chilaw dated 22.07.2009 in Case No. 15967/66.

Facts of the case:

The police had filed information in the Magistrate's Court of Chilaw against the 2nd party 1st respondent-respondent-appellants (hereinafter referred to as the '1st appellant') and 1st party respondent-petitioner –respondent (hereinafter referred to as the '1st respondent') under section 66 (1) of the Primary Courts Procedure Act (hereinafter referred to as the 'PCP Act'). After considering the affidavits and the documents filed by both parties, the Learned Magistrate had held that the possession should be vested with the 1st appellant.

Being aggrieved by the said order, the 1st respondent preferred a revision application to the Civil Appellate High Court of Chilaw under case No. HCR 24/2009. The Learned High Court Judge has set aside the order of the Learned Magistrate and held that the 1st appellant was holding the property as a trust and therefore the 1st respondent was entitled to possess the land.

Being aggrieved by the said order, the appellant preferred an appeal to this Court.

The police had filed the information dated 09.01.2009 disclosing the following facts;

- i) On 29.10.2008, the 1st appellant had made a complaint to the police station that he bought the land in dispute from the 1st respondent on

15.05.2007 and the 1st respondent was attempting to acquire the said land again.

- ii) On 16.11.2008, the 1st appellant had lodged a complaint that he was cleaning the land and the 1st respondent had threatened the caretaker (2nd appellant) of the property asking not to develop the land.
- iii) On 18.11.2008, the 1st respondent had made a complaint that when he was going to the land on 17.11.2008 the 2nd appellant did not allow him to enter the said land. He further stated that the transfer deed of the said land was executed as a security for a loan and therefore the 1st appellant had not handed over the possession of the land.
- iv) On 22.11.2008, again the 1st respondent had complained that the appellants restricted him from entering into the premises by putting a new padlock to the gate.
- v) On 23.11.2008 the 1st respondent had complained that the 1st appellant plucked coconut in the land which the 1st appellant was not entitled to.
- vi) Thereafter on 28.11.2008 the 1st appellant had made a complaint that the 1st respondent was disturbing his possession.
- vii) On 13.12.2008 and on 14.12.2008, the 2nd appellant had lodged a complaint that the 1st respondent broke the padlock of the gate.

Thereafter the Police had filed information under section 66 (1) of the PCP Act since there was an imminent danger of breach of peace.

According to the affidavit of the 1st appellant at page 184 of the brief, he purchased the disputed land from the 1st respondent on or about 15.05.2007 by virtue of deed No. 7856 dated 15.05.2007 attested by M.A.S. Madagoda Notary Public (Page 198 of the brief). The Learned Counsel for the appellants submitted that the 1st

respondent after selling the property and handing over the possession thereof had disturbed the possession of the 1st appellant.

We perused the documents submitted by both parties and we observe that the 1st respondent in his affidavit at page 152 of the brief had stated that the aforesaid transfer deed was executed as a security for a loan and therefore the possession of the disputed land had not been handed over to the appellant.

The Learned President's Counsel for the 1st appellant has contended that the Learned High Court Judge had determined the ownership of the land which was not the duty of Court in an application made under section 66 of the PCP Act.

In the case of **S.A. Kanagasabai V. M.K. Mylwaganam [78 NLR 280]**, Sharvananda, J (as he was then) held that,

“Section 62 of the Administration of Justice Law confers special jurisdiction on a Magistrate to make orders to prevent a dispute affecting land escalating and causing a breach of the peace. The jurisdiction so conferred is a quasi-criminal jurisdiction. The primary object of the jurisdiction so conferred on the Magistrate is the prevention of a breach of the peace arising in respect of a dispute affecting land. The section enables the Magistrate temporarily to settle the dispute between the parties before the Court and maintain the status quo until the rights of the parties are decided by a competent civil Court. All other considerations are subordinated to the imperative necessity of preserving the peace. The section requires that the Magistrate should be satisfied, before initiating the proceedings, that a dispute affecting land exists and that such dispute is likely to cause a breach of the peace. But, once he is satisfied of these two conditions, the section requires him to proceed to inquiry and make order

under section 63. The pendency of a civil suit in respect of the right in question is no bar to action being taken under section 62 of the Administration of Justice Law. At an inquiry under that section the Magistrate is not involved in an investigation into title or right to possession, which is the function of a civil Court. The action taken by the Magistrate is of a purely preventive and provisional nature in a civil dispute, pending final adjudication of the rights of the parties in a civil Court. The proceedings under this section are of a summary nature and it is essential that they should be disposed of as expeditiously as possible..."

In the case of **Ramalingam V. Thangarajah (1982) 2 Sri. L.R. 693**, Sharvananda, J took a similar view as follows,

*"In this connexion what I said with reference to the provisions of section 62 of the Administration of Justice Law No.44 of 1973 (now repealed) in **Kanagasabai Vs. Mailvanaganam (78 NLR 280)**, apply equally well to the Section 66 and 68 of the Act which correspond to them:-*

"Section 62 of the the Administration of Justice Law confers special jurisdiction on a Magistrate to make orders to prevent a dispute affecting land escalating and causing a breach of the peace..."

In the case of **Punchi Nona V. Padumasena and Others (1994) 2 Sri L.R. 117**, it was held that,

"The Police Officer is empowered to file the information only if there is a dispute affecting land and the breach of the peace is threatened or likely. However, when an information is filed by a party to the dispute under section 66(1) (b) it is left to the judge to satisfy himself that there is a dispute affecting land owing to which a breach of the peace is threatened or likely.

As observed in Velupillai and Others v. Sivanathan [1993] 1 Sri L.R. 123 "...when an information is filed under section 66(1) (b) the only material that the Magistrate would have before him is the affidavit information of an interested person and in such a situation without the benefit of further assistance from a police report, the Magistrate should proceed cautiously and ascertain for himself whether there is a dispute affecting land and whether a breach of the peace is threatened or likely'."

It was further held that,

"...The jurisdiction conferred on a Primary Court under section 66 is a special jurisdiction. It is quasi-criminal jurisdiction. The primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land. The Court in exercising this jurisdiction is not involved in an investigation into title or the right to possession which is the function of a civil Court. He is required to take action of a preventive and provisional nature pending final adjudication of rights in a civil Court. It was therefore incumbent upon the Primary Court Judge to have initially satisfied himself as to whether there was a threat or likelihood of a breach of peace and whether he was justified in assuming such a special jurisdiction under the circumstances..."

Accordingly we are of the view that the Learned Magistrate should have determined who was in the possession of the land in dispute at the filing of the information in terms of section 66 and thereafter should have considered whether any party had been forcibly disposed from the land in dispute within a period of two months immediately prior to the filing of the information. The Learned Counsel for the respondent contended that the Learned Magistrate's reading of the

provisions of section 68(3) of the PCP Act was erroneous and it has resulted in making of the said impugned order, where the Learned Magistrate had held that “in terms of section 68(3) the possession should be given to the person, who had been in possession, two months immediately prior to the filing of the information” (Page 99 of the brief). We decide to answer the said contention of the Learned Counsel of the respondent in affirmative.

In the case of **Bank of Ceylon V. Kaleel and others (2004) 1 Sri L R 284**, it was held that;

"In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it - the order complained of is of such a nature which would have shocked the conscience of court."

In the case of **M.Roshan Dilruk Fernando V. AG [CA (PHC) 03/2016]**, it was held that,

"It is settled law that the extraordinary jurisdiction of revision can be invoked only on establishing the exceptional circumstances. The requirement of exceptional circumstances has been held in a series of authorities. Ameen v. Rasheed 3 CLW 8, Rastom v. Hapangama [19787-79] 2 Sri L R 225, Cader (on behalf of Rashid Kahan) V s Officer - In - Charge Narcotics Bureau, [2006]3 Sri LR 74, Colombo Apothecaries Ltd. and others V. Commissioner of Labour [1998] 3 SriLR 320 are some of the authorities where it has been emphasized that unless the existences of the exceptional circumstances are been established in cases where an alternative remedy is available, revisionary jurisdiction cannot be invoked..."(Emphasis added)

Therefore the Learned High Court Judge was correct in revising the said order of the Learned Magistrate since there were exceptional circumstances which warranted the exercise of revisionary jurisdiction. We observe that the Learned High Court Judge had considered the aforesaid loan transaction between the parties only in the context of possession and had not decided on the title of the property.

Therefore we are of the view that the order of the Learned High Court Judge was correct and was in accordance with law. Accordingly we affirm the order of the Learned High Court Judge dated 22.11.2012.

Both parties agreed to abide by the same decision in case No. CA (PHC) APN 159/2012.

This appeal is hereby dismissed subject to costs.

JUDGE OF THE COURT OF APPEAL

Janak De Silva, J

I agree.

JUDGE OF THE COURT OF APPEAL