

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

Bawa Abubacker

No:15, Nearby the Bus Stand,

Ragala.

Case No. CA(PHC) `104/2011

Party of the 2nd Part Petitioner Appellant

H.C. Nuwara Eliya Case No. HCR 30/2010(Rev) Vs.

M.C. Nuwaraeliya Case No. 99937

01. Herath Mudiyanse Lage Duminda Udayangana

Assistant Superintendent,

Liddesdale Estate,

Ragala.

Party of the First Part-1st Respondent-Respondent

02. Mathara Liyanage Sugath

No:04, Liddesdale Estate,

Ragala.

03. Poragalle Gedara Jothipala

Lines No.01, Liddesdale Estate,

Ragala.

04. Koothan Devadas

Lines No:08

Liddesdale Estate,

Ragala.

05. Veeraiah Muthusamy

Lines No:17,

Liddesdale Estate,

Ragala.

06. Sinna Kitnasamy

Lines No:24,

Liddesdale Estate,

Ragala.

07. Samban Kanagaratnam

Lines 06,

Liddesdale Estate,

Ragala.

08. Ramasami Yogaraj

Lines No:24,

Liddesdale Estate,

Ragala.

Parties of the First Part 2nd -8th Respondent Respondents

Inspector of Police

Police Station,

Ragala.

Complainant-Respondent-Respondent

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

M.D.J. Bandara for Party of the 2nd Part Petitioner-Appellant

D. Pieris Vissundara for Party of the 1st Part 1st Respondent-Respondent

Written Submissions tendered on:

Party of the 2nd Part Petitioner-Appellant on 09.10.2018

Party of the 1st Part 1st Respondent-Respondent on 08.10.2018

Argued on: 30.07.2018

Decided on: 11.01.2019

Janak De Silva J.

This is an appeal against the order of the learned High Court judge of the Central Province holden in Nuwaraeliya dated 04.08.2011.

The Complainant-Respondent-Respondent filed information in the Primary Court of Nuwaraeliya under section 66(1)(a) of the Primary Courts Procedure Act (Act) on 18.02.2010 stating that there is a dispute over the possession of a metal quarry the operations of which had caused damages to the tea plantation belonging to Liddesdale Estate managed by Maturata Plantation Company which is likely to cause a breach of peace between parties.

As the information disclosed a dispute affecting land between the Party of the 2nd Part Petitioner-Appellant (Appellant), Party of the 1st Part 1st Respondent-Respondent (1st Respondent) and Parties of the First Part 2nd -8th Respondent-Respondents (2nd to 8th Respondents) that threatened or was likely to lead to a breach of peace, the learned Primary Court judge directed that a notice be affixed to the disputed corpus inviting any parties interested to appear in court on the date mentioned in the notice and file affidavits setting out their claims.

The learned Primary Court judge having perused the affidavits, counter affidavits and written submissions of the aforementioned parties came to the conclusion that there was no dispute which required any order to be made under Part VII of the Act relating to the possession of a part of a land. The Appellant made a revision application to the High Court of the Central Province holden in Nuwaraeliya which was dismissed. Hence this appeal.

In this appeal this Court must consider the correctness of the order of the High Court. It is trite law that existence of exceptional circumstances is the process by which the court selects the cases in respect of which the extraordinary method of rectification should be adopted, if such a selection process is not there revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in the garb of a Revision Application or to make an appeal in situations where the legislature has not given a right of appeal [Amaratunga J. in *Dharmaratne and another v. Palm Paradise Cabanas Ltd. and another* [(2003) 3 Sri.L.R. 24 at 30]

In terms of section 66(1) of the Act, the jurisdiction of the Primary Court to make order under Part VII of the Act depends on the existence of a "dispute affecting land". Section 75 of the Act sets out the meaning of "dispute affecting land". In *Kanagasabai v. Mylvaganam* (78 N.L.R. 280 at 287) Sharvananda J. (as he was then) in interpreting the similar provision in section 62(4) of the Administration of Justice Law stated:

"Where the word defined is declared to 'mean' so and so, the definition is explanatory and prima facie restrictive; where the word defined is stated to 'include' so and so, the definition is extensive. " ' Include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute, and when it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include."- per Lord Watson *Dilworth v. Commissioner of Stamps* (1899-A.C. 105 & 106), An interpretation clause which extends the meaning of a word does not take away its ordinary meaning as understood in our jurisprudence. The expression must be given its ordinary meaning and, in addition, it must, in relevant cases, be given the special meaning which the statute says is to be included. The ordinary meaning must however harmonise with the subject of the enactment and the object which the legislature has in view. It must fall within the scope and object of the statute and must not extend to ground foreign to its intention."

Accordingly, the learned counsel for the Appellant submitted that possession of a metal quarry is a dispute affecting land within the meaning of section 75 of the Act and the learned Primary Court Judge erred in not making any order under Part VII of the Act. He further submitted that this error amounted to exceptional circumstances which warranted the High Court to act in revision.

The Appellant in his affidavit and counter affidavit filed in the Primary Court prayed for orders preventing any obstructions to his business of quarrying. There was no relief as to obstruction to possession. In fact, at paragraph 12 of the petition filed in the High Court the Appellant categorically states that from the date of the dispute to the date on which the order was made by the Primary Court, he carried on his business of quarrying. Clearly therefore the dispute before the Primary Court was on obstructions caused to the Appellant's business of quarrying. The question is whether this is a "dispute affecting land" within the meaning of sections 66(1) and 75 of the Act.

The approach of our courts in ascertaining what is a "dispute affecting land" is not clearly discernible. In the case of *Kanagasabai v. Mylvaganam* (78 N.L.R. 280) Sharvananda, J. (as he was then) held that land in our Law includes houses and buildings, and when the legislature employs the term 'land' in any statute, the word is presumed to include houses and buildings. The language of section 62 does not repel such an inclusive meaning and therefore he held that a dispute in respect of a building on a land is a "dispute affecting land". A dispute between parties over the running of a business which is run in premises in respect of which the complaint is made to the Magistrate's Court is a "dispute affecting land" within the meaning of section 62 of the Administration of Justice Law, No. 44 of 1973 [*Velauthan Ellayathamby v. Ramalingam Kandasamy and another* [(79) II N.L.R. 97]]. The reasoning was that under our law, a building accedes to the soil, and it becomes a part and parcel of land upon which it stands. The building thus loses its independent existence. Therefore, a dispute in respect of a building is one that necessarily involves the land on which it stands. However, a complaint of being prevented from tending the crops in the lands claimed to have been cultivated by the complainant, is not a

dispute as to the "right to cultivate" the land within the meaning of section 75 of the Primary Courts Procedure Act [*Velupillai and others v. Sivanathan* (1993) 1 Sri.L.R. 123].

I am of the view that a dispute as to quarrying is a "dispute affecting land" within the meaning of sections 66(1) and 75 of the Act as it is in relation to the land on which the metal is situated which accedes to the soil and becomes part and parcel of the land. Accordingly, both the learned Magistrate and High Court Judge erred in concluding that the dispute before Court was not one where an order under Part VII of the Act can be made.

In this connection it is important to bear in mind the purpose for which the special jurisdiction in Part VII of the Act was established. The legislature appears to have been mindful that disputes affecting land can in our society escalate to a situation which may result in the breach of peace and the need to expeditiously address the situation to prevent such an eventuality. In this respect I wish to quote the following statement by Salam J. (P/CA) in *Ananda Sarath Paranagama v. Dhammadinna sarath Paranagama and others* [(CA(PHC) APN 117/2013; C.A.M. 07.08.2014]

"I wish to place it on record that land disputes can cause social disruption and sometimes loss of life. They can have a negative impact on the development of lands and eventually on the economy of the Country. An efficient and effective system for settling land disputes is essential in any Country although the resolution of land disputes may appear to be complex. However trivial the dispute may be, it is the duty of the law enforcing authorities to pay serious attention to the Issue, particularly with a view to take a preventive measure against possible violence."

In this context it is important to adopt a liberal interpretation to the words "dispute affecting land" in sections 66(1) and 75 of the Act to achieve the legislative purpose. When a person has been operating a metal quarry for several years, one cannot certainly take the law unto one's hand and seek to prevent the person from carrying on his business by physical force or otherwise. Where the quarrying is been done contrary to law or is causing a public nuisance steps must be taken according to law to address that issue. That is a fundamental attribute of the rule of law.

The question then arises as to what relief can be granted to the Appellant. The petition of appeal filed by the Appellant has sought only two reliefs, namely setting aside of the order dated 26.05.2010 made by the learned Primary Court Judge of Nuwaraeliya and revising the order dated 04.08.2011 of the learned High Court Judge of the Central Province holden in Nuwaraeliya. It is trite law, that a court can only grant the relief prayed for by a party [*Sirinivsa thero v. Sudassi thero* (63 N.L.R. 31), *Wijesuriya v. Senaratne* (1997) 2 Sri.L.R. 323, *National Development Bank v. Rupasinghe and others* (2005) 3 Sri.L.R. 92, *Surangi v. Rodrigo* (2003) 3 Sri.L.R. 35, *Doris Siriwardena et al v. De Silva* (2006) 2 Sri.L.R. 309]. Accordingly, I set aside the order dated 26.05.2010 made by the learned Primary Court Judge of Nuwaraeliya and the order dated 04.08.2011 of the learned High Court Judge of the Central Province holden in Nuwaraeliya.

In the interest of justice, I make further order directing the learned Primary Court Judge of Nuwaraeliya to notice all the parties, consider the evidence already before Court and make an appropriate order according to law.

Subject to the above the appeal is allowed. No costs.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal