

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

Sath Kumara Mudiyansele Ranjith
Priyantha Sath Kumara,

Assistant Superintendent,
Ketandola State Plantation,
Elpitiya.

1st Respondent-Petitioner-Appellant

Case No.CA (PHC) 78/2006

H.C. Balapitiya Case No. HCR/584/2004 (Rev)

M.C. Elpitiya No.47993/12

Vs.

Headquarters Inspector of Police,
Police Station,
Pitigala.

Complainant-Respondent- Respondent

Walawa Durage Piyasiri,
Talagaspe,
Ketandola.

2nd Respondent-Respondent-Respondent

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Samantha Withana with Hiranga Fernando for 1st Respondent-Petitioner-Appellant

M.D.J. Bandara with Upali Alwis for 2nd Respondent-Respondent-Respondent

Written Submissions tendered on:

1st Respondent-Petitioner-Appellant on 17.07.2018

2nd Respondent-Respondent-Respondent on 25.07.2018

Argued on: 16.11.2018

Decided on: 18.01.2019

Janak De Silva J.

This is an appeal against the order of the learned High Court judge of the Southern Province holden in Balapitiya dated 27.04.2006.

On 16.05.2002 the Complainant-Respondent- Respondent filed information in the Magistrates Court of Elpitiya in terms of section 66(1)(a) of the Primary Courts Procedure Act (Act) stating that a dispute affecting land had arisen between the 1st Respondent-Petitioner-Appellant (Appellant) and 2nd Respondent-Respondent-Respondent (Respondent) that threatened or was likely to lead to a breach of peace. The learned Magistrate 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. Thereafter, the learned Magistrate – having perused the affidavits, counter affidavits and written submissions of the aforementioned parties – came to the conclusion that this was a dispute relating to the possession of a land. Accordingly, having identified the disputed corpus, the learned Magistrate came to the conclusion that the Respondent had been in possession of the land in dispute at least nine

months prior to information been filed and held that possession of the land in dispute should be with the Respondent.

Aggrieved by the said order the Appellant preferred a revision application to the High Court of the Southern Province holden in Balapitiya. The learned High Court Judge dismissed the application and hence this appeal.

The ambit of an inquiry under section 66 of the Act was explained by Sharvananda J. (as he was then) in *Ramalingam v. Thangarajah* [(1982) 2 Sri.L.R. 693 at 698] as follows:

“In an inquiry into a dispute as to the possession of any land, where a breach of peace is threatened or is likely under Part VII, of the Primary Courts Procedure Act, the main point for decision is the actual possession of the land *on the date of the filing of the information* under section 66; but, where forcible dispossession took *place within two months before the date on which the said information was filed* the main point is actual possession prior to that alleged date of dispossession. Section 68 is only concerned with the determination as to who was in possession of the land or the part on the date of the filing of the information under section 66. It directs the Judge to declare that the person who was in such possession was entitled to possession of the land or part thereof Section 68(3) becomes applicable only if the Judge can come to a definite finding that some other party had been forcibly dispossessed within a period of two months next proceeding the date on which the information was filed under section 66. The effect of this sub-section is that it enables a party to be treated to be in possession on the date of the filing of the information though actually he may be found to have been dispossessed before that date provided such dispossession took place within the period of two months next proceeding the date of the filing of the information. It is only if such a party can be treated or deemed to be in possession on the date of the filing of the information that the person actually in possession can be said not to have been in possession on the date of the filling of the information. Thus, the duty of the Judge in proceedings under section 68 is to ascertain which party was or deemed to have been in possession on the relevant date, namely, on the date of the filing of the information

under section 66. Under section 68 the Judge is bound to maintain the possession of such person even if he be a rank trespasser as against any interference even by the rightful owner. This section entitles even a squatter to the protection of the law, unless his possession was acquired within two months of the filing of the information.

That person is entitled to possession until he is evicted by due process of law. A Judge should therefore in an inquiry under Part VII of the aforesaid Act, confine himself to the question of actual possession on the date of filing of the information except in a case where a person who had been in possession of the land had been dispossessed within a period of two months immediately before the date of the information."

Chandrasiri Wickrematilleke Midigaspe Assistant Superintendent of Ketandola Estate made a complaint to the Pitigala Police on 06.05.2002 (X2, Appeal Brief page 30) stating that previously complaints had been made on 14.08.2001 (X7A, Appeal Brief page 36) and 22.07.2001 (X7B, Appeal Brief page 37) stating that Walawe Durage Jayasena, brother of the Respondent, had encroached onto part of the Ketandola Estate and cleared the land. He stated that thereafter the Police had directed Jayasena to stop such encroachment but despite such direction the Respondent and Jayasena have dug the ground to plant tea and requested the Police to stop the encroachment. It is clear upon a perusal of the three statements X2, X7A and X7B that both the incidents in July/August 2001 and May 2002 occurred in respect of the same land.

The Respondent took up the position that the land in dispute, although state land, has been possessed by them for a long time. Under section 68 of the Act the Judge is bound to maintain the possession of such person even if he be a rank trespasser as against any interference even by the rightful owner except in accordance with the law. The investigation notes prepared by the Pitigala Police (X5, Appeal Brief page 28) shows that there were coconut plants of around one year old as well as tea plants brought to be planted on the land when the inspection took place on 15.05.2002. The observation of the Police Officer who conducted the inspection shows that the Respondent was in possession of the land in dispute at least 9 months prior to the information been filed in court.

The Appellant submitted that the learned Magistrate and High Court Judge have failed to take into account that the encroachment in July 2001 by Jayasena was not connected with the present encroachment. I have no hesitation in rejecting this submission as the Police statements marked X7A, X7B and X2 clearly indicate that both incidents took place in relation to the land in dispute.

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 others* (2003) 3 Sri.L.R. 24 at 30]. The Appellant failed to adduce any exceptional circumstances warranting the intervention of the High Court.

For the foregoing reasons, I see no reason to interfere with the order of the learned High Court judge of the Southern Province holden in Balapitiya dated 27.04.2006.

Appeal is dismissed with costs fixed at Rs. 30,000/=.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal