

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

In the matter of an Appeal under
Article 154(P)(6) read with Article
138 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

C.A.(PHC)Appeal No. 105/2015
P.H.C. Embilipitiya Case
No.H.C.E./RA13/ 2014
M.C.Embilipitiya Case
No. 99469/2014

Manthrasinghe Devage
Kusumawathi,
Maduwanwela,
Kolonna.

Respondent- Petitioner -Appellant

Vs.

1. Aruna Sanjeewa Jayanada
Godallawatta,
Divisional Secretary
Divisional Secretariat,
Kolonna
Applicant-Respondent- Respondent

2. Hon. Attorney General,
Attorney General's Department,
Colombo 12
Respondent-Respondent

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

COUNSEL : Chandrasiri Wanigapura for the
Respondent-Petitioner-Appellant
Nuwan Peiris SC for the Applicant—
Respondent-Respondent and Respondent-
Respondent

WRITTEN SUBMISSIONS

TENDERED ON : 03-12-2018(by the Respondents)

DECIDED ON : 01st March, 2019

ACHALA WENGAPPULI, J.

The Applicant-Respondent-Respondent (hereinafter referred to as the "Respondent") made an application to the Magistrate's Court of *Embilipitiya*, 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 her failure to hand over the State land described in its schedule.

The appellant was thereafter summoned to show cause by the Magistrate's Court. She has tendered an affidavit in support of her claim

that the State land in respect of which she was summoned to show cause had been in their possession since 1879. She also relied on the deed of gift No. 1420 of 08.09.1925 to impress upon the Court that she had title to the said State land.

Having considered the material placed before it, the Magistrate's Court of *Embilipitiya* concluded that she has failed to satisfy Court that she has a "*valid permit or other written authority of the State granted in accordance with any written law*" and proceeded to issue the impugned order of ejection on 27.06.2014.

The Appellant thereafter invoked revisionary jurisdiction of the Provincial High Court of the *Sabaragamuwa* Province holden in *Embilipitiya* 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 her petition on the premise that there were no exceptional circumstances disclosed, warranting its intervention.

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 as well as the order of ejection issued by the Magistrate's Court.

The Appellant was represented in Court upon notice and has obtained her copy of the appeal brief on 05.09.2018. When her appeal was taken up for hearing before us, on 01.12.2018 the parties indicated their willingness to dispose this matter on written submissions. The parties were then directed by this Court to tender written submissions on or before 25.02.2019 and they were also informed that the judgment would be pronounced today. However, the Appellant opted not to comply with the direction of Court.

In these circumstances, this Court will consider her appeal on the grounds that are raised in her petition. Although the appellant described her grounds of appeal under five separate heads, the underlying complaint is that the land has not properly been identified by the Magistrate's Court when it issued the impugned order of ejectment.

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 since she has independent title to it by way of a deed.

If this submission is accepted as the correct statement of the applicable law, then it places a duty on the Magistrate's Court to inquire into the question whether the land in question is in fact a State land or not. Clearly the applicable relevant statutory provisions do no 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 is further held that:-

"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 the

respective Courts and have arrived at legally valid determinations at the end.

Another complaint of the Appellant is that the description of the land in the quit notice and the application for an order of ejection are different. This particular complaint was in fact considered and rejected by the Magistrate's Court after reproducing the two schedules in its order which clearly indicates that the boundaries are identical. We have considered the reasoning of Court and found that it had arrived at a correct finding of fact.

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 with costs fixed at Rs.15,000.00.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL