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

W.W.Palis

Rassagala.

Balangoda.

Case No: CA (PHC) 182/2006 **1st Party Respondent-Respondent-Appellant**

P.H.C. Ratnapura Case No. Rev. 01/03

Vs.

01. Subramanium Ranjith KUMAR
02. Subramanium Thileinadan
03. Shamugam Subramanium

All of:

No.54/15,Sadungama,Thumbagoda,

Balangoda.

2nd Party Respondents-Petitioner-Respondents

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Hirosha Munasinghe for 1st Party Respondent-Respondent-Appellant

Asoka Fernando for 2nd Party Respondents-Petitioners-Respondents

Written Submissions tendered on:

1st Party Respondent-Respondent-Appellant on 21.06.2018

2nd Party Respondents-Petitioners-Respondents on 05.04.2018

Argued on: 27.02.2018

Decided on: 08.03.2019

Janak De Silva J.

This is an appeal against the judgment of the learned High Court Judge of the Sabaragamuwa Province holden in Ratnapura dated 24.07.2006.

The Officer-in-Charge of the Balangoda Police filed a report in the Magistrates Court of Balangoda in terms of section 66(1)(a) of the Primary Courts Procedure Act as amended (Act). The report stated that there was a dispute affecting land between the 1st Party Respondent-Respondent-Appellant (Appellant) and 2nd Party Respondents-Petitioners-Respondents (Respondents) indicating an imminent breach of peace and sought appropriate orders from court.

The learned Magistrate held that the Appellant had dispossessed the Respondents from the land in dispute and made order restoring the Appellant to possession. The Respondents filed an application in revision in the High Court of Sabaragamuwa Province holden in Ratnapura. The learned High Court Judge held that the learned Magistrate had made an incomplete order and misdirected himself. Accordingly, the High Court set aside the order of the learned Magistrate and granted the relief prayed for in the petition. 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 *Siripala v. Lanerolle and another* [(2012) 1 Sri.L.R. 105] Sarath De Abrew J. held that revision would lie if -

(i) aggrieved party has no other remedy

(ii) if there is, then revision would be available if special circumstances could be shown to warrant it

(iii) Party must come to court with clean hands and should not have contributed to the current situation.

(iv) he should have complied with the law at that time

(v) acts should have prejudiced his substantial rights

(vi) acts should have occasioned a failure of justice.

I will now consider whether the grounds urged by the Appellant comes within these principles.

The position of the Respondents before the Magistrate was that soon after the general elections in 1994 the appellant forcibly occupied part of the land in dispute and subsequent to proceedings instituted in terms of section 66(1)(a) of the Act in Primary Court Balangoda case no. 18542, the Respondents were restored to possession which they continued to enjoy until the Appellant sought to evict them again in 2001 after the general elections.

The learned Magistrate concluded that it is not clear whether the land in the two cases is the same. However, as the learned High Court Judge points out a consideration of the description of the lands in dispute in the two cases clearly establish that it is the same land that is involved in both instances. Furthermore, the Appellant in this case was one of the 2nd Party Respondents in Primary Court Balangoda case no. 18542.

Therefore, the learned High Court Judge was correct in concluding that the learned Magistrate had misdirected himself.

Sharvananda J. (as he was then) in *Ramalingam v. Thangarajah* [(1982) 2 Sri.L.R. 693 at 698] held:

> "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."

The learned Magistrate failed to apply the above principles in determining the alleged date of dispossession. The Appellant in the police complaint made on 07.04.2002 states that he was dispossessed about three weeks prior to that date whereas in his affidavit the date of dispossession is stated to be 23.03.2002. The learned Magistrate has not determined the date on which the alleged dispossession had taken place.

These errors amount to exceptional circumstances warranting the intervention of the High Court by way of revision.

For the foregoing reasons, I see no reason to interfere with the judgment of the learned High Court Judge of the Sabaragamuwa Province holden in Ratnapura dated 24.07.2006.

Appeal is dismissed with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal