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

In the matter of an application under, and in terms of, Article 154P (6), read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Sinnapurage Deepa Ranjani,

Wewelwatta,

Ratnapura.

Plaintiff

Case No: CA(PHC) 196/2014

P.H.C. Ratnapura

Case No: HCR/RA 36/2010

Vs.

Sinnapurage Harrison,

Wewelwatta,

Ratnapura.

Defendant

AND

Sinnapurage Harrison,

Wewelwatta,

Ratnapura.

Defendant-Petitioner

Vs.

Sinnapurage Deepa Ranjani,

Wewelwatta,

Ratnapura.

<u>Plaintiff-Respondent</u>

AND NOW BETWEEN

Sinnapurage Harrison,

Wewelwatta,

Ratnapura.

<u>Defendant-Petitioner-Appellant</u>

Vs.

Sinnapurage Deepa Ranjani,

Wewelwatta,

Ratnapura.

<u>Plaintiff-Respondent-Respondent</u>

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Thilini Aluthnuwara for the Defendant-Petitioner-Appellant

Nuwan Bopage with Lahiru Welgama for the Plaintiff-Respondent-Respondent

Written Submissions tendered on:

Defendant-Petitioner-Appellant on 28.12.2018

Plaintiff-Respondent-Respondent on 28.12.2018

Argued on: 14.11.2018

Decided on: 08.03.2019

Janak De Silva J.

This is an appeal against the order of the learned High Court Judge of the Sabaragamuwa Province holden in Ratnapura dated 13.11.2014.

This appeal arises from proceedings instituted under section 66(1)(b) of the Primary Courts Procedure Act (Act) by the Plaintiff-Respondent-Respondent (Respondent) in the Magistrates Court of Ratnapura. After inquiry the learned Magistrate by order dated 23.04.2010 gave possession of the land in dispute to the Respondent in terms of section 68(1) of the Act. The Defendant-Petitioner-Appellant (Appellant) filed a revision application in the High Court of the Sabaragamuwa Province holden in Ratnapura. This application was dismissed and hence this appeal.

The Appellant sought to assail the order of the learned High Court Judge on the following grounds:

(a) The Respondent failed to disclose the fact that she was in possession of part of the land named lot 72 depicted in the Grama Sevaka Report
(b) The learned Magistrate failed to carry out a proper and independent site inspection
(c) The learned Magistrate failed to consider whether there was an actual breach of peace or likelihood of a breach of peace
(d) The learned Magistrate failed to explore a settlement

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.

Failure to Disclose that Respondent was in possession of part of the land named lot 72 depicted in the Grama Sevaka Report

The learned counsel for the Appellant submitted that the Respondent had fraudulently refrained from disclosing the fact that she was in possession of part of the land identified as lot 72 in the Grama Sevaka report.

The learned Magistrate has after a careful examination of the evidence held that the land in dispute is the portion marked 'E' in the Grama Sevaka report. He has further concluded that at the time of filing of information it was the Respondent who was in possession of the land in dispute.

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. 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 entities 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."

The learned Magistrate has correctly applied the principles enunciated above to the facts of the instant case and correctly concluded that it was the Respondent who was in possession of the land in dispute on the date that proceedings were instituted under section 66(1)(b) of the Act.

Independent Site Inspection

The learned counsel for the Appellant submitted that the learned Magistrate had erred in failing to hold an independent site inspection as part of the inquiry before the Magistrates Court.

In the instant case the learned Magistrate has obtained two site inspection reports one from the Wewalwatte Police and the other from the Bambarakotuwa Garma Sevaka. While acknowledging that certain cases may show that public officers have acted partially towards one party to the dispute there is no evidence or allegations of such conduct on the part of the Wewalwatte Police or the Bambarakotuwa Garma Sevaka. Accordingly, I see no merit in this submission of the Appellant.

Breach of Peace

The learned counsel for the Appellant submitted that in *Velupillai and others v. Sivanathan* [(1993) 1 Sri.L.R. 123] Ismail. J. held that 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. In *Punchi Nona v. Padumasena and others* [(1994) 2 Sri.L.R. 117] Ismail J. further held that in an information by a private party under section 66(1) (b) it is incumbent upon the Primary Court Judge to initially satisfy himself as to whether there was a threat or likelihood of a breach of the peace and whether he was justified in assuming such a special jurisdiction under the circumstances. Failure to so satisfy himself deprives the judge of jurisdiction. The learned counsel for the Appellant submitted that the learned Magistrate failed to do so.

The learned Magistrate has clearly stated that Court was satisfied at the outset that there was a threat to breach of peace. Accordingly, I have no hesitation in rejecting this ground urged by the Appellant.

Failure to Explore a Settlement

The learned counsel for the Appellant submitted that the learned Magistrate had failed to explore a settlement between parties in terms of section 66(6) of the Act. The learned counsel for the Appellant relied on the decision in *Ali v. Abdeen* [(2001) 1 Sri.L.R. 413] where Gunawardena J. held that The Primary Court Judge was under a peremptory duty to encourage or make every effort to facilitate dispute settlement before assuming jurisdiction to hold an inquiry into the matter of possession and impose on the parties a settlement by means of Court order and that the making of an endeavor by the Court to settle amicably is a condition precedent which had to be satisfied before the function of the Primary Court under section 66(7) began to consider who had been in possession. It was further held that the fact that the Primary Court had not made an endeavor to persuade parties to arrive at an amicable settlement fundamentally

affects the capacity or deprives the Primary Court of competence to hold an inquiry into the question of possession.

In *Jayantha Gunasekera v. Jayatissa Gunasekera and others* [(2011) 1 Sri.L.R. 284] a divisional bench of this Court held that the objection to jurisdiction must be taken at the earliest possible opportunity. If no objection is taken and the matter is within the plenary jurisdiction of the Court, court will have jurisdiction to proceed with the matter and make a valid order. The objection in terms of section 66(6) of the Act was not raised before the learned Magistrate. Hence it cannot be allowed to be raised at this stage.

In any event, the journal entry of 22.01.2010 (Appeal Brief page 153) reflects that the learned Magistrate had made a note that there is no settlement between parties. I therefore reject the submission of the Appellant.

Accordingly, the learned High Court Judge correctly concluded that the Appellant had not established exceptional circumstances.

For the foregoing reasons, I see no reason to interfere with the order of the learned High Court Judge of the Sabaragamuwa Province holden in Ratnapura dated 13.11.2014.

The appeal is dismissed. I make no order as to costs in the circumstances of the case.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal