

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

Mohomed Haneefa Mohomad  
Irshan,  
Kudugalwatta,  
Ratnapura.

2<sup>nd</sup> Party-Respondent-Appellant

U.M. Anwar Rosa,  
No.7/3, Godigamuwa,  
Ratnapura.

3<sup>rd</sup> Party-Respondent-Appellant

**CA CASE NO: CA (PHC) 214/2014**

**SABARAGAMUWA PROVINCIAL HIGH COURT CASE NO:  
RA83/2012**

**RATNAPURA ADDL MAGISTRATE'S COURT CASE NO: 83359**

Vs.

Don Lal Michel Hettiarachchi,  
No.11, Election Houses,  
Sri Pada Mawatha,  
Ratnapura.

1<sup>st</sup> Party Petitioner-Respondent

Officer in Charge,  
Miscellaneous Complaints  
Branch, Police Station,  
Ratnapura.

Applicant-Respondent-  
Respondent

Before: K.K. Wickramasinghe, J.  
Mahinda Samayawardhena, J.

Counsel: Asanka Dissanayake for the 2<sup>nd</sup> and 3<sup>rd</sup> Party  
Appellants.  
Tharanga Edirisinghe for the 1<sup>st</sup> Party  
Respondent.

Argued on: 02.04.2019

Decided on: 05.04.2019

Samayawardhena, J.

The first information was filed by the police before the Magistrate's Court under section 66 of the Primary Courts' Procedure Act, No.44 of 1979, making the 1<sup>st</sup> party respondent and the 2<sup>nd</sup> and 3<sup>rd</sup> party appellants parties to the matter on the basis that there was an imminent threat to the breach of the peace among the parties over possession of a portion of a land. There is no dispute about the identification of the said portion. The contest was between the 1<sup>st</sup> party respondent (respondent) and the 2<sup>nd</sup> party appellant (appellant). It is inconceivable why the 3<sup>rd</sup> party also appealed and actively participated in the appeal because he sought no relief from the Magistrate's Court.<sup>1</sup>

After inquiry, the learned Magistrate, in terms of section 68(1), held with the appellant on the basis that it was the appellant who was admittedly in possession of the portion of the land on the date the first information was filed in Court, and the respondent, in terms of section 68(3), had not proved

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<sup>1</sup> Vide page 342 of the brief.

dispossession within two months prior to the filing the said information.

This order was set aside by the High Court in revision, and held with the respondent. This appeal is from the Judgment of the High Court.

In the facts and circumstances of this case, the Judgment of the High Court is correct.

The respondent complained to the police on 09.11.2011 about forcible dispossession of him from the portion of land in dispute by the appellant on the same day.<sup>2</sup> Soon after the complaint was made, a police officer has visited the scene and made notes.<sup>3</sup> From those notes it is quite clear that the respondent had been in possession of this portion of land until he was dispossessed by the appellant on that day. This portion of land is just behind the eatery of the respondent, and according to the said police notes, that part had been using by the respondent to dispose waste.<sup>4</sup> The fact that the respondent had been in possession of this portion of land is further confirmed by the inspection notes made by a former Magistrate in respect of another section 66 application in respect of the same portion of land with another party marked 1V20.<sup>5</sup>

According to paragraph 4 of the affidavit filed by the appellant before the Magistrate's Court, he has taken possession of the adjoining premises (house) from one Hapangama on

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<sup>2</sup> Vide page 304 of the brief.

<sup>3</sup> Vide page 305 of the brief.

<sup>4</sup> Vide lines 9-11 from bottom of page 305 of the brief.

<sup>5</sup> Vide pages 365-370 of the brief.

14.11.2011.<sup>6</sup> That means, if at all he has come into possession of the disputed portion of the land, he has done so only one week before the filing of the first information. He has not had any possession before that date.

The police officer who visited the scene on 09.11.2011 has clearly stated that the house which the appellant is alleged to have bought from Hapangama was an abandoned house, which has not been used for a long time by anybody.<sup>7</sup> That means, Hapangama had not been in possession of the disputed portion of the land before.

For the aforesaid reasons, it is clear that the respondent had been forcibly dispossessed from the disputed portion of the land by the appellant within two months immediately before the filing of the first information in Court, and therefore the respondent was entitled to be restored in possession in terms of section 68(3) of the Act.

Appeal is dismissed with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal

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<sup>6</sup> Vide page 328 of the brief.

<sup>7</sup> Vide lines 5-8 from bottom of page 305 of the brief.