

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

1. Warakapitiya Mudiyansele
Yasantha Warakapitiya,
No. 140, Dharmapala Road,
Mirihalla,
Kegalle.
 2. Bandara Mirihalla,
No. 162, Dharmapala Road,
Mirihalla,
Kegalle.
- Respondent-Petitioner-Appellants

CA CASE NO: CA (PHC) 79/2015

HC KEGALLE CASE NO: 4782/REVISION

MC KEGALLE CASE NO: 23247/14

Vs.

1. Kasthurisinghe Mudiyansele
Sisira Kumara Kasthurisinghe,
No. 246, Walimannathota Road,
Kegalle.
 2. Nelundeniyalage Priyalal Aruna
Shantha Abeyrathna,
No. 23, Dharmapala Road,
Mirihalla,
Kegalle.
- Petitioners-Respondents-
Respondents

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

Counsel: Chaminda Seneviratne for the Appellants.
S.W. Wilwaraarachchi for the Respondents.

Argued on: 11.02.2019

Decided on: 08.05.2019

Samayawardhena, J.

This is an application filed by the two petitioners against the two respondents under section 66(1)(b) of the Primary Courts' Procedure Act, No.44 of 1979, alleging dispossession of a portion of a land described in the schedule to the petition within two months before filing of the application in the Magistrate's Court. The information has been filed on 05.02.2014 and the dispossession has taken place on 18.12.2013.¹ As the police have referred the matter to the Mediation Board before reporting facts to Court to see whether settlement is possible, the petitioners have gone to the Magistrate's Court by way of a private information before two month period from the date of dispossession is lapsed. Upon being satisfied with the material placed before Court, the learned Magistrate has held with the petitioners and granted relief under section 68(3) by restoring them in possession. This order has been affirmed by the High Court in revision. The respondent-appellants (appellants) have come before this Court against the said Judgment of the High Court.

¹ Vide *inter alia* P11 and P12 at pages 234-235 of the brief.

The learned counsel for the appellants raises only one point in appeal. That is, the learned Magistrate has pronounced the order without calling for the observation notes relating to this dispute from the police. According to the journal entry dated 04.04.2014 of the Magistrate's Court case record, the learned Magistrate, whilst accepting counter affidavits, on his own, not for any apparent special reason, but, as a matter of course, has called for "observation notes" from the police. That order routinely made, has not been pursued, nor such notes have ever been tendered. Nobody knows whether the police have ever had a scene visit after the complaints were made for them to have made "observation notes". In my view, that order calling for "police observation notes" is an unspecific and irresponsible order. Thereafter, upon both parties filing written submissions, the learned Magistrate has pronounced the aforesaid order.

I observe that in the written submissions tendered to the Magistrate's Court, the appellants have not taken up the position that without "police observation notes" being tendered to Court, the Court cannot make an order or something to that effect.² Not a word has been mentioned about "police observation notes" in the said written submissions. What the counsel for the appellants in that written submissions has stated is, that, although it was incumbent on the part of the petitioner-respondents (respondents) to tender an "observation report" (not police observation notes) through the respondents' lawyer in order to prove breach of the peace, such notes have not been produced.³ I emphasize that the counsel for the appellants has

² Vide pages 186-189 of the brief.

³ Vide last paragraph of page 2 of the written submissions of the appellants tendered to the MC which continues to the next page (at pages 187-188 of the brief).

expected the lawyer for the respondents to tender observation report in order to satisfy the Court on breach of the peace and nothing else. The counsel for the appellants before this Court does not take up the position that there was no likelihood of a breach of the peace and therefore the Magistrate's Court could not have proceeded with the application. The reason why the counsel for the appellants before this Court insist on "police observation notes" is not clear. In the written submissions counsel says that by failure to call for police observation notes, there was "an infringement of natural justice on these appellants"! I am unable to understand that argument. It is clear from the police complaints that there was a grave likelihood of a breach of the peace over this dispute.

As the learned High Court Judge has pointed out, there is no necessity to call for police observation notes even though upon his discretion the Magistrate can call for a report. However there is no such mandatory legal requirement. Both parties have field copious documentary evidence to substantiate their positions, and therefore the Magistrate had enough material before him to decide the matter without "police observation notes", the existence of which is not known.

This appeal is devoid of merits.

Appeal is dismissed with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal