

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

Fathima Iysha,

No. 359/B,

Walgama,

Malwana.

2nd Party Respondent-Petitioner-
Appellant

CA CASE NO: CA (PHC) 77/2013

HC NEGOMBO CASE NO: WP/PHC/GPH APL NO: 3/11

PRIMARY COURT GAMPAHA CASE NO: 66942/PCA

Vs.

1. The Officer in Charge,

Police Station,

Biyagama.

Complainant-Respondent-
Respondent-Respondent

2. Mohomad Sarook Mohomad Nazli,

No. 532/5,

Walgama,

Malwana.

1st Party Respondent-Respondent-
Respondent

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

Counsel: Vishva Vimukthi for the 2nd Party Appellant.
1st Party Respondent is absent and
unrepresented.

Decided on: 15.05.2019

Samayawardhena, J.

The first information under section 66 of the Primary Courts' Procedure Act, No. 44 of 1979 was filed by the police in the Magistrate's Court making the 1st party husband (respondent) and the 2nd party wife (appellant) parties to it, over a dispute in relation to a house. By that time, they had got divorced. After the inquiry, the learned Magistrate, in terms of section 68(3) of the Act, held with the respondent on the basis that the respondent had been in possession of the house until he was dispossessed by the appellant within two months prior to the filing of the first information. This was affirmed by the High Court. This appeal is from that Judgment of the High Court.

On the date on which the respondent is alleged to have been dispossessed, i.e. 05.09.2010, he has made a complaint to the police.¹ The following day, i.e. 06.09.2010, S.I. Wasantha has visited the place and observed that the appellant had broken the old padlocks of the gate and the main door of the house and replaced them with new padlocks. S.I. Wasantha has informed the appellant who was in the house to come to the police station

¹ Vide page 87 of the Appeal Brief.

on the following day at 9.00 am.² The appellant has made a statement to the police on the following day.³ In that statement she has admitted that she left the house about three months ago to stay in a rented-out house. She has further stated that both of them (she and her ex-husband) had the keys of the house and as usual she came to the house without using any force. This is false, and false to the knowledge of the appellant. However before this Court she takes up a different position and says that: *“The appellant became aware that the respondent by using an extra key which he had obtained prior to the divorce had entered the house situated in the land in dispute. Therefore the appellant changed the padlock and keys of the house in order to prevent him from entering the house and further threatening and harassing the children.”*⁴ This is also false and contrary to her statement to the police, which she made soon after the incident.

Learned counsel for the appellant drawing attention of Court to *Iqbal v. Majedudeen [1999] 3 Sri LR 213* says that the appellant had constructive possession. That is not acceptable on her own admissions which I stated above.

I see no reason to interfere with the Judgment of the High Court.

Appeal is dismissed. No costs.

Judge of the Court of Appeal

² Vide page 88 of the Appeal Brief.

³ Vide page 88 of the Appeal Brief. The date of that statement (27.09.2010), must be a typographical error. The date should be 07.09.2010.

⁴ Vide paragraph 1.5 of the written submissions filed in this Court with the motion dated 03.07.2018.

K.K. Wickramasinghe, J.

I agree.

Judge of the Court of Appeal