

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

Athugal Pedige Cyril Samarasinghe
and 30 Others

All of Bosella,

Kalugala.

Respondent-Respondent-Appellants

CASE NO: CA/PHC/147/2008

HC CASE NO: PHC KEGALLE 2491/REV

MC MAWANALLA CASE NO: 90116

Vs.

1. Ibrahim Lebbe Mohomad Saleem,

2. Ibrahim Lebbe Marikkar Hussain
Bari,

3. Mohomad Nawas Saleem,

4. Karuppiah Nawaratnam,

All of Debathgamawatte,

Debathgama,

Kegalle.

Petitioner-Petitioner-Respondents

Before: A.L. Shiran Gooneratne, J.
Mahinda Samayawardhena, J.

Counsel: Sunil Abeyratne for the Respondent-Appellants.
Yoosuf Nazar for the Petitioner-Respondents.

(Although counsel agreed to dispose of argument by way of written submissions, no written submissions have been filed on behalf of Petitioner-Respondents.)

Decided on: 25.06.2.2019

Mahinda Samayawardhena, J.

The petitioners filed this action against a number of parties as respondents in the Magistrate's Court under section 66(1)(b) of the Primary Courts' Procedure Act seeking restoration of possession on the basis that, within two months prior to the filing of the action, the said respondents forcibly entered into possession of the land in suit, which the petitioners had been in possession. The respondents denied it. After inquiry concluded by way of written submissions, the learned Magistrate dismissed the application of the petitioners. Being dissatisfied with this order, the petitioners went before the High Court, and the High Court set aside that order and directed the learned Magistrate to make a fresh order having properly considered the material placed before him. It is against this Judgment of the High Court, some of the respondents have filed this appeal before this Court.

The learned Magistrate has dismissed the petitioners' case on two grounds: (a) there was no threat to the breach of the peace and (b) case has been filed two months after the alleged dispossession. The High Court has decided that the learned Magistrate erred on both points.

The learned Magistrate has accepted that the fourth petitioner has made two complaints to the police regarding forcible entry, in that, the first one was on 24.10.2004, and other one, on 13.12.2004. According to the petitioners, the forcible entry has taken place on 23.10.2004. The learned Magistrate has taken the view that the second complaint has been made in order to file this action. Accordingly, he has held that there was no threat to the breach of the peace.

The learned Magistrate has further stated that notwithstanding the alleged dispossession has taken place on 23.10.2004, the case has been filed on 11.01.2005, i.e. more than two months after the said dispossession. This is a gross misdirection of the most material fact as the case has in fact been filed on 21.11.2004 and not on 11.01.2005, the latter date being the notice returnable date.

Then the finding of the learned Magistrate that the second complaint was made to the police on 13.12.2004 for the purpose of filing this action is also erroneous. That complaint has been made between the filing of the case and notice returnable date.

It appears that the learned Magistrate has hurriedly prepared the order without making a proper analysis of the facts presented before him.

Setting aside that order by the High Court in revision and directing the learned Magistrate to deliver the order afresh in such circumstances are correct.

Appeal is dismissed. No costs.

Judge of the Court of Appeal

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Court of Appeal