

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

In terms of an appeal under Article 154(P)
of the Constitution of the Democratic
Socialist Republic of Sri Lanka and High
Court of the Provinces (Special provisions)
Act No. 19 of 1990

C.A. Case No: **CA/PHC/160/2013**
PHC Kalutara Case No:
Rev 09/2011
MC Mathugama Case No: **63910/10**

1. Ponnampereuma Arachchige Nuwan
Thilakarathna ,
2. Dona Sadana Kumari Wijesooriya,
Both of
Lumbini Niwasa,
Kosketiya,
Pelawatta.

2nd Party-Petitioner-Appellants

-Vs-

Hettiarachchige Don Nihal Jayawardana,
Kosketiya,
Pelawatta.

1st Party-Respondent-Respondent

The Officer in Charge,
Police Station,
Meegahathenna.

Complainant-Respondent-Respondent

Before : A.L. Shiran Gooneratne J.

&

Mahinda Samayawardhena J.

Counsel : Nihara Randeniya for the 2nd Party-Petitioner-
Appellants.

Ranjan Nayakaratne with Kumara Gunathilake for the 1st
Party-Respondent-Respondent.

Written Submissions: By the 1st Party-Respondent-Respondent on 20/09/2018

By the 2nd Party-Petitioner- Appellants on 25/01/2019

Argued on : 31/05/2019

Judgment on : 03/07/2019

A.L. Shiran Gooneratne J.

This is a Revision application against the judgment of the learned High
Court Judge of Kalutara dated 08/08/2013.

The Complainant-Respondent-Respondent filed an information under Section 66(1)(a), of the Primary Courts Procedure Act (Act), owing to a likelihood of a breach of peace between the 2nd Party-Petitioner-Appellant (Appellant) and the 1st Party-Respondent-Respondent (Respondent) due to a forcible encroachment to the land described in the sketch at page 33 of the brief. The learned Magistrate after inquiry, by order dated 09/02/2011, granted possession of the land to the Respondent in terms of Section 68(1) of the Act.

The Appellant filed a revision application in the High Court where the learned High Court Judge affirmed the order made by the learned Magistrate.

This application has been filed mainly on the basis that the learned Magistrate has not properly and carefully considered the evidence led by the Appellant in order to identify the land in issue. The objection raised on the failure to show exceptional circumstances by the Appellant, in order to maintain this application, was not pursued by the Respondent.

In terms of Section 66(1) of the Act, the Magistrate should evaluate the evidence, if there is a dispute regarding the identity of the land. (*David Appuhamy vs. Yassassi Thero (1989) 1 SLR 253*)

The land in dispute is known as Kosketiyawatta Uthuru Kattiya, however, in common usage the land is known as Kadewatta. The police report dated 08/09/2010, has identified the disputed land as Kadewatta.

The Appellant has drawn attention of Court to documents marked 2P6, 2P7 and 2P9 as documents, which the Appellant contended were documents not considered by the learned Magistrate. The Appellant states that he filled a part of the adjacent land in dispute with earth, since the land where his house is situated is high land than the adjacent land.

It is noted that at pages 169-172 of the brief, the learned Magistrate has compared and distinguished the sketch of the land in dispute marked 2P6 with the sketch prepared by PC 81911 Wijesuriya, which is a sketch made in the process of the investigation to the compliant. The sketch marked 2P6, clearly indicates that the land in dispute which the Respondent claims ownership is 60 perches in extent and is adjacent to the 1 acre land, which belongs to the Appellant. It is observed that there is no road which gives direct access to the Appellants land from the main road. The access road to the Appellants house is limited to his house and not the land in dispute.

According to the police observations, the 20 perch land in dispute adjacent to the land of the Appellant is an uncleared land which does not consist of a roadway from the Appellants land.

It is noted that the learned Magistrate has correctly considered the sketch prepared by the police and the Appellant marked 2P6 and 2P7, and after considering the evidence of the respective parties, has identified the land in

dispute. Therefore, the argument of the Appellant that the land in dispute is not identified correctly, cannot be sustained.

In the circumstances, I do not see any reason to interfere with the findings of the learned Magistrate or the learned High Court Judge.

Accordingly, the appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL