

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

Malwalage Piyaseeli,
Welihindahenyaya,
Lellopitiya.
Plaintiff-Respondent-Appellant

CA CASE NO: CA (PHC) 155/2007

HIGH COURT RATNAPURA CASE NO: 126/2006/RA

RATNAPURA MAGISTRATE'S COURT CASE NO: 15117

Vs.

1. Malwalage Elbert Singho,
2. Wijesinghe Mudiyanseelage
Wimalawathie Perera,
3. Malwalage Sajeewaka
Gunasinghe,
All of Welihindahenyaya,
Lellopitiya.
Defendant-Petitioner-
Respondents

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

Counsel: Ranga Dayananda for the Appellant.
Shaminda Silva for the Respondents.

Decided on: 18.07.2019

Mahinda Samayawardhena, J.

The Appellant has filed this appeal against the order of the High Court Judge of Ratnapura dated 23.10.2007 whereby the order of the learned Magistrate of Ratnapura dated 11.07.2006 delivered in case No. 15117 was set aside.

Case No. 15117 was filed by the Appellant under section 73 of the Primary Courts' Procedure Act, No. 44 of 1979, seeking to punish the parties mentioned therein for violation of the order made by the learned Magistrate in Case No. 17898 filed under section 66 of the Primary Courts' Procedure Act. By that order dated 05.03.1997 the learned Magistrate has under section 68 held that the Appellant is entitled to possession of the land.

Thereafter the Appellant has filed Case No. 14579 in the District Court seeking declaration of title to the land. The Defendants to that case also in their answer have sought a declaration of title, possession and ejectment of the Appellant from the land. That case has been dismissed on 30.08.2002 on a preliminary issue regarding the maintainability of the action in view of the cancellation of the Permit granted to the Appellant by the State.

It is against that background, the Appellant has filed a separate action on violation of the aforementioned section 66 order delivered in favour of the Appellant.

The learned High Court Judge has set aside the order of the learned Magistrate on two grounds:

- (a) With the dismissal of the civil action, section 66 order automatically ceases to operate; and

(b) In the manner the complaint has been presented, Case No. 15117 cannot be maintained.

Filing or dismissal of a civil action, in my view, does not, *ipso facto*, invalidate the order made under section 68 of the Primary Courts' Procedure Act. According to section 68(2), order under section 68(1) is valid "*until such person or persons (in favour of whom order was made) are evicted therefrom under an order or decree of a competent court*". Here the District Court did not make an order evicting the Appellant from the land. The District Court dismissed the action on the basis that the land in suit is a State land. The District Court did not say that the Defendants in that case were entitled to possession and ownership of the land. Hence section 66 order still prevails. If the High Court Judge's view is accepted, breach of the peace is inevitable as the District Court did not make an order in regard to possession and ownership of the land in favour of either party.

The second ground relates to the manner in which section 73 has been invoked. Such an objection has not been taken either before the Magistrate's Court or before the High Court. If the High Court Judge takes the view that the manner in which section 73 has been invoked is wrong, he must tell how it shall be invoked correctly.

The order of the High Court is set aside and the order of the Magistrate's Court is restored.

This does not prevent the accused to take up any other objection/defence at the inquiry.

Appeal is allowed. No costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal