

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

Peli Kanakanamge Chandrasiri,
No. 341/20, Colombo Road,
Divulapitiya,
Boralesgamuwa.
1st Party-Petitioner-Petitioner

CA CASE NO: CA (PHC) 130/2016

HC COLOMBO CASE NO: HCRA/243/2015

MC NUGEGODA CASE NO: 5989

Vs.

Madduma Patabendige Indrani,
W. Luvi De Costa,
Both of
No. 11/010,
Sunethra Devi Road,
Kohuwala.
2nd Party-Respondent-Respondent
Kanaka Hewage Suresh Gayan
Fernando,
No. 29/38,
Sri Saranankara Road,
Bodiyawatte,
Kalubowila.
Intervenient-Respondent-
Respondent

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

Counsel: W. Dayaratne, P.C., with R. Jayawardena for
the 1st Party-Petitioner.
Roshan Dayaratne for the 2nd Party-
Respondents.

Decided on: 24.07.2019

Mahinda Samayawardhena, J.

These proceedings were instituted by the police under section 66(1)(a) of the Primary Courts' Procedure Act in the Magistrate's Court naming two parties over a dispute relating to a building. Later another party intervened. After inquiry the learned Magistrate held with the 2nd party in terms of section 68(1) on the basis that it is the 2nd party who was in possession of the building at the date of filing the first information in Court. The learned Magistrate further held that the 1st party did not prove that he was forcibly dispossessed by the 2nd party within two months prior to the filing of the first information. The learned Magistrate took the view that the 1st party was never in possession of the building. This order of the learned Magistrate has been upheld by the High Court in revision. It is against that Judgment of the High Court the 1st party has filed this revision application.

The 1st party had a right of appeal against the Judgment of the High Court. According to paragraph 19 of the petition filed before this Court, it is stated that petition of appeal was filed

against the Judgment of the High Court. If it is so, it is not clear why he filed a revision application thereafter. The 1st party has not averred any exceptional circumstances in this belated revision application when he himself says that he preferred a final appeal against the said Judgment. On that ground alone, this revision application is liable be dismissed *in limine*.

Be that as it may, the 1st party heavily relies on the Fiscal's report relating to the execution of the writ in the Magistrate's Court to say that the order of the learned Magistrate on the question of possession is erroneous. The 2nd party does not admit the contents of the said report. Even assuming the contents of the said report is correct, the learned Magistrate could not have taken it into consideration as it came into being after the order was delivered. The learned Magistrate has delivered the order on the facts presented before him prior to the delivery of the order.

It is undisputed that the 1st party was not in physical possession of the building. He says that he purchased the property from the 2nd party by way of a Deed of Transfer. The position of the 2nd party is that the said Deed was executed as security to a loan obtained from the 1st party. That matter has be decided by a District Court.

The 1st party says that he rented out the upstairs of the building to one Wijedasa and collected rent. There is no dispute that Wijedasa had been there as a tenant for a long time under the 2nd party. Thereafter, according to the learned Magistrate, the

2nd party has asked Wijedasa to pay rent direct to the 1st party because of the aforesaid loan transaction.

The learned Magistrate has refused to accept the informal Lease Agreement tendered by the 1st party as a genuine one. Hence the learned Magistrate has not accepted the version of the 1st party that he had been in possession of the premises through Wijedasa.

Also the learned Magistrate has not accepted the version of the intervenient party that he was in possession of the ground floor of the building as a tenant of the 1st party. Nor has he accepted the informal Lease Agreement tendered in that regard either as a genuine one.

The learned Magistrate has noted that the 1st party in his first complaint has not mentioned that he has rented out the ground floor of the building to the intervenient party, and also the fact that the intervenient party has not made any police complaint regarding any obstruction to his possession.

In the counter affidavit tendered to the Magistrate's Court, the 1st party has accepted that the possession of the building is with the 2nd party. If it is a mistake, it has not been corrected so far. This matter has been raised in the High Court by the 2nd party.

The order of the learned Magistrate is a well-considered one. There is no necessity to repeat each and every point the learned Magistrate has dealt with in his order.

I see no reason to interfere with it or the Judgment of the High Court which affirmed it. The 1st party shall vindicate his rights

to the property on the disputed Deed of Transfer in the District Court.

Application is dismissed without costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal