

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

In the matter of an Application for Revision of  
the Order dated 14<sup>th</sup> September 2014 made by  
the Learned High Court Judge of Avissawella  
in Case No. PHC/04/2013 under and in terms  
of Article 138(1) read with Article 154P(6) of  
the Constitution of the Democratic Socialist  
Republic of Sri Lanka

C.A. Case No: **CA/PHC/171/2014**  
PHC Awissawella Case No:  
**04/2013 (Rev)**  
MC Homagama Case No: **21519/B**

Kokmaduge Ramani Fernando,  
No. 1048/1, Liyanagoda,  
Pannipitiya.

**Petitioner-Respondent-Appellant**

**-Vs-**

1. Amarasinghe Arachchige Chathuranga  
Niroshan Peiris,  
No. 1118/1, Liyanagoda,  
Pannipitiya.

**1<sup>st</sup> Respondent-Respondent-  
Respondent**

2. Nissanka Mudiyanseelage Dilini Ishara  
Nissanka,  
No. 1167/1, Liyanagoda,  
Pannipitiya.

**2<sup>nd</sup> Respondent-Petitioner-  
Respondent**

**Before :** A.L. Shiran Gooneratne J.

**&**

**Mahinda Samayawardhena J.**

**Counsel :** Rasika Dissanayake for the Petitioner-Respondent-  
Appellant.

Chathura Galhena for the 1<sup>st</sup> Respondent-Respondent.

**Written Submissions:** By the 2<sup>nd</sup> Respondent-Petitioner-Respondent on  
17/09/2018

By the Petitioner-Respondent-Appellant on 06/05/2019

By the 1<sup>st</sup> Respondent-Respondent-Respondent on  
11/06/2019

**Argued on:** 19/06/2019

**Judgment on :** 22/07/2019

**A.L. Shiran Gooneratne J.**

This is an application against the order of the learned High Court Judge of Avissawella dated 07/10/2014.

The Petitioner-Respondent-Appellant (Appellant) instituted proceedings against the 1<sup>st</sup> and 2<sup>nd</sup> Respondent-Petitioner-Respondents (Respondents) in terms of Section 66(1)(b) of the Primary Courts Procedure Act (Act) in the Magistrates Court of Homagama, by private plaint, claiming possession to the land in dispute. The learned Magistrate by order dated 19/03/2013, held in favour of the Appellant.

The Provincial High Court set aside the said order on the basis that the Appellant had not satisfied that there was a breach of peace or a threat to that effect as alleged, when action was instituted under Section 66(1)(b) of the Act.

The Counsel for the Respondent argued that, it was incumbent upon the learned Magistrate to have considered the existence of a breach of peace, and the failure to satisfy himself of the existence of a breach of peace would deprive the learned Magistrate of jurisdiction to consider such application. The counter argument by the Counsel for the Respondent is that since the matter in issue concerns jurisdiction, the Appellant should have raised such issue at the first available opportunity and failure to do so would amount to a waiver of such right on the part of the Appellant.

If such objection to jurisdiction has been taken, it would be the duty of the learned Magistrate to come to a judicial pronouncement on the said issue.

In the affidavit filed in the Magistrates Court, the Respondent (paragraph 17), *inter alia*, has contended that since there was no threat or a likelihood of a breach of peace the Court has no jurisdiction to make a valid order. The counsel for the Respondent has also taken up this position in the written submissions filed of record in the Magistrates Court.

It is observed that in several complaints to the police, marked P6 to P8 and P11 to P12, the Appellant has sought the assistance of the police to inquire into a conditional land transfer of the disputed land to one Chandrapala Perera as security for a loan, which the Appellant states is not an absolute transfer. The said Chandrapala Perera had thereafter, transferred the said land to the 1<sup>st</sup> Respondent and the 1<sup>st</sup> Respondent in turn has transferred it to the 2<sup>nd</sup> Respondent. Police observations or in the sketch pertaining to the said land at pages 85 to 87 of the brief, does not make any reference to a dispute regarding the said land.

It is also observed that the Appellant has taken contradictory positions regarding the breach of peace between the Appellant and the Respondents regarding the disputed land in the Petition filed in the Magistrates Court (paragraph 16) and in the counter affidavit (paragraph 11 and 14).

*“in an information by a private party under sec. 66(1) (b) it is incumbent upon the primary court judge to initially satisfy himself as to whether there was a threat or likelihood of a breach of the peace and whether he was satisfied in assuming such special jurisdiction under the circumstances. Failure to so satisfy*

*himself, deprives the judge of the jurisdiction". (Punchi Nona v. Padumasena (1994) 2 SLR 117)*

The learned Magistrate in his order dated 19/03/2013, considering the issue whether there is a breach of peace made direct reference to the complaints made to the police regarding a dispute and the failure to carryout investigations into such dispute. It is noted that even at the time of issuing notice on the Respondents or thereafter, the learned Magistrate failed to satisfy himself of a breach of peace or a likelihood and therefore the jurisdictional question has not been addressed.

In the circumstances, the question arises as to whether the learned Magistrate was satisfied in terms of Section 66 (1)(b) of the Act, that a breach of the peace prevailed. *(Velupillai v. Sivanathan (1993) 1 SLR 123)*.

*"Under Section 66 (1)(a) of the Primary Courts Procedure Act, the formation of the opinion as to whether a breach of the peace is threatened or likely is left to the police officer inquiring into the dispute. The police officer is empowered to file the information if there is a dispute affecting land and a breach of the peace is threatened or likely. The Magistrate is not put on inquiry as to whether a breach of the peace is threatened or likely. In terms of Section 66 (2) the Court is vested with jurisdiction to inquire into and make a determination on the dispute regarding which information is filed either under Section 66 (1)(a) or 66 (1)(b). However, when an information is filed under Section 66 (1)(b) the only material that the Magistrate would have before him is the affidavit information of an interested person and in such a situation without the benefit of further*

*assistance from a police report, the Magistrate should proceed cautiously and ascertain for himself whether there is a dispute affecting land and whether a breach of the peace is threatened or likely.” (Velupillai v. Sivanathan (1993) 1 SLR 123).*

Therefore, it is observed that in the instant case the learned Magistrate has not satisfied himself that the breach of the peace is threatened or likely after considering all material filed before Court and failure to do so would deprive the judge of jurisdiction.

Accordingly, I see no reason to interfere with the order made by the learned High Court Judge and accordingly, I affirm the said order.

The Appeal is dismissed.

**JUDGE OF THE COURT OF APPEAL**

**Mahinda Samayawardhena, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**