

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

Raja Mahesh Wijekoon,  
Punchi Digana,  
12<sup>th</sup> Mile Post,  
Opatha.  
Respondent-Respondent-Appellant

**CA CASE NO: CA (PHC) 115/2012**  
**HC GALLE CASE NO: HC/760/2010/REV**  
**MC UDUGAMA CASE NO: 46962**

Vs.

Hiniduma Liyanage Sarathchandran  
Gunawardena,  
Sinhaweli Watta,  
Opatha.  
Petitioner-Petitioner-Respondent

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

Counsel: Thilak Wijesinghe for the Appellant.  
Shihan Ananda for the Respondent.  
(No written submissions have been filed on  
behalf of the Respondent)

Decided on: 30.07.2019

Mahinda Samayawardhena, J.

The petitioner-respondent (respondent) filed an application against the respondent-appellant (appellant) under section 66(1)(b) of the Primary Courts' Procedure Act in the Magistrate's Court seeking to restore him in possession in terms of section 68(3) on the basis that he was dispossessed from the land in question by the appellant immediately within two months before the filing of the application.

As seen from the Journal Entry dated 25.02.2010, the learned Magistrate first having satisfied that there would be an imminent threat to the breach of the peace as a result of this land dispute, issued notice on the respondent.

However, after the inquiry concluded by way of written submissions, the learned Magistrate by order dated 08.07.2010 dismissed the application of the petitioner, without making a determination on possession, stating that the Court has no jurisdiction to make an order on possession as there was no breach of the peace.

On appeal, the learned High Court Judge set aside that order on the ground that once the Magistrate was satisfied that there was an imminent threat to the breach of the peace, he cannot at the end dismiss the application on want of jurisdiction on the premise that there was no threat to the breach of the peace. The learned High Court Judge directed the learned Magistrate to deliver the order afresh on merits.

It is against this Judgement of the High Court the appellant has filed this appeal.

It is my considered view that the Judgment of the High Court is correct. The Magistrate is clothed with the jurisdiction to entertain the application upon his being satisfied that owing to the dispute affecting land, the breach of the peace is threatened or likely. That is a precondition to issuance of notice. Once it is recorded and notice issued, and the inquiry is held, the Magistrate need not revisit his earlier decision and dismiss the application *in limine* without considering the merits on the ground of lack of jurisdiction due to non-existence of breach of the peace.

Breach of the peace does not amount to actual physical fight leading to grievous hurt or murder. If the breach of the peace is likely, although there is no such threat at present, that is sufficient for the Magistrate to make an order under section 66 of the Primary Courts Procedure Act.

Appeal is dismissed without costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal