

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

In the matter of an Appeal in terms of Article
154P (6) of the Constitution of Sri Lanka

Court of Appeal Case No:
CA (PHC) 98/2014
HC Colombo Revision Application No:
HCRA 79/2012
MC Colombo Case No:
1988/06/12

Ramalingam Satgunarajah,
No. 78, College Street,
Kotahena
Colombo 13.

1st Party-Petitioner

-Vs-

1. Lasitha Wasundara De Zoysa Gunarathne,
No. 58/42 - F1,
Ananda Balika Mawatha,
Pitakotte.
2. Mangala Udawatte,
Nation Lanka Finance,
No. 42, Premasiri Khemadasa Mawatha,
Colombo 07.
3. Devika Selvaratnam,
No. 9, Penruddocke Road,
Bucklands Beach, Auckland 2012,
New Zealand.

4. Nation Lanka Finance,
No. 28, Dickmans Road,
Colombo 04.

2nd Party Respondents-
Respondents-Respondents

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

&

Mahinda Samayawardhena J.

Counsel : Ashoka Fernando for the 1st Party Petitioner-Appellant
instructed by A.R.R. Siriwardane.

Harsha Soza, PC with Rajindh Perera instructed by Nithi
Murugesu and Associates for the 2nd Party Respondents-
Respondents-Respondents.

Written Submissions: By the 1st Party Petitioner-Appellant on 28/11/2018

By the 2nd Party Respondents-Respondents-Respondents
on 28/11/2018

Argued on : 27/08/2019

Judgment on : **08/10/2019**

A.L. Shiran Gooneratne J.

The 1st Party Petitioner-Appellant (Appellant), instituted proceedings in the Magistrates Court of Colombo, in terms of Section 66 (1)(b) of the Primary Courts Procedure Act No. 44 of 1979 (as amended), for unlawfully and forcibly ousting

him from the land in question by the 2nd Party 1st, 2nd and 3rd Respondents-Respondents (Respondents). The learned Magistrate by order dated 13.06.2012 decided in favour of the 3rd Respondent. Being aggrieved by the said order, the Appellant preferred a Revision Application to the High Court of the Western Province holden in Colombo. The learned High Court Judge by his order dated 22.08.2014 affirmed the order of the learned Magistrate. The Appellant is before this Court to canvas the said orders.

Facts of the case briefly are as follows;

The premises in dispute bearing assessment No. 300, Galle Road, Bambalapitiya, Colombo 4, consists of a building in a larger land comprising of four lots. The said land is depicted in Plan No. 1276 dated 25.02.1977, made by P. Sivasundaram, at page 184 of the brief. The land in dispute devolved to the 3rd Respondent and her son in equal shares, after the demise of the husband of the 3rd Respondent.

By Agreement No. 1537 dated 11.03.2006, attested by K. Kaneshayogan NP, the Petitioner came into possession of the disputed land where he has carried out a car sales business under the name and style of Rasu and Company (Pvt) Ltd. However, there is no evidence on record to show whether the Appellant had a car sales business in the said premises.

The 3rd Respondent submits that the Appellant had sub-leased the said property to Timberline Furniture (Pvt) Ltd., in violation of the terms agreed upon with the Appellant. According to the statement given by Danushka Seneviratne,

director of Timberline Furniture (Pvt) Ltd. the said company had been in possession of the entirety of the disputed property pursuant to the execution of an agreement and admits that the land was given to the company by the Appellant on a temporary basis.

The Respondents contend that the Appellant has unlawfully sub-leased out the said disputed premises to Timberline Furniture's (Pvt) Ltd, a subsidiary of Arpico Company, to run a furniture business. However, as reflected in document marked Y4, the said company on 04/01/2012 had voluntarily and peacefully handed over the entirety of the said premises to the 1st Respondent, the power of Attorney holder of the 3rd Respondent, in the presence of the Bambalapitiya Police. In the circumstances, it is contended that in the absence of evidence of a likelihood of or of a threatened breach of the peace, the Court is not vested with the jurisdiction to entertain such proceedings. On 6th January 2012, the 3rd Respondent entered into Agreement, No. 619 with Nation Lanka Finance PLC, undertaking to sell the said property to the said Nation Lanka Finance PLC. (The said Agreement is marked "X3")

The Appellant in his affidavit dated 09/02/2012, states that he has been in possession of the disputed land inclusive of the building for a period of 13 years and had his personal office and the business in the name of his wife. He claims that the 1st Respondent as the power of Attorney holder of the 3rd Respondent entered the premises in dispute and forcibly ejected him to leave behind his valuable documents, office furniture and equipment in the said premises. The

Appellant made a complaint to the Bambalapitiya police on 04th January 2012, against the said undue influence, unlawful eviction and contends that no investigation was carried out.

The main grievance of the Appellant is that the Court has failed to consider that the Appellant had been forcibly dispossessed, within a period of two months immediately before the date on which, the information was filed under Section 68 (1) of the Code.

In terms of Section 66 (1)(b) of the Act a Primary Court Judge is to ascertain whether there is a situation where breach of the peace prevails. (Velupillai v. Sivanathan (1993)1 SLR 123, Ismail, J.)

In ***Punchi Nona v. Padumasena & Another (1994) 2 SLR 117, Ismail, J*** held that,

“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 justified in assuming such special jurisdiction under the circumstances. Failure to so satisfy himself, deprives the Judge of the jurisdiction”

Therefore, in the first instance it is paramount for the Court to decide on the threat or likelihood of a breach of the peace in order for the Court to assume jurisdiction. The learned Magistrate at page 4 of his order, has come to a clear finding that there is no dispute affecting land and there is no forcible eviction of

the Appellant. The said conclusion is based on document marked Y4 and the statement given to the police by Dhanushka Seneviratne, the director of the company, on 04/01/2012, marked Y5. According to the said statement the disputed land has been handed over voluntarily to the power of Attorney holder of the 3rd Respondent. Document Y5 makes reference to the entirety of the disputed land and does not distinguish the said premises as part of the land.

In the circumstances, the available evidence infer, taking possession of the entirety of the disputed land by the 1st Respondent, voluntarily and peacefully, which dispel the argument of forcible dispossession advanced by the Appellant. Therefore, I am of the view that the learned Magistrate was correct in considering the relevant evidence in deciding the applicable law which was affirmed by the Court above.

For all the above reasons, I uphold the orders given by the learned High Court Judge and the Court below and dismiss this application.

Appeal dismissed with costs fixed at Rs. 15,000/-

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL