

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

Kumarasiri Athukorala,
No. 285/1,
Kirulapone Road,
Colombo 05.

**1st Party Respondent-
Petitioner-Appellant**

Athukoralalage Somapala,
No. 103/01,
Weniwelkola,
Polgasowita.

**1st Party Intervenant-
Respondent-Petitioner**

Court of Appeal Case No:
CA (PHC) 26/2013
HC Panadura Revision Case No:
HCRA 28/2011
MC Kesbewa Case No: **41319/66**

-Vs-

Athukoralalage Dayananda,
Athukoralalage Dayananda Hemachandra,

Both are residing at

No. 104/1,
Weniwelkola,
Polgasowita.

**2nd Party Respondent-
Respondent-Respondent**

Officer-in-Charge,
Police Station,
Kahathuduwa.

Complainant-Respondent

Before : A.L. Shiran Gooneratne J.

&

Mahinda Samayawardhena J.

Counsel : Rasika Dissanayake for the 1st Party-Appellant-Petitioner.

Nihara Randeniya for the 2nd Party-Respondent-Respondent-Respondent.

Written Submissions: By the 2nd Party-Respondent-Respondent-Respondent on 18/01/2019

By the 1st Party-Respondent-Petitioner-Appellant on 30/01/2019 and 31/10/2019

Argued on : 15/10/2019

Judgment on : 19/11/2019

A.L. Shiran Gooneratne J.

The Officer-in-Charge of the Kahathuduwa Police filed information in terms of the provisions contained in Section 66(1)(a) of the Primary Courts Procedure Act No. 44 of 1979, (hereinafter referred to as the Act) in the Magistrates Court of Kesbewa against the 1st Party-Respondent-Petitioner-

Appellant and the 1st party-Intervenient-Respondent-Petitioner (hereinafter referred to as the Appellant) and the 2nd party Respondent-Respondent-Respondent (hereinafter referred to as the Respondent) alleging that the Respondent had forcibly entered the paddy field called 'Helapathamulla Kumbura' and dispossessed the Appellants from the said paddy land in dispute. The learned Magistrate by order dated 25/08/2011, held that the possession of the disputed land be handed over to the Respondent. The Appellants aggrieved by the said order, filed a revision application in the Provincial High Court of the Western Province holden in Panadura. By order dated 29/04/2013, the learned High Court Judge of Panadura, dismissed the application of the Appellants. It is the said order that the Appellants are seeking to canvass by this application.

The main contention of the Appellants are that the Court by not identifying the disputed corpus has granted relief which has not been prayed for by the Respondent and therefore, has urged Court to set aside the order of the Magistrates Court of Kesbewa and the High Court of Panadura, which affirmed the said order.

The Appellants submit that, 2 complains were made to the Kahatuduwa Police Station stating that the Respondent had forcibly entered the paddy field called 'Pandiya Kumbura' and 'Helapathamulla Kumbura' on or about 26/06/2010 and 12/04/2011 respectively, which are owned and possessed by them. The Appellants point out that according to the inquiry report dated 01/05/2011, the

Respondent has claimed only a land in extent of '5 Lahas' of paddy sowing area of the paddy land called 'Helapathamulla Kumbura' which is in extent of 1 Acre.

The Appellants by affidavit dated 09/06/2011, (at page 88 of the brief) sought to be placed in possession of the lands called 'Pandiya Kumbura' in extent of 2 Bushels of paddy sowing area and the land called 'Helapathamulla Kumbura' in extent of 1 Acre, more fully described in the schedule to the said affidavit.

In the affidavit dated 25/05/2011, (at page 72 of the brief), the Respondent describes 2 different lands in the two schedules as 'Helapathamulla Kumbura'. The land described in the 2nd schedule is in extent of 5 Lahas of paddy sowing area. In the said affidavit the Respondents have prayed for possession of the land described in the 2nd schedule. The Respondents in their counter affidavit dated 23/06/2011, (at page 132 of the brief) describes an additional land called 'Pandiya Kumbura' in extent of 1 Rood in the 3rd schedule, which is an addition to the lands described in the 1st and 2nd schedules. By the said counter affidavit, the Respondents claim possession of 'Helapathamulla Kumbura' in extent of 5 Lahas of paddy sowing area and the land called 'Pandiya Kumbura' in extent of 1 Rood, the lands described in the 2nd and 3rd schedules.

The lands described in the 1st and 2nd schedules refer to a land called 'Helapathamulla Kumbura'. However, it is observed that the boundaries and the extents of the lands so described are not the same. The land described in the 2nd

schedule is in extent of 5 Lahas of paddy sowing area, which the Respondent claims to be in possession.

The learned Counsel for the Appellant has cited the case of *Ratnayake Vs. Kumarihamy (2002) 1 SLR 65*, where Weerasooriya J. held that “one Laha of paddy sowing area is equivalent to 10 perches.” Accordingly, the Appellants contend that by the impugned order the Court has placed the Respondent in possession of 160 perches of land instead of 50 perches claimed by them. Therefore, the learned Counsel submits that the said order has placed the Respondent in possession in extent of 160 perches instead of the 50 perches claimed by him. It was the stand of the Respondent that he cleared the forest and cultivated the land in extent of 5 Lahas described in the 2nd schedule of the affidavit. In paragraph 3(x) of the said affidavit dated 25/05/2011, the Respondent has clearly stated as follows;

“3(x) මාස ගණනාවක් තිස්සේ එම කැලයෙන් කොටසක් කපා එළි පෙනෙළි කොට මෙහි පහත දෙවන උපලේඛනයේ දැක්වෙන වී ලාස් පහක ප්‍රමාණයෙන් දයානාන් හේමවන්ද පෙරේරා වන මම මාගේ පියා වන දයානන්ද පෙරේරාට මව් උරුමයෙන් ලද ප්‍රමාණය පමණක් අස්වැද්දීමට කටයුතු කළෙමි.”

However, by the impugned order, the learned Magistrate has given possession to the Respondent of the entirety of the land called ‘Helapathamulla Kumbura’ described in the 1st schedule, which is in extent of 1 acre. It is observed that the learned Magistrate has clearly failed to identify the corpus described in the

1st and 2nd schedules as 2 lands referred to as 'Helapathamulla Kumbura' and in that premise has erred in identifying the disputed land as 'Helapathamulla Kumbura' and thereby has placed the Respondent in possession of a land in extent of 1 Acre which was never the subject matter of this dispute.

In the circumstances, I am of the view that the impugned order of the learned Magistrate and the order of the learned High Court Judge should be set aside forthwith.

Application allowed. I order no costs.

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL