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

Case No. **CA PHC 130/2015**

Rajakaruna Wasala Mudiyanselage
Nihal Rajakaruna
No. 112, Darmapala,
Walligalla.

Plaintiff/Informant

Vs.

01. Aditya Bahmana Ralalage Wijekoon
02. Aditya Bahmana Ralalage
Nawarathne Banda
03. Aditya Bahmana Ralalage Kuda
Banda
All are
110C, Kandy Road, Waligalla.

Respondents

AND

Rajakaruna Wasala Mudiyanselage
Nihal Rajakaruna
No. 112, Darmapala,
Walligalla.

Plaintiff/Informant-Petitioner

Vs.

01. Aditya Bahmana Ralalage Wijekoon

02. Aditya Bahmana Ralalage

Nawarathne Banda

03. Aditya Bahmana Ralalage Kuda

Banda

All are

110C, Kandy Road, Waligalla.

Respondent-Respondent

AND NOW BETWEEN

Rajakaruna Wasala Mudiyanselage

Nihal Rajakaruna

No. 112, Darmapala,

Walligalla.

Plaintiff/Informant-

Petitioner – Appellant

Vs.

01. Aditya Bahmana Ralalage Wijekoon

02. Aditya Bahmana Ralalage

Nawarathne Banda

03. Aditya Bahmana Ralalage Kuda

Banda

All are

110C, Kandy Road, Waligalla.

Respondent-Respondent-

Respondents

Before : **Prasantha De Silva J.**

S.U.B Karaliyadde J.

Counsel: Mr. Nilantha Kumarage A.A.L for the Plaintiff-Petitioner-Appellant.

Mr. Thishya Weragoda A.A.L with Mr. Prathap Welikumbura A.A.L for the Respondent-respondent-Respondent.

Written Submissions

tendered on: 09.09.2015 by the Plaintiff-Petitioner -Appellant

30.03.2021 by the Respondent-Respondent-Respondent.

Decided on: 29.04.2021

Prasantha De Silva J

Judgment

The Plaintiff instituted action bearing No 56970/12 against the Respondents in the Magistrate Court of Kandy in terms of Section 66 of the Primary Court's Procedure Act No 44 of 1979, by way of a Private Plaint.

It appears that the learned Magistrate acting as the Primary Court Judge granted interim relief prayed in Prayer (ඒ) of the Plaint under Section 67 (3) of the Primary Court Procedure Act.

The Respondents filed a counter affidavit and the Plaintiff filed a cross counter affidavit and thereafter the Court allowed parties to file written submissions.

The learned Primary Court Judge after hearing to both the Plaintiff and the Respondents, dismissed the action of the Plaintiff and also dissolved the interim order issued by Court.

Being aggrieved by the said order, the Plaintiff-Petitioner had invoked the Revisionary Jurisdiction of the Provincial High Court of the Central Province.

After filing the objections by the Respondent-Respondent's and written submissions by both the parties, the learned High Court Judge delivered the order dismissing the Plaintiff-Petitioner application with cost on 06.10.2015.

The Plaintiff-Petitioner being dissatisfied with the said order has preferred this appeal seeking to revise or set aside the orders made by the learned Primary Court Judge dated 03.09.2013 and the learned High Court Judge dated 06.10.2015.

Apparently, it was the contention of the Plaintiff-Petitioner-Appellant [hereinafter referred to as the Appellant] that, whether both the learned Magistrate and the learned High Court Judge have failed to consider the fact that the Appellant was in possession of the disputed land, within a period of two months immediately before the date on which the information was filed under Section 66 of the Primary Court Procedure Act.

It was submitted on behalf of the Appellant that the Appellant had been in possession of the entire land called Bathalage Kotuwa depicted in අ1 from the year 1998 and the Respondents have no possession whatsoever to the same.

Further, it was submitted that in terms of the averment 6 of the Affidavit dated 08.02.2013 by the Respondents in the Magistrate Court of Kandy, has accepted that the Appellant is in Possession of the subject matter. Paragraph 6 of the said Affidavit states that,

6. දිවුරුම් ප්‍රකාශය 10 සහ 11 ඡේදවල ද, ඒ සමග ඉදිරිපත් කර ඇති පැ3 සිට පැ 13 දක්වා ලේඛණ සම්බන්ධයෙන් ද අපි ප්‍රකාශ කර සිටින්නේ පෙත්සම්කරු ගුරුවරයකු ලෙස ගුරුවරුන් වෙත ලබා දුන් නිල නිවාසයක පැ1 ලෙස ඉදිරිපත් කර ඇති අංක 603 දරන පිඹුරේ කැබිලි අංක 1 හි පිහිටා ඇති අතර, එම නිල නිවසේ මෙම පෙත්සම්කරු නිල තත්වයෙන් පදිංචිව සිටින බව කියා සිටී.

As such, it was the position taken up by the Appellant that at the time of instituting the action in the Magistrate Court, the Appellant is the person who had been in possession of the disputed premises for a period of two months immediately before the date on which the information was filed under Section 66 of the Primary Court Procedure Act.

However, it was submitted on behalf of the Respondents that the Appellant has failed to provide any evidence on the Appellant being dispossessed from the said land and when the dispossession took place.

In this respect, it is to be noted that in view of the Complaint made by Widanelage Rohini Thilaka Fernando, the wife of the Appellant against Wijekoon Banda the 1st Respondent that their possession in respect of the residence No 112 Bathalagala Weligalla had been disputed, disturbed and interrupted.

As such, it is clear that the Appellant was in possession of the residence bearing No 112 which is in dispute on the 14.10.2012 and the Appellant was not dispossessed from the same by the Respondents.

Apparently, the informant-Petitioner-Appellant has referred to the disputed land in the schedule to the Plaint as follows;

උප ලේඛණය

ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ මධ්‍යම පළාතේ මහනුවර දිස්ත්‍රික්කයේ උඩුනුවර ගඟ,පළාත වැලිගල්ලෙ පිහිටි බතලගේ කොටුව, හිදගල වලව්වේවත්ත අරඹවත්ත හා රටඅඹගහමුල යන ඉඩම් වලින් සර්වේ ජනරාල් විසින් මැන සාදන ලද අංක: මහ 630 දරණ පිඹුර ප්‍රකාර බෙදාවෙන් කළ ලොට් - 01 දරණ බිම් කැබැල්ලට මායිම්, උතුරට: මීගම්පිටියේ සිට පොල්ගහඅංග දක්වා දිවෙන ගම්සභා පාරද, නැගෙනහිරට: අංක: ටි. බි. එස්.ප්‍රේමතිලක හිමිකම් කියනු ලබන අරඹේවත්ත ගෙවත්ත හා මහ 585 දරණ පිඹුරේ දැක්වෙන ඉඩම ද, දකුණට: ආර්. ආර්. එම්. සමරකොන් හිමිකම් කියනු ලබන සම්පත් මුදියන්සේලාගේ වත්ත නැමති ගෙවත්ත ද, බස්නාහිරට : ටි.ඇම්. මුදියන්සේ හිමිකම් කියනු ලබන බඩවැටිය ගෙවත්ත ද මායිම් වූ අක්කර එකයි රූඩ් එකයි පර්චස් විසිහයකුත් දශම බිංදුවක් (අක්: 1, රූඩ් : 1 පර් : 26.0) ක් විශාලකම ඇති ඉඩම තුල පිහිටි නිවස ගහකොළ ඇතුළු සියලු දේ.

එකි උඩුනුවර ගඟපළාත වැලිගල්ලේ පිහිටි බතලගේ කොටුව, හිදගල වලව්වේවත්ත අරඹවත්ත හා රට අඹගහමුල යන ඉඩම් වලින් සර්වෙ ජනරාල් විසින් මැන සදන ලද අංක: මහ 630 දරණ පිඹුර ප්‍රකාර බෙදාවෙන් කළ ලොට් 02

දරණ බිම් කැබැල්ලට මායිම්, උතුරු නැගෙනහිරට: ටි.බි. එස්. ප්‍රේමතිලක හිමිකම් කියනු ලබන අරඹේවත්ත ගෙවත්නද දකුණුට: මීගම්පිටියේ සිට පොල්ගහඅංග දක්වා දිවෙන ගම්සභා පාරද උතුරු බස්නාහිරට: ඩී. ජී. මෙන්ඩිස් හිමිකම් කියනු ලබන අරුප්පොළ අරඹේ ගෙවත්නට ද මායිම් වූ ඉඩම තුල පිහිටි ගහකොළ ඇතුළු සියලු දේ.

The Court draws the attention to the Plan bearing No මහ 630 marked and produced as පැ It is seen that the schedule referred in the Plaint described the same land depicted and described in Plan පැ 1.

Schedule of the said plan described the name of the land as " බතලගේ කොටුව", හිඳගල වලව්වේවත්ත, අරඹවත්ත හා අඹගහමුලහේන.

It is pertinent to note that the description of Plan පැ 1 states, "ගෙවත්න, කොන්ක්‍රීට් වහල සහිත කපරාදුකළ ස්ථිර වැසිකිළියක්ද ....."

The Court observes that the said description indicates to "ගෙවත්න, කොන්ක්‍රීට් වහල සහිත කපරාදුකළ ස්ථිර වැසිකිළියක්ද", thus it could be reasonable to presume that the ගෙවත්න is the house occupied by the Appellant referred as No 112, බතලගේ වැලිගල්ලේ.

Furthermore, the said Plan පැ 1 was prepared in January 1971, it described the trees on the land. Since the Appellant has indicated in the Plaint that he had come into the possession/occupation of the said "Teachers Quarters" in 1998, thus the Appellant cannot

claim or said that he is entitled to the Plantation described in the said land in පැ 1, since no evidence placed before Court.

Moreover, in Plan පැ 1, refers to the names of the claimants as K.W Wijeratne Banda and Mrs. P.M Abeyratne, claiming rights jointly for the entire land which is 1 acre, 1 rood and 26 perches.

It is observable that the Appellant has established his possession/occupation to the premises No 112 Bathalagala Weligalla by the documents පැ 2, පැ 3 - පැ 10 and පැ 11. Nevertheless, the Plaintiff could not prove his possession to the entire land [1 acre 1 roods and 26 perches] වැලිගල්ලේ පිහිටි බතලගේ කොටුව described in the schedule to the Plaint as lot 1 and lot 2.

Nevertheless, it is reasonable to presume that the premises No 112, Bathalagala Weligalle is situated within the said land Bathalage Koratuwa of Weligalle [1 acre, 1 rood and 26 perches] but the Appellant has not proved that he had been in exclusive possession of the entirety of the land.

The Respondents have specifically mentioned in Paragraph 6 of their Affidavit that the Appellant being a teacher was given teacher's quarters and he is occupying the quarters in official capacity in respect of residence bearing No 112, Bathalagala – Weligalle

6. දිවුරුම් ප්‍රකාශය 10 සහ 11 ඡේදවල ද, ඒ සමග ඉදිරිපත් කර ඇති පැ 3 සිට පැ 13 දක්වා ලේඛණ සම්බන්ධයෙන් ද අපි ප්‍රකාශ කර සිටින්නේ පෙත්සම්කරු ගුරුවරයකු ලෙස ගුරුවරුන් වෙත ලබා දුන් නිල නිවාසයක පැ 1 ලෙස ඉදිරිපත්

කර ඇති අංක 603 දරන පිඹුරේ කැබිලි අංක 1 හි පිහිටා ඇති අතර, එම නිල නිවසේ මෙම පෙත්සම්කරු නිල තත්වයෙන් පදිංචිව සිටින බව කියා සිටී.

In this instance, it is worthy to note that the Appellant has not mentioned in the Plaint how he had come to the occupation of the premises No 112, Bathalagala, Weligalla and thereby suppressed the same.

The Court observes that the Complaint made on 14.10.2012 to the Daulugala Police station by the wife of the Appellant referred only to the residence (නිවස) No 112, Bathalagala – Weligalla.

Similarly in the Complaint made on 29.01.2012 to the Daulugala Police station by the wife of the Appellant specifically mentioned the "ගුරු නිවස" which they occupy.

Therefore, it is clear that the Appellant being a teacher had come to occupy the "Teachers Quarters [ගුරු නිවස]" No 112, Bathalagala, Weligalla. But not proved that he was in exclusive possession of the entire land of the extent of 1 acre 1 rood and 26 perches.

In view of the Judgment of ***Ramalingam Vs Thangamma [1982 2 S.L.R]*** when the evidence about the possession is clearly balanced, the primary Court Judge could consider the evidence about the title and come to the conclusion that the party who has the title to the property is entitled to the possession of it until the rights of the parties are determined by a competent Court.

It was revealed that the Appellant had executed a deed of transfer bearing No 067 of 01.03.2013 [පැ 11] in his favour.

However, it appears that the said deed [පැ 11] was executed after filing the Plaint in this action.

Similarly, the Respondents also produced documents marked as වි1 to වි3 claiming the title of the lands and documents වි4 to වි7 to establish the possession of the said lands.

Apparently, the learned Magistrate acting as a Primary Court Judge had come to the findings that none of the Parties have proved that they are entitled to the land in dispute and it has to be determined by a Civil Court.

In this instance, it is submitted that in view of the aforesaid reasons, it is clear that the Appellant was not dispossessed from the premises No 112, Bathalagala, Weligalla.

It is worthy to note that the Appellant through his Plaint claims an order under Section 68 (3) of the Primary Court Procedure Act. However, such a relief can only be available when there is forceful dispossession of a party concerned.

According to the Judgment of ***Punchi Nona Vs Padumasena and others [1994 (2) S.L.R 117]***, it was established that the application of Section 66 (1) (b) and Section 68 (3) becomes applicable only if the Judge can come to a definite finding that some other party had been forcibly dispossessed within a period of two months next presiding the date on which the information was filed. The distinction in Section 69 is that it requires the Court to determine the question as to which party is entitled to the disputed right preliminary to making an Order under Section 69 (2) of the Act.

However, when an information is filed by a Party to the dispute under Section 66 (1) (b) it is left to the Judge to satisfy himself that there is a dispute affecting land owing to which a breach of the peace is threatened or likely.

Since the Appellant was not provided any evidence as to the dispossession of the premises and the land in dispute, the Appellant is not entitled to relief in terms of prayer (එෆ) of the Plaint.

It was held in ***Kayas Vs. Nazeer and others, [2004 (3) S.L.R 202]***, Section 68 (3) mandates the Primary Court Judge directing restoration, if he is satisfied that any person who had been in possession has been forcibly dispossessed within two months immediately preceding the date of filing the information.

In the instant case, there is no forceful dispossession proved by the Appellant within two months immediately before the date of filing the information. Thus, the learned Primary Court Judge has not made a direction to restoration of possession.

As such, it is seen that the learned Magistrate, acting as a Primary Court Judge has correctly dismissed the action of the Plaintiff-Petitioner-Appellant and also directed the Parties to resolve their dispute pertaining to the subject land by a Competent Jurisdiction of a Civil Court.

In view of the foregoing reasons, it is apparent that the Appellant has no exceptional circumstances to invoke the Revisionary Jurisdiction of the Provincial High Court of the Central Province against the Order of the learned Magistrate.

Hence, we are not inclined to interfere with the Order dated 03.09.2013 by the learned Magistrate and the Order dated 06.10.2015 by the learned High Court Judge.

Therefore, we affirmed the said orders and dismiss this appeal with cost fixed at Rs. 25,000/-.

JUDGE OF THE COURT OF APPEAL

S.U.B Karaliyadde J.

I agree.

JUDGE OF THE COURT OF APPEAL