

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

In the matter of an Appeal from Orders made  
pursuant to the terms of Article 154 P (3) (b) of the  
Constitution of the Democratic Socialist Republic  
of Sri Lanka.

C.A Case No. **CA/PHC/209/2015**  
H.C.R.A 12/97  
Primary Court of Ratnapura  
Case Number 14405

The Officer in Charge  
Small Complaints Section,  
Police Station,  
Ratnapura.

**Complainant.**

**Vs.**

1. L.H.P Leslie Rajapakse  
Old Batugedara Road,  
Ratnapura.
2. H. Premaratne  
No. 28/2, Old Road,  
Batugedara,  
Ratnapura.
3. G.A. Dharmasena  
Malwatte Gedara,  
Walkumbura Road,  
Kalawana.

**Respondents.**

**And between**

H. Premaratne  
No. 28/2, Old Road,  
Batugedara,  
Ratnapura.

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

**Vs.**

L.H.G Leslie Rajapakse  
Batugedara  
Old Road,  
Ratnapura.

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

**And Now between**

H. Premaratne  
No. 28/2, Old Road,  
Batugedara,  
Ratnapura.

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

**Vs.**

L.H.G Leslie Rajapakse  
Batugedara  
Old Road,  
Ratnapura.

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

**Before :**           **Prasantha De Silva, J.**

**K.K.A.V Swarnadhipathi, J.**

Counsel:           Mr. A. Nanayakkara A.A.L for the 2<sup>nd</sup> Respondent-Petitioner- Appellant.

                          Mr. B. Gamage A.A.L for the 1<sup>st</sup> Respondent- Respondent-Respondent.

Initial Written  
Submission

filed on:           21.10.2020 by the 2<sup>nd</sup> Respondent-Petitioner-Appellant.  
                          18.02.2020 by the 1<sup>st</sup> Respondent- Respondent-Respondent.

Argued on:        12.07.2021

Decided on:      02.11.2021

**Prasantha De Silva, J.**

### **Judgment**

The Officer in Charge of the Police Station of Ratnapura, filed an information in terms of Section 66 (1) of the Primary Courts' Procedure Act, on the 23<sup>rd</sup> of May 1994 against the 1<sup>st</sup>, 2<sup>nd</sup>, and the 3<sup>rd</sup> Respondents with regard to the possession of the shop premises namely "THE NEW HOME NEEDS". Since the actual dispute was between the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent, the 3<sup>rd</sup> Respondent had been released from the proceedings.

However, after the inquiry, the learned Judge of the Primary Court held in favour of the party of the 1<sup>st</sup> part Respondent [hereinafter sometimes referred to as the Respondent] and delivered the Order on 27<sup>th</sup> December 1996.

Being aggrieved by the said Order, the party of the 2<sup>nd</sup> Respondent-Petitioner invoked the Revisionary Jurisdiction of the Provincial High Court of Ratnapura to revise or set aside the said

Order. Apparently, the Learned High Court Judge by Order dated 6<sup>th</sup> November 2000 dismissed the Application of the Petitioner, affirming the Order of the Learned Primary Court Judge.

Consequently, the party of the 2<sup>nd</sup> part Petitioner-Appellant [hereinafter sometimes referred to as the Appellant] made an Application bearing No. CA (PHC) APN 77/2000 to the Court of Appeal challenging the said Orders of the High Court as well as the Primary Court. It appears that the Court of Appeal set aside the impugned Order of the Learned High Court, since it is a nullity, because no reasons were assigned to the conclusion reached by the High Court Judge and thus directed the Registrar to send the Case forthwith to the relevant High Court to make an Order on the merits of the Case.

Consequently, the learned High Court Judge made an Order dated 15<sup>th</sup> October 2015, once more dismissing the Application of the Appellant. Subsequently, the Appellant has preferred this Appeal against the said Order of the High Court.

The Appellant alleged that the said Order, once more failed to give proper consideration to the merits of the Case and to adduce proper reasons thereto, and is therefore, contrary to the express direction given by the Court of Appeal by its Order dated 19<sup>th</sup> November 2008.

It was submitted on behalf of the Appellant that the learned High Court Judge, in the course of his Order stated that upon the documentary proof available, the premises in dispute was in the Respondent's control (Constructive Possession) during the period in question.

The learned Judge of the High Court appears to have relied upon the Police investigation reports dated 18<sup>th</sup> August 1993 and 21<sup>st</sup> August 1993 in coming to this conclusion. In this respect, it was further submitted that there is no evidence of such Constructive Possession in favour of the Respondent during the material time and in any event that the said investigation reports of 18<sup>th</sup> August 1993 cannot be relied upon in determining the impugned application filed on or around 23.05.1994.

In these circumstances, the learned High Court Judge has concluded that the Respondent's uninterrupted possession to the premises in dispute had been proved by the facts revealed during the inquiry in the Primary Court as an erroneous finding. Which fails to take cognizance of the fact that at the time of filing the information in Court, it was the Appellant who was in possession and not the Respondent.

In fact, this is the position taken even by the Respondent and also the keys to the premises had been obtained from the Appellant by the Fiscal acting on an Order of Court.

In such circumstances, the Appellant had taken up the position that no Order could have been made in favour of the Respondent pursuant to Section 68(1) and 68(2) of the Primary Courts' Procedure Act.

Moreover, it was submitted that on the other hand, to make an Order in terms of Section 68(3) in favour of the Respondent, there has to be a clear finding by the learned Judge of the Primary Court that the said Respondent had been forcibly dispossessed within a period of two months

immediately before the date on which the information was filed under Section 66 of the Act. Since the Learned Judge of the Primary Court as well as the learned Judge of the High Court has not come to any such finding in the circumstances, no Order could have been made in favour of the Respondent even under and in terms of Section 68(3) of the Act.

In this instance, the Court wishes to peruse the Affidavits and the documents submitted before the learned Primary Court Judge.

According to the Affidavit filed by the Appellant dated 18.07.1994 inter alia that the Appellant took over the property in question in the year 1980 from a member of the Local Authority namely Mr. Leo Peiris in view of the receipt marked and produced as Z ①.

In or around 1985 the Appellant had given the said property to the Respondent to carry on a Grocery Shop and in or around 1987 the Appellant had invested Rs. 40, 000/- in the business on the agreement based on profit sharing.

Nevertheless, the Respondent's position was that he purchased the premises in dispute from the Appellant for Rs. 30, 000/- in 1986 and constructed a building. Thereafter he carried on a Partnership business with one Yusoof and the said Partnership business was terminated consequent to the settlement entered in Case bearing No. 100/M in the District Court of Ratnapura. Subsequently, he carried on a business with one Hemana Manthri in the said premises.

However, it was admitted by the Appellant in his Affidavit that the Respondent carried on a grocery shop at the said premises from 1987-1993 June.

In 1993, the Electricity supply and the Water supply to the said premises were disconnected due to the non-payment of bills. Therefore the shop was closed and the business was discontinued from June 1993.

The Respondent stated that since the Electricity Bills were incorrect he was delayed in settling the Electricity Bills, until he got the correct bills as they were in the name of the Appellant. Consequently, the Respondent sought to transfer the Electricity connection to his name instead of the Appellant, but the Electricity Board did not accede to the request of the Respondent. Further the Respondent averred in his Affidavit to the Primary Court, it was revealed that the Electricity supply was disconnected due to a request made by the Appellant.

The said position was substantiated by the Respondent by producing the documents marked as ๒๗3, ๒๗4, ๒๗10, ๒๗11 and ๒๗12. It was submitted by the Appellant that during the time the shop was closed, the Appellant had observed on a certain day, the padlocks put to the premises had been broken. Accordingly, when the Appellant inquired that from the Respondent, he had indicated that he had no knowledge of the same. Therefore, having discussed the matter with the Respondent, the Appellant took over possession of the premises after giving the Respondent some goods such as, two refrigerators, a deep freezer and some items as his share.

On the contrary, the Respondent had affirmed in his Affidavit that due to the disconnection of the Electricity supply, the shop premises was closed with groceries. On 18.08.1993, he observed that the padlocks placed by him to the entrance door of the premises were removed and the padlocks

were changed somebody. Therefore the Respondent had complained to the Ratnapura Police Station on the same day regarding a suspicious housebreaking. On this complaint, the Respondent has complained that there was a reasonable suspicion that those padlocks were changed by Premalal, the Appellant. The said complaint dated 18.08.1993 is on page 323 of the Brief and the observation notes made by the Police Officer and the statement made by the Appellant are on pages 325 and 326 of the Brief.

According to the observation notes, the shop premises was broke opened by the Police and the Respondent had stated that there was no shortage of Groceries.

Appellant admitted in his statement that it was he who padlocked the premises.

The Appellant has taken up the position in his Affidavit that he was occupying the shop premises from or around 23.09.1993 and there was no objection from the Respondent for occupying the premises. In support of the said proposition the Appellant produced, marked as 2ව2, a Complaint made to the Grama Niladhari in this regard and the said Grama Niladhari was called to adduce evidence.

It is worthy to draw the attention to the statement made to the Police by the Appellant on 18.08.1993. “ඔහු ලවා ලයිට් බිල ගෙවා නිදහස් කරවා ගැනීම ඉක්මන් කරවීමට මම එසේ ඉබ්බිය යතුරු යෙදූ බව පිලිගනිමි. එය තුලට මා ගියේ නැහැ. මම ඉබ්බිය යතුරු දමන විට ඔහු දැමූ ඉබ්බිය යතුරු හොඳින් තිබුණා”.

It is noteworthy, the averments contained in the Affidavit of the Appellant dated 18.07.1994 produced before the Primary Court in this respect,



8. “එසේ වසා තිබූ කාලයේ දිනක කඩයේ යොදා තිබූ ඉබ්බන් කඩා තිබූ හෙයින් පසුව මේ සම්බන්ධව මා විසින් 1 වන වග උත්තරකරුගෙන් විමසීමෙන් පසු හෙතෙම ඒ ගැන කිසිවක් නොදන්නා බව ප්‍රකාශ කරන ලදී. පසුව ඔහු සමඟ කඩයේ අර්බුදය සාකච්ඡා කර ඔහුට වෙලඳාමෙන් අයවිය යුතු භාණ්ඩ වශයෙන් ශීතකරණ දෙකක්ද, අධිශීතකරණයක් ද තවත් බඩු මුට්ටු ද ඔහු වෙත භාර දී කඩයේ භුක්තිය මවිසින්...

9. 1993.09.23 දින සිට මවිසින් ඉහත කී කඩ කාමර දෙක ප්‍රයෝජනයට ගනිමින් භුක්ති විදීමට පටන් ගත්තේ. ඊට 1 වන වග උත්තරකරුගේ විරෝධයක් නොතිබුණි. එදින මා විසින් ග්‍රාම නිලධාරීට කරන ලද පැමිණිල්ලේ පිටපතක් 2වැ ලෙස ලකුණු කොට ඉදිරිපත් කරමි”.

The attention of Court was drawn to the Counter Affidavit of the Respondent dated 05.09.1994 tendered to the instant Primary Court Case.

It was the contention of the Appellant that from 1994, the Appellant started using the premises for the purpose of storing empty bottles of aerated water and soft drinks pertaining to a result of the agency that he was carrying out. The Grama Niladhari report was produced in proof thereof.

The Respondent states in Paragraph 6 of the Affidavit that,

6. “දෙවන වග උත්තරකරුගේ දිවිරුම් ප්‍රකාශයේ 9 වන ඡේදයේ සඳහන් කරුණු මා තරයේ ප්‍රතික්ෂේප කරමි. 1993.09.23 දින මා ඔහුට කඩය භාර දුන්නා නම් 1993.09.27 වන දින නීතිඥ වරයෙකු ලවා විදුලිය ලබා ගැනීමට නැවත නැවත ලිපි ලිවීමට කිසිදු අවශ්‍යතාවයක් නොමැත. 1993.06.30 දින කඩය ඉල්ලුවාට නොදුන් බව ප්‍රකාශ කරමින් දෙවන වග උත්තරකරු විසින් කරන ලද පැමිණිල්ල පැ13 ලෙස ලකුණු කොට ඉදිරිපත් කරමි. මා කිසිදු දිනක කඩ කාමරය භාර දුන්නේ නැත. 2වැ ලෙස ලකුණු කොට ඉදිරිපත් කර ඇති ලේඛණය පිළිබඳව මා නොදනිමි”.

However, the Electrical Superintendent of the Ratnapura Municipal Council adduced evidence and said in Cross-Examination that “2වි2 ලේඛණය ඉදිරිපත් කර තිබෙන්නේ එවි. ප්‍රේමරත්න 94.05.27 දින ගෙවා තිබෙන්නේ”. According to the evidence of the said Witness, Premaratne the Appellant has paid Rs. 10, 000/- out of the arrears of the Electricity Bills of Rs. 24, 337/- on 27.06.1994. It is to be noted that this date is after the filing of the information.

According to the document පැ7 (Payment for Electricity) dated 11.03.1994, L.H.P Rajapakse the Respondent has paid Rs. 2000/- in receipt bearing No. 51357 on behalf of H. Premaratne, the Appellant.

The said Witness, Electrical Superintendent said in evidence which is that at P.172 of the brief.

ප්‍ර : විදුලි බල මණ්ඩලයෙන් තමාට ලිපියක් එවා තිබෙනවාද? ලිපි ගොනුවේ තිබෙනවාද?.

පි : එම 1994.03.11 වන දින විදුලිය සහ අංක ටී අයි/ එම් 136

The said document අයි/ එම් 136 dated 11.03.1994 was marked and produced as පැ5, which was an Order made under the Electricity Act.

It states that,

.... ලෙස්ලි රාජපක්ෂ මහතා සමඟ ගිවිසුමක් අත්සන් කර විදුලිය 11.03.1994 වැනි දින සැපයිය යුතුයි.

4.... හිඟ මුදල් වාරිකය එක් මසක් තුළ නොගෙවුවහොත් පාරිභෝගිකයාට දන්වා පැය 48කට පසු විදුලිය විසන්ධි කිරීමට පුලුවන.

It was revealed in Evidence of the said Witness, that on the same day that is on 11.03.1994 the Respondent paid Rs. 2000 /- as part payment of the arrears of the Electricity Bills by පැ7 and has

entered into a contract with the Electricity Board. Subsequently, the Electricity supply was given on 21.03.1994.

It is to be noted that the Appellant has paid Rs. 10, 000/- on 27.05.1994 by 2②2 and the Respondent entered into a contract with the Electricity Board on 11.03.1994. Since the information was filed on 23.05.1994 the Appellant has paid Rs. 10, 000/- in view of the Electricity bills after the filing of the information.

It is pertinent to note that since the information was filed on 23.05.1994, the Respondent had entered into a contract with the Electricity Board and paid Rs. 2000/- as part of the arrears on 11.03.1994 and had got the Electricity Supply on 21.03.1994, thus it appears that the Respondent got the Electricity Supply prior to the filing of the information. Nevertheless, the Appellant has paid Rs. 10, 000/- as part payment of the Electricity bills on 27.05.1994 just after filing of information.

In view of the said position, a serious doubt is created in accepting the contents of the Affidavit of the Appellant and the letter (2②2) by the Grama Niladhari.

As such, the pertinent question that has to be determined under Section 66 of the Primary Court Procedure Act, is whether the Respondent was dispossessed by the Appellant or whether the possession was handed over to the Appellant amicably by the Respondent. Apparently, in terms of Section 68(3) of the said Act, Court has to determine who was in possession of the premises in dispute two months prior to the date of filing the information.

On this premise, Court wishes to draw attention to the evidence adduced at the inquiry and the Documentary Evidence placed before Court by both parties.

The Witness, Matara Bandarage Samarapura [Linesman], adduced Evidence at the inquiry and said that on the instructions of the Electrical Superintendent, the said Witness reconnected the Electricity Supply to the premises in question somewhere in March 1994. Since the premises was closed, the Witness had to go to the Respondent's residence to get him down to open the shop premises to reconnect the power supply.

It is interesting to note the Evidence of the Appellant's Witness, Grama Niladhari, Alabodawatte Lekamlage Sarath.

In his Evidence, it was produced a letter [පැ6] dated 02.07.1993 issued to the Respondent by the said Witness, Counter Signed by the Divisional Secretary stating that “එල්. එස්. එල්. රාජපක්ෂ මහතා විසින් බටුගෙදර ප්‍රධාන පාරේ අංක 1/20 හා 1/13 දරන ස්ථානයේ ඉහත සඳහන් නමින් (The New Home Needs) ග්‍රොසරි බඩු වෙළඳාමේ ව්‍යාපාරයක් පවත්වාගෙන යන බව මෙයින් වාර්තා කරමි”.

The said letter පැ6 confirmed the possession of the Respondent with regard to the premises in dispute until 02.07.1993.

In contrast, the said Witness issued another letter [2ව3] dated 03.06.1994 addressed to the Divisional Secretary, Ratnapura which states that,

“බටුගෙදර පරණ පාරේ අංක 28/2, රත්නපුර ලිපිනයේ පදිංචි එච්. ප්‍රේමරත්න මහතා විසින් ඉහත අංක සඳහන් ස්ථානයන්හි 1994 වර්ෂයේ මාර්තු මාසයේ සිට හිස් බෝතල් (ෆැන්ටා, කොකාකෝලා, ස්ප්‍රයිට්) ගබඩා කිරීම් කටයුතු සිදුකරගෙන යන බව මෙයින් වාර්තා කරමි”.

It is to be noted that the said letter 2ව3 was not Counter Signed by the Divisional Secretary as indicated in the said letter [පැ6] issued to the Respondent. Thus the authenticity of 2ව3 is impeachable.

Apparently, the said letter 2ව3 was obtained on 03.06.1994, after filing of the information in the instant Case and it is obvious that letter 2ව3 was obtained to get an advantage for the purpose of this Case. Thus, it is doubtful that the Appellant started a business of storing empty bottles of Coca-Cola, Sprite and Fanta at the disputed premises since March 1994. As such, the possession of the Appellant to the disputed premises on the date of filing of the information does not seem to be established by the said letter 2ව3 of the Grama Niladhari.

The Court draws attention to the document produced & marked as 2ව4 which is an Application dated 05.03.1994 for a Business License. The said Application was signed by the Municipal Commissioner on 31.05.1994 and the letter was issued to the Appellant on 02.06.1994, after the institution of the instant case.

The said Witness, Grama Niladhari, was Cross Examined by the Counsel for the Respondent in this respect as follows,

“මම කිව්වා මෙම ස්ථානයේ බෝතල් ගබඩා කිරීම සඳහා ගබඩාවක් වශයෙන් පාවිච්චි කලා කියලා. එහෙම පාවිච්චි කරනවා දැක්කේ 1994 මාර්තු, අප්‍රේල් මාස වල.

ප්‍ර : ඒ කාලයේ විශේෂත්වය මොකක්ද?

පී : අවුරුද්ද දවස් වල මම මගේ වාහනයෙන් එතකොට පාර අවහිර වී තිබුණා එතන, එතකොට මම දැක්කා පාරේ ලොරියක් නවතා හිස් බෝතල් බානවා. මෙම කඩය තිබෙන්නේ ප්‍රධාන පාර අයිනේ. එතකොට පාර අවහිර වෙනවා. ඒ දැක්කේ අප්‍රියෙල් මැයි මාස වල වගේ. බෝතල් ගන්න මම ගියේ නැහැ”.

According to the aforesaid Evidence, Witness has not specified whether he saw the bottles being unloaded from the Lorry to the shop premises in the month of April or in May. Further, the Witness has not stated that he saw the Appellant there at the time of unloading bottles. As such, the Court cannot come to a definite conclusion whether the bottles were unloaded by and on behalf of the Appellant or whether the bottles were unloaded in the month of May after the filing of the information on the 23<sup>rd</sup> of May. However, the said evidence was vague and not corroborated by the Appellant through any other independent evidence. Thus, the said evidence cannot be accepted in favour of the Appellant to decide this matter in terms of Section 68(1) of the Primary Courts’ Procedure Act.

Furthermore, the said Witness was questioned on the complaint made by the Respondent regarding the break open of the shop premises.

ප්‍ර : තමා දන්නවාද 1994.05.21 වෙනි දින මෙම නඩුවට අදාල කඩ කාමරය කඩා විවෘත කර ඇති බවට පැමිණිල්ලක් ලෙස්ලි රාජපක්ෂ කර තිබෙනවා කියා.

උ : දන්නේ නැහැ.

1994.05.22 වෙනි දින නැවත පැමිණිල්ලක් කල බව දන්නේ නැහැ. පොලීසියෙන් පරීක්ෂණ පැවැත්වූ බවක් දන්නෙත් නැහැ.

මේ දෙවැනි වග උත්තරකරුට (Appellant) ලිපියක් නිකුත් කලා. 1994.06 වෙනි මාසයේ දෙවැනි හෝ තුන්වැනි දින.

In view of the aforesaid Evidence of the Grama Niladhari, it is observable that either he was deliberately lying to Court by suppressing that he was unaware of breaking open of the shop premises in question, or the Appellant has suppressed the dispute regarding the shop premises taken place on the 21.05.1994, when he was obtaining the said letter 203 from the Grama Niladhari. However, it is clear that the said Grama Niladhari had issued the letter 203 without inquiring into the request made by the Appellant.

The Court draws the attention to the complaint made by the Respondent on 21.05.1994 to the Police Station, Ratnapura. It states,

කඩයක ආරවුලක්.

..... මම මේ කඩේ ග්‍රොසරියක් වශයෙන් ලක්ෂ දෙකක විතර වටිනා බඩු දැනට මේ කඩයේ තබා වෙළඳාම් කරනවා. එහෙම තිබෙන අවස්තාවේ මගේ කඩේ පිළිබඳව ඇතිවූ විදුලි ආරවුලක් නිසා මගේ කඩේට සැපයෙන විදුලිය නගර සභාව මගින් විසන්ධි කලා. ඊට පසුව එය යථා තත්වයට පත් කර ගැනීමට මට මාස තුනක් පමණ කඩය වැසීමට සිදු වුනා.

මම පසුව දැන් මෙම ආරවුල විසඳාගෙන මෙම මස 29 වන දින නැවත කඩය ඇරීමට බලාපොරොත්තුවෙන් සිටියා. එසේ සිට අද දින මා නිවසේ සිට කඩය ඉදිරිපිටට එනවිට මා දැක්කා මගේ කඩය ඇරලා තියෙනවා.

පසුව මම මගේ කාර් එක කඩය ඉදිරිපිට නතර කලාම මෙම කඩයේ සිට ධර්මේ යන අය සහ තව කීප දෙනෙක් අඩෝ උඹ බහින්න එපා, බැස්සොත් මරණවා, උඹේ බෙල්ල ගෙදර ගෙනියනවා කියා මට මරණ බවට තර්ජනය කරා.....මෙම කඩයේ තිබෙන සියලුම දේවල් මගේ සතු බඩුය.

Apparently, the Respondent had made another complaint regarding the same incident to the Ratnapura Police Station on the following day. The attention of Court was drawn to the complaint dated 22.05.1994.

වෙළඳ සැලක භාණ්ඩ ආරවුලක්

.....  
.....

..... 21.05.1994 දින ප්‍රේමරත්න යන අයගේ මස්සිනා වන ධර්මේ යන අය පැමිණ ඔහුට වෙළඳ සැල අයිති බව කියා මට බැන්නා. තර්ජනය කරා. ඔහු සමඟ තවත් පිරිසක් සිටියා.....

..... තර්ජනය කලා. පසුව මා පොලීසියට පැමිණ මේ සම්බන්ධයෙන් පැමිණිල්ලක් කලා. මම ආපසු යන විටත් ඔවුන් වෙළඳ සැල විවෘත කර ඒ අසලට වී සිටියා. අද දින උදේ 8ට පමණ මා පොලීසියට ඒමට පැමිණියා. එවිට මම දැක්කා එම වෙළඳ සැලට දමා තිබූ ඉබ්බා කඩා ඔවුන්ගේ ඉබ්බන් දොරට දමා වෙළඳ සැල වසා තිබෙනවා. මට අයත් රු. ලක්ෂ දෙකක් පමණ වටිනා පාරිභෝගික විකුණුම් බඩු වෙළඳ සැල තුළ තිබෙනවා.

The complaint of the Respondent was inquired by the Ratnapura Police and statements were recorded from the Appellant and one Dharme [Galhena Arachchilage Dharmasena]. The Police made observations of the shop premises and made Observation Notes and Inventory of the Groceries in the shop premises.

It is worthy to note the statement made by the Appellant [Haththalage Premaratne],  
“1994.05.21 දින ලෙස්ලී රාජපක්ෂ විසින් අයිතිවාසිකම් කියනු ලබන කඩය මට අයිති එකකි. 1985 වර්ෂයේ ඔහුට මා විසින් කඩය භාරදුන්නා, විශ්වාසවන්තකමට.....



.....  
.....

..... විදුලි බිල්පත් නොගෙවීම නිසා විදුලිය 1993 වර්ෂයේදී විසන්ධි කලා. මේ හේතුවත් මත කඩය මාස තුනක් පමණ වසා තිබුනා.

මේ සිද්ධීන් නිසා දෙදෙනා විසින් කරගෙන ආ වෙළඳාම් කටයුතු නතර කලා. ඔහුට අයවිය යුතු මුදල් වෙනුවෙන් ඔහු විසින් කඩයේ තිබූ ශීතකරණ හා අධිශීතකරණය රැගෙන ගියා. මට අයවිය යුතු මුදල් හා ඉතිරි බඩු මා ගත්තා.

29.09.1993 දින බටුගෙදර(අංගම්මන කොට්ඨාශයේ) ග්‍රාම සේවක මහතාගේ පොතේ පැමිණිල්ලක් සටහන් කලා. මෙම කඩය විවෘත කර මා විසින් නැවත පවත්වාගෙන යන බව. මෙසේ කලේ ලෙස්ලී රාජපක්ෂ විසින් කඩය ඇර මා හට කඩය භාර දුන්නාට පසුවයි. 29.09.1993 දින සිට මා විසින් මෙම කඩය කරගෙන යනවා. මා විසින් කොකාකෝලා ඒජන්සියක් කරගෙන යන අතර, මෙම ස්ථානයේ බෝතල් ගබඩා කිරීම සඳහාද යොදා ගන්නවා.....

.....  
.....  
.....

..... මෙම කඩය සඳහා මා විසින් රත්නපුර මහ නගර සභාවට 1980 වර්ෂයේ සිටම වරිපනම් බදු ගෙවනවා.

මෙම කඩයේ දැනට නැවතී සිටින්නේ මගේ අයිියා වන ධර්මේ සහ මල්ලී වන වන්දුසේන යන අයයි.

.....  
.....”.

Accordingly, Ratnapura Police had recorded the statement of the said Dharme [Galhena Arachchilage Dharmasena]. The statement made by Dharmasena on 22.05.1994 to the Police Station Ratnapura states as follows,

“මට විරුද්ධව ඇති චෝදනාව මා හට තේරුම් කර දුන්නා. ඒ අනුව මට කීමට ඇත්තේ ලෙස්ලි රාජපක්ෂ යන අය මම හඳුනමි. මොහු කියන පරිදි 21.05.1994 දින මා ඔහුගේ බටුගෙදර පිහිටි කඩයක සිටියේ නැත. මා ඔහුට කාරයෙන් බහින්න එපා මරණවා කියා තර්ජනය කලේ නැත. මා මොහු සමග අවුරුදු ගනනකින් කතා කර නැත. මා සමඟ මොහු කිසිම අමනාපයක්ද නැත. මට විරුද්ධව මෙසේ පැමිණිලි කිරීමට හේතුව මා දන්නේ නැත”.

It is significant to note that, the statement of the said Dharmasena, contradicts the statement of the Appellant.

The Appellant [Premartne] said that “මෙම කඩයේ දැනට නැවතී සිටින්නේ මගේ අයිසා වන ධර්මේ සහ මල්ලී වන වන්දුසේන යන අයයි”.

Apparently, the said Dharmasena denied that he was occupying the said disputed shop premises. Although the Police filed the information making the Appellant, Respondent and the said Dharmasena as parties before the Primary Court Case, later he was discharged from the Proceedings.

The Appellant in his statement mentioned another brother namely Chandrasena, but no statement was recorded from him. Since he did not come forward in these proceedings, it is difficult to believe the version of the Appellant, indicated in his statement to the Police.

Furthermore, it is apparent that the Appellant had not substantiated the contents of the said statement made to the Ratnapura Police on 22.05.1994 thus, Court is not inclined to accept the evidence of the Appellant in this regard and it has to be disregarded.

It has to be observed that the Affidavit tendered by the Appellant to the learned Primary Court Judge dated 18.07.1994 is entirely based on the statements made to the Ratnapura Police by the Appellant.

According to Paragraphs 8 and 9 of the Affidavit of the Appellant which stated that as a compromise to the dispute with the Respondent he gave him two refrigerators, a deep freezer and some other goods in lieu of the business and took possession of the premises and started occupying the same from 23.09.1993 onwards.

In this respect, it is submitted that the Appellant had not proved these facts by any Documentary or cogent Evidence.

The rest of the averments in the said Affidavit of the Appellant pertains to the Coca-Cola Agency carried on at the premises in dispute from 23.09.1993. In support of this contention, the Appellant has submitted the documents 2Ⓓ<sub>4</sub>, 2Ⓓ<sub>5</sub> and 2Ⓓ<sub>6</sub>.

The said document 2Ⓓ<sub>4</sub> is an Application made on 05.03.1994 by the Appellant to obtain a Business License for the year 1994. According to 2Ⓓ<sub>4</sub> it was approved by the PHI on 31.05.1994 and countersigned by the Municipal Commissioner Ratnapura on 02.06.1994.

The said document 204 appears to be in a printed form, but just a photocopy was tendered and not a certified copy. The Application was made on 05.03.1994 and the Public Health Inspector approved it on 31.05.1994 and after the signature of the Municipal Commissioner, the date indicates as 02.06.1994.

Therefore, it is significant to note that the Appellant got the approval to use the premises in dispute as a storage for empty bottles after filing the information in the Primary Court Case. Since 204 is a photocopy and not certified by the relevant authorities, and also since no evidence has been adduced on the said document by the relevant authorities, the Learned Primary Court Judge, very correctly held that the document 204 is not proved by the Appellant.

205 and 206 are the documents obtained from a lorry owner/ driver to substantiate that from February 1994 empty bottles were transported to the Kaduwela soft drinks manufacturing company and loaded drink bottles were transported to the premises in dispute.

Apparently, 205 and 206 are photocopies of the letters. The Court observed that 205 and 206 are neither Affidavits nor the Appellant submitted the receipts pertaining to the payments made in view of the Lorry hires, to substantiate the said position. Since there is no evidentiary value on those documents, the Learned Primary Court Judge disregarded those and correctly held that those documents were not proved.

It is relevant to note that the Appellant stated in Paragraph 15 of the said Affidavit that,

15. මෙම ස්ථානයේ සිසිල් බීම බෝතල් ගබඩා කිරීමේ ව්‍යාපාරය පවත්වාගෙන යනු ලබන බව 31.05.1994 දින මෙම අධිකරණයේ පිස්කල් නිලධාරී ඉදිරිපත් කල වාර්තාවේද සඳහන් වේ.

Therefore, it is worthy to draw attention to the Fiscal report dated 31.05.1994 which is filed on Page 304 of the Brief.

There are 336 Grocery items in the inventory. It is relevant to note items No. 334 and 335.

334. මිදන්ඩා, පෙප්සි, ෆැන්ටා යන බීම වර්ග හිස් බෝතල් 8400ක් පමණ ඇති අතර ලියෙන් සහ ප්ලාස්ටික් වලින් තනන ලද කේස් ද ඇත.

335. ස්මෑක් බීම සහිත හා රහිත ලියෙන් තනන ලද කේස් හතරක් ඇත.

According to the statement made by the Appellant on 22.05.1994, the Appellant stated that,

“25.09.1993 දින සිට මවිසින් මෙම කඩය කරගෙන යනවා. මවිසින් කොකාකෝලා ඒජන්සියක් කර ගෙන යන අතර මෙම ස්ථානය බෝතල් ගබඩා කිරීම සඳහාද යොදා ගන්නවා”.

In view of the aforesaid statement, the 8400 empty bottles and cases referred to in item No.334 above belong to the Appellant. As such, it is clear that the day (31.05.1994) inventory was prepared by the Court Officer, the possession of the disputed premises was with the Appellant.

Nevertheless, the Investigating Officer of the Ratnapura Police Station P.C 16760 Nimalsiri inspected the premises in dispute on 22.05.1994 and made observations that,

“කඩයේ මකුළු දැල් බැඳ ඇති අතර වසා තිබූ බවට හේතු ඇත. මෙම කඩයේ ඉදිරිපස දොර අසල මුල්ලේ ෆැන්ටා, කොකාකෝලා, ස්ප්‍රයිට්, පෙප්සි ආදී බීම වර්ග අඩංගු හා හිස් බෝතල් අඩංගු කේස් 25ක් පමණ ගොඩ ගසා ඇත.

ලොකු ප්‍රමාණයේ කබඩි තුනක විවිධ රසකැවිලි, ටොෆි හා බිස්කට් වර්ග ඇත. සමහර ඒවා පරණ වූ ඒවා බව පෙනේ”.

According to the said investigation notes, the Officer observed expired and perished groceries at the shop. Since there were cobwebs, it appeared that the premises was closed for some time and no one had occupied the same until 22.05.1994.

As such, it is hard to believe that the Appellant had been carrying out a business at the said premises during the period of 29.09.1993 to 22.05.1994.

On the other hand, according to the said observation notes, the Investigating Officer had observed that there were only 25 cases of Fanta, Coca-Cola, Sprite and Pepsi bottles. If one case contains 24 bottles, then 25 cases would be 600 bottles. Thus therein no indication of 8400 bottles.

When the premises was inspected on 22.05.1994 on this day there were only approximately 600 bottles, nevertheless, on 31.05.1994 there were 8400 bottles more. Thus it is apparent that those 8400 bottles were stored after the inspection on 22.05.1994.

The court draws the attention to the complaint made on 22.05.1994 by the Respondent which states that,

“අද දින උදේ 8ට පමණ මා පොලීසියට ඒමට පැමිණියා. එවිට මම දැක්කා එම වෙළඳ සැලට දමා තිබූ ඉබ්බා කඩා ඔවුන්ගේ ඉබ්බන් දොරට දමා වෙළඳ සැල වසා තිබෙනවා. මට අයත් රු. ලක්ෂ දෙකක් පමණ වටිනා පාරිභෝගික විකුණුම් බඩු වෙළඳ සැල තුළ තිබෙනවා”.

In view of the said contents of the complaint of the Respondent, since the Appellant broke opened the padlocks and changed the same, it clearly shows that even after the inspection on 22.05.1994 the keys of the padlocks were with the Appellant thus the Appellant had the opportunity of storing 8400 bottles during the period of 22.05.1994 to 31.05.1994. Hence, the Appellant had not established that he was in possession of the shop premises from 29.09.1993 to 21.05.1994. Therefore, the Court can come to a reasonable conclusion that until 21.05.1994, the possession of the shop premises was with the Respondent and his possession was interrupted by the Appellant on 21.05.1994.

It is worthy to note that the 1<sup>st</sup> Respondent had sought in his Affidavit for an Order of restoration of Possession to place him in possession of the corpus on the footing that he was forcibly dispossessed.

It appears that the 1<sup>st</sup> Respondent had sought relief in terms of section 68(3) of the Primary Court Procedure Act. In such a situation there has to be a specific finding to the effect that the 1<sup>st</sup> Respondent had been forcibly dispossessed or evicted from the corpus within a period of 2 months immediately before the date in which the information was filed under Section 66 of the Act.

However, the learned Primary Court Judge made an Order that the 1<sup>st</sup> Respondent is entitled to Possession of the disputed premises and further ordered the Appellant or his agents and/or servants not to disturb such Possession of the 1<sup>st</sup> Respondent.

Apparently, the learned Primary Court Judge has made an Order that the 1<sup>st</sup> Respondent was entitled to Possession of the disputed land on the assumption that the 1<sup>st</sup> Respondent was in constructive possession of the corpus on the date of filing of the information under Section 66 of the Primary Court Procedure Act and further Ordered the Appellant or his servants and/or agents not to disturb the Possession of the 1<sup>st</sup> Respondent.

It is noteworthy that, the learned Judge had come to the conclusion that the 1<sup>st</sup> Respondent had been in constructive possession of the disputed premises on the date of filing of the information, on the assumption that the 1<sup>st</sup> Respondents grocery items are in the premises on the relevant date and also the learned Primary Court Judge held that the Appellant had not been proved that he had been in Possession of the disputed premises during the period of 29.09.1993 to 21.05.1994.

Nevertheless, it is evident that the Appellant had forcibly removed the padlocks placed by the 1<sup>st</sup> Respondent and had changed the padlocks, which can be construed as dispossession of the 1<sup>st</sup> Respondent by the Appellant from the disputed premises. The keys to the disputed premises had been obtained from the Appellant by the fiscal on 29.05.1994 by an Order of Court, which clearly demonstrates that the 1<sup>st</sup> Respondent was dispossessed by the Appellant from the premises in dispute on 21.05.1994.

Since it was established by the 1<sup>st</sup> Respondent that he had been in Possession of the disputed premises, since 18.08.1993 until the dispute arose on 21.05.1994, thus the Respondents possession cannot be disturbed such wise. Therefore, the learned Primary Court Judge is under a statutory



duty to consider and grant relief to the 1<sup>st</sup> Respondent by restoration of his Possession to the disputed premises under see 68(3) of the Act.

In view of the foregoing reasons, it clearly manifests that although the 1<sup>st</sup> Respondent was dispossessed by the Appellant on 21.05.1994, the Appellant had not substantiated his possession to the premises in dispute during the period of 29.09.1993 to 21.05.1994. Thus, the Appellant had failed to prove that he was in possession of the premises in question two months prior to the date of filing of the information under Section 66(1) of the Primary Court Procedure Act on 23.05.1994.

Hence, the Order made by the learned Primary Court Judge on 27.12.1996, which determined that the 1<sup>st</sup> Respondent was entitled to the Possession of the premises is well-founded. Thus, we see no reason for us to interfere with the said Order of the learned Primary Court Judge, as well as the Order of the Learned High Court Judge dated 15.10.2015.

As such, we affirm the said Orders of the learned Primary Court Judge and the learned High Court Judge and Dismiss the Appeal with cost fixed at Rs. 50,000/-.

**JUDGE OF THE COURT OF APPEAL**

**K.K.A.V. Swarnadhipathi, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**