

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

*In the matter of an appeal under Article 154 P(6)
of the Constitution, read with Article 138.*

Officer-in-Charge,
Minor Complaints Division, Police Station,
Ratnapura.

Applicant

CA (PHC) 85/2016
HC Ratnapura RA 94/2009
MC Ratnapura (Add) 71890

Vs.

1. Dona Sakila Thilani Sunethradevi
Kahandawela of No.6,
Amuthagoda, Ratnapura.
2. Peli Muhandiram Sunil Premadasa
of No.35/17, Railway Avenue,
Hiddallena, Ratnapura.
Parties
3. W.A.B. Senanayake
Assistant Superintendent,
Palm Garden Estate, Ratnapura.

AND BETWEEN

Dona Sakila Thilani Sunethradevi
Kahandawela of No.6,
Amuthagoda, Ratnapura

1st Party-Petitioner

1. Peli Muhandiram Sunil Premadasa of
No.35/17, Railway Avenue,
Hiddallena, Ratnapura.

2nd Party-Respondent

2. W.A.B. Senanayake
Assistant Superintendent,
Palm Garden Estate, Ratnapura

Intervent Party-Respondent

- 2A. Tiran Dananja Jayasinghe
Assistant Superintendent,
Palm Garden Estate,
Ratnapura.

Added-Intervent Party-Respondent

3. Officer-in-Charge,
Minor Complaints Division,
Police Station, Ratnapura.

Applicant-Respondent

AND NOW BETWEEN

Dona Sakila Thilani Sunethradevi
Kahandawela of No.6, Amuthagoda,
Ratnapura.

1st Party-Petitioner-Appellant

Vs.

1. Peli Muhandiram Sunil Premadasa of
No.35/17, Railway Avenue,
Hiddallena, Ratnapura.

2nd Party-Respondent-Respondent

- 2A. Tiran Dananja Jayasinghe,
Assistant Superintendent,
Palm Garden Estate, Ratnapura

Added-Intervenient Party-Respondent, Respondent

2. Officer-in-Charge
Minor Complaints Division
Police Station, Ratnapura.

Applicant-Respondent-Respondent

**BEFORE: PRASANTHA DE SILVA, J. &
K. K. A. V. SWARNADHIPATHI, J.**

**COUNSEL: K.V.S. Ganesharajan, AAL with
K.Nasikethan, (A.A.L.) and S. Suthashana, (A.A.L.)
For the 1st party Petitioner – Appellant.
Maithree Wickremasinghe, (P.C.) with Rakitha Jayathunga, (A.A.L.)
For the 2A Substituted-Intervenient-Respondent**

Argument: By Written Submissions

Date of Judgment: 11.11.2021

K. K. A. V. SWARNADHIPATHI, J.

JUDGMENT

The 1st Respondent-Petitioner-Appellant had sought the intervention of this Court to set aside the order dated 12th November 2015 by the High Court of Ratnapura in Case No.94 of 2009 and an order granting remedies prayed for by revision application dated 17th December 2009. After both parties filed their respective written submissions, the matter was argued before this Court on 20th July 2021.

On 17th February 2009, the Officer-in-charge of the Minor Crimes Investigate Unit of Ratnapura Police had filed the information report to the Magistrate's Court of Ratnapura. Acting on that information, the Magistrate had ordered to affix notices under Section 66(4) of the Primary Courts Act. Again on the following date, the same order had been made. On both occasions, the 1st Respondent Dona Shakila Sunethradevi Kahandawala was present in Court. On the 3rd day, the 2nd Respondent had appeared in Court.

According to a journal entry dated 04.05.2009, the 3rd Respondent had intervened, and without any mention regarding notices, an order to file written submissions was recorded. One ground of Appeal the 1st Respondent-Petitioner had urged before the High Court was that notices were not affixed on the land. The High Court Judge had overruled that objection and held that the Magistrate's order should not be disturbed on a technical ground of this nature. Ground argued by the parties in this Court is regarding non-compliance of Section should or should not be a reason to discard the order of the High Court Judge and the order of the Magistrate in turn.

The Magistrate mentioned that notices were affixed in the land when writing the order, but the relevant journal entry does not depict so. What this Court will have to consider is should a technical error will disturb the order or not. The reason for affixing notices is to inform the general public to come forward if anyone has any interest in the land. Since the order is in ream, this Section has introduced the public to come forward and inform the Court of any interest.

The 3rd party had appeared before Court on the notice returnable date. There is no mention of affixing notices or not affixing of notices. There is no indication to understand how the 3rd party appeared in Court. Appearing of the third party leaves to accept that people were aware of the dispute. If affixing notice was essential to anyone before proceeding, an objection should have taken and brought the fact to the notice of the Court.

Perusing the Affidavit and the Counter Affidavit of the 1st Respondent forwarded to the Magistrate's Court, there is no mention of taking an objection of not affixing notices. Therefore, she is now estopped from applying to dismiss on a ground she had decided not to contest in the Magistrate court.

The learned High Court Judge had referred to Rathnayake Vs. Padmini De Silva (1990) 2 S.L.R. page 196) states, "failure to cause the notices to be affixed on the land as required by Section 66(4) of the PCPA does not affect the jurisdiction of the court but is only an irregularity in the procedure."

The learned High Court Judge had observed that all parties had come forward. Therefore, no person had got prejudiced by not affixing notices. Even this Court will have to agree with this finding of the learned High Court Judge. Even the 2nd ground urge of not trying to settle the matter is also a trivial application. On the other hand, if there were a settlement since lawyers had appeared before the Magistrate's Court matter would have been settled. Lawyers are officers of Court. The Court does not mean only the Judge. Written submissions were filed by the lawyer of the 1st Respondent on behalf of the 2nd Respondent Mr Sanath Perera, on behalf of the 3rd Respondent Mr D.P. Wanniarachchi had appeared. Therefore, this Court considers the High Court Judge's order regarding fulfilling the requirement of Section 66(6) of the PCPA is compatible with the law.

When perusing the order of the learned Magistrate, it is clear that the learned Judge had considered the evidence according to Sections 66(1) and Section 68(3) of the PCPA. The learned Judge had indicated that until a competent court decides otherwise, the order should stand. We have to take this Section seriously regarding ownership. Since that was one ground

stressed by the 1st Respondent-Petitioner-Appellant. She must go before a competent court and establish her ownership. Even the Court of Appeal is not the Court to have a fair trial and pronounce the ownership.

Parties argue whether this Court should entertain an application that does not disclose exceptional circumstances. Primary Courts Procedure Act was introduced to our legal system to expedite particular categories of disputes. By the Act, the provision for Appeal was removed later. Court had allowed coming on revision. Therefore, all rules regarding revision apply to these cases.

The Petitioner tries to establish ownership even at the argument this was the main point stressed. Since this is not the competent Court to decide the ownership, this Court restrains making orders regarding ownership.

Since there are no exceptional circumstances that warrant the intervention of this Court, It is my view that the Appellant had failed to establish any reasons to set aside the order of the learned High Court Judge of Ratnapura.

Therefore, the 1st Respondent-Petitioner-Appellant's application is rejected subject to tax costs.

Judge of the Court of Appeal

PRASANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal