

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

**SRI LANKA.**

The Officer in Charge  
Police Station,  
Welikada.

Court of Appeal Case No:

**Plaintiff.**

**CA/PHC/Appeal No: 139/13**

High Court Case No: HCRA/80/2011

Magistrate's Court Colombo

Case No: 14405

**Vs.**

D. Ariyawathi Munasinghe,  
No.85/2, U.E.Perera Mawatha,  
Obesekarapura,  
Rajagiriya.

**1<sup>st</sup> Party.**

1. Parapedewage Sanjaka Aravinda Kumara  
No.85/2, U.E.Perera Mawatha,  
Obesekarapura,  
Rajagiriya.

2. Dona Gnanawathi Munasinghe  
No.85/1, U.E.Perera Mawatha,  
Obesekarapura,  
Rajagiriya.

**2<sup>nd</sup> Party.**

**-Now-**

1. Parapedewage Sanjaka Aravinda Kumara  
No.85/2, U.E.Perera Mawatha,  
Obesekarapura,  
Rajagiriya.

3. Dona Gnanawathi Munasinghe  
No.85/1, U.E.Perera Mawatha,  
Obesekarapura,  
Rajagiriya.

**2<sup>nd</sup> Party-Petitioners.**

**Vs.**

D. Ariyawathi Munasinghe,  
No.85/2, U.E.Perera Mawatha,  
Obesekarapura,  
Rajagiriya.

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

The Officer in Charge  
Police Station,  
Welikada.

**Plaintiff- Respondent.**

Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondent.**

**-And Now Between-**

1. Parapedewage Sanjaka Aravinda Kumara  
No.85/2, U.E.Perera Mawatha,  
Obesekarapura,  
Rajagiriya.

2. Dona Gnanawathi Munasinghe  
No.85/1, U.E.Perera Mawatha,  
Obesekarapura,  
Rajagiriya.

**2<sup>nd</sup> Party-Petitioner-Appellants.**

**Vs.**

D. Ariyawathi Munasinghe,  
No.85/2, U.E.Perera Mawatha,  
Obesekarapura,  
Rajagiriya.

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

The Officer in Charge  
Police Station,  
Welikada.

**Plaintiff- Respondent- Respondent.**

Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondent-Respondent.**

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

**Khema Swarnadhipathi, J.**

Counsel:        Ms. Samantha Gamage A.A.L with Pradeepa Abeyrathne A.A.L for the 2<sup>nd</sup>  
Party-Petitioner- Appellants.

Mr. Pubudu De Silva A.A.L with K.Samaratunga A.A.L for the 1<sup>st</sup> Party-  
Respondent- Respondent.

The Appeal disposed on  
Written Submissions with  
The consent of the Parties : 03.08.2021

Decided on                                : 07.12.2021

**Prasantha De Silva, J.**

### **Judgment**

The Officer in Charge of the Welikada Police station filed an information on 29.10.2010 in terms of Section 66(1) of the Primary Courts' Procedure Act No.44 of 1979, against the 1<sup>st</sup> Party-Respondent- Respondent and the 2nd Party-Petitioner-Appellants in this Appeal, on the basis of a breach of the Peace being threatened over the possession of a property in dispute. After following the procedure stipulated in the Primary Courts' Procedure Act, Parties have filed their respective Affidavits, Counter Affidavits and the documents marked and produced as 1ඒ1-1ඒ26 and 2ඒ1-2ඒ28 by both the 1<sup>st</sup> Party and the 2<sup>nd</sup> Party.

Consequently, the learned Magistrate acting as the Primary Court Judge having considered all the Affidavits and the documents placed before Court at the inquiry, held that the 1<sup>st</sup> Party-Respondent- Respondent [hereinafter referred to as the Respondent] was in possession of the disputed portion of land two months prior to the date of filing of the information and decided in terms of Section 68(3) of the Primary Courts' Procedure Act to restore the Respondent into the possession of the disputed portion of land.

Being aggrieved by the said Order, the 2<sup>nd</sup> Party-Petitioner- Appellants had invoked the Revisionary Jurisdiction of the Provincial High Court of the Western Province holden in Colombo. It appears that the learned High Court Judge after hearing of both parties and having considered the Pleadings, Proceedings and the Written Submissions filed by them, held that the learned Magistrate had come to the correct findings of fact and Law and decided that the 1<sup>st</sup> Respondent was in possession of the disputed portion of land, two months prior to the date of filing of the information, thus affirmed the Order of the learned Magistrate.

Being aggrieved by the said Order dated 04.10.2013 by the learned High Court Judge, the 2<sup>nd</sup> Party-Petitioner-Appellants [hereinafter sometimes referred to as the 1<sup>st</sup> Appellant and the 2<sup>nd</sup> Appellant] have preferred this Appeal to this Court.

In terms of Section 68(1) of the Primary Courts' Procedure Act, it is the duty of Court to ascertain who was in possession of the land in dispute, on the date of filing of the information under Section 66 of the Act.

If there is a forcible dispossession of a Party, the Court has to determine, when that dispossession took place and if it was within two months immediately prior to the date of institution of the Action, thus, it is a duty of Court to make an Order to place him back in possession of the disputed land under Section 68(3) of the Act.

However, it appears that at the inquiry before the Judge of the Primary Court, the Plaintiff submitted the documents such as the Complaint made by the 1<sup>st</sup> Party-Respondent and their Affidavit, Counter Affidavit and the documents marked as 1<sup>Ⓟ</sup><sub>1</sub>-1<sup>Ⓟ</sup><sub>26</sub> and the Affidavit and Counter Affidavit of the 2<sup>nd</sup> Party- Appellants with the documents marked as 2<sup>Ⓟ</sup><sub>1</sub>-2<sup>Ⓟ</sup><sub>28</sub> and 2<sup>Ⓟ</sup><sub>2(1)</sub>-2<sup>Ⓟ</sup><sub>2(9)</sub>.

In addition to those documents, the Plaintiff filed a sketch which depicts the disputed portion of land, and the observation notes of the Inquiring Officer. After the conclusion of the inquiry, both the 1<sup>st</sup> Party-Respondent and 2<sup>nd</sup> Party- Appellants had filed Written Submissions.

Apparently, the learned Magistrate acting as the Primary Court Judge, having considered all the materials placed before Court had come to the conclusion that,

- 1) The disputed portion of land was identified by Plan No. 5274 of Lot 15C prepared by Surveyor Liyanasuriya.
- 2) The 1<sup>st</sup> Party-Respondent was in Possession of the disputed Land until the date on which the dispute arose.

It was observed by the learned Primary Court Judge that on or about 23.11.2010 the 2<sup>nd</sup> Party-Appellant had attempted to dig the ground and put up poles to build a Garage to repair three-wheelers, and this is where the dispute between the Appellants and the Respondent had started. Consequently, the 1<sup>st</sup> Party-Respondent was dispossessed by the 2<sup>nd</sup> Party- Appellants from the disputed portion of land.

Both the Appellants and Respondent admitted that the disputed portion of land is depicted in Plan bearing No 5274 made by Licensed Surveyor Mr. Siri Liyanasuriya as Lot 15C.

It is to be noted that the said Gnanawathi Munasinghe the 2<sup>nd</sup> Party-Petitioner- Appellant (hereinafter referred to as the 2<sup>nd</sup> Appellant) in her Affidavit dated 21.02.2011 affirmed as follows;

“ මාගේ මව ප්‍රශ්නගත ලොට් 15C යන පර්චස් එකක් වන බිම් කොටස කිසිවකුගේ නමට ඔප්පුවක් මගින් පැවරීමක් කළේ නැත. මව ජීවතුන් අතර සිටි කාලයේදී පවා භුක්ති විඳින ලද්දේ මා පමණි. දැනට අවුරුදු 10ක කාලයක් පමණ සංජන අරචින්ද කුමාර එහි ඉදිරිපස කොටසේ ත්‍රිරෝද රෙපෙයාර් කරන ගරාජයක් පවත්වාගෙන යයි”.

The Court draws the attention to the statement made by Sanjana Aravinda Kumara the 2<sup>nd</sup> Party-Petitioner- Appellant on 25.11.2010 to the Police Station Welikada.

“පරපේ දේවගේ සංජන අරචින්ද කුමාර, වයස අවුරුදු 23.....මේ ඉඩමේ මම ත්‍රිවිල් රෙපෙයාර් කලා”.

According to the said statement made by the said Sanjana Aravinda Kumara, the 1<sup>st</sup> Appellant has been running a Garage to repair three-wheelers for the last 10 years. Since the 1<sup>st</sup> Appellant was 23 years old at the time of making a statement to the Police, this means he was running a Garage to repair three-wheelers, since he was 10 years old.

It is pertinent to note that the 1<sup>st</sup> Complaint made by the 1<sup>st</sup> Party-Respondent- Respondent (hereinafter referred to as the 1<sup>st</sup> Respondent), Don Ariyawathi Munasinghe has stated as follows.

“මගේ අයිතිය වන ඩී. පියදාස මුණසිංහ යන අය විසින් 01.11.2010 වන දින ඔහුට අයත් පර්චස් 01 ක ඉඩම් කැබැල්ල නීතිඥ ගුරුගේ මහතා ඉදිරියේ ඔප්පු අංක 555 යටතේ මගේ නමට ලිව්වා. එහි ප්ලාන් කිවෙන්නවා. ඒ ඉඩමට අල්ලලා මගේ ඉඩමක් කිවෙන්නවා. අද දින මගේ නංගියේ පුතා වන සජී යන අය විසින් මම අයිතියගෙන් මිලදී ගත් ඉඩමේ ගරාජ් එකක් හදන්නවා. මම ඔහුට අවසර දීලා තිබුණේ නෑ. ඔහු බලෙන් මෙහි මේ ගරාජ් එක හදන්නේ.....”.

The 2<sup>nd</sup> Appellant denied the said position of the 1<sup>st</sup> Respondent and submitted a letter marked as 2ව10 dated 10.01.2000 which states that “.....මාගේ නැගණියගේ පුතා වන පී.ඩී. සංජන අරචින්ද කුමාර හට කොළඹ රාජගිරියේ උබේසේකරපුර නො.248 දරන ඉඩමේ මා සතු දේපල වලින් පංගුවක් 10.01.2000 දින සිට ඔහුට කැමති ව්‍යාපාරයක් කරගෙන යාමට ඉඩ සලසා දී ඇති බවත්.....”.

It is worthy to note that the learned High Court Judge has considered the said letter 2ව10 and stated in his Order that.....“බලය පැවරීමේ ලිපියක් ලෙස සඳහන් ලේඛණයේ විශයගත දේපල සංජන අරචින්ද කුමාර නමැති පලවන පෙත්සම්කරුට 10.01.2000 වන දින ලබා දෙන බවට ප්‍රකාශ කර ඇත්තේ, එහි සඳහන් කර ඇත්තේ මා සතු දේපල වලින් පංගුවක් ඔහුට කැමති ව්‍යාපාරයක් කර ගෙන යාමට ඉඩ සලසා දී ඇති බව පමණක් වේ”.

It is observable that the said letter 2ව10 does not specify a portion of land, as such, it is not clear whether the uncle of the 1<sup>st</sup> Appellant, Piyadasa Munasinghe promised to give the disputed portion of land to the 1<sup>st</sup> Appellant.

On the other hand, it is to be noted that at the time of writing the said letter 2ව10 in the year 2000, the 1<sup>st</sup> Appellant was 10 years old. Thus, it is questionable that the said Piyadasa Munasinghe promised to give the disputed portion of land to his nephew. However, the 1<sup>st</sup> Appellant had not established that he was given the possession of the disputed premises to carry

out a business on the land in question. It is observable that the said Piyadasa Munasinghe did not transfer the property in dispute to the 1<sup>st</sup> Appellant for the last 10 years after such promise to the 1<sup>st</sup> Appellant. Nevertheless it was transferred to his sister the said Respondent Ariyawathi Munasinghe on 03.11.2010.

As such, it is apparent that the uncle of the 1<sup>st</sup> Appellant did not intend to transfer his rights of the disputed portion of land to the 1<sup>st</sup> Appellant. Thus, there is no evidentiary value of the said letter 2010 to the instant Case.

Therefore, it is imperative to note that the contents of the Affidavits of the Appellants are disproved by the evidence placed before Court by the Respondents. In view of the material placed before Court, it is evident that the dispute arose among the Parties when the 2<sup>nd</sup> Appellant attempted to dig the ground and put-up poles to build a Garage to repair three-wheelers on 23.11.2010. Thus, it is apparent that the possession of the land in dispute was with the said Piyadasa Munasinghe and the 1<sup>st</sup> Respondent Ariyawathi Munasinghe until the dispute arose on 21.11.2010.

The said position was clearly established by the observation notes dated 21.11.2010 of the investigating officer. It appears that the said observation notes stated that the land in dispute is a bare land, 1 Perch in extent and the 1<sup>st</sup> Appellant [සඤ්ඤා] was engaged in a construction, digging the ground and setting up poles.

.....“මා එහි යන විට සඤ්ඤා යන අය විසින් වලවල් භාරා පොල් ලී කණු යොදා ඉදිකිරීමක් කිරීමට කටයුතු කරමින් සිටි අතර මා ඔහුට දැනුම් දුන්නා, දැනට ඉඩම සම්බන්ධව පැමිණිලි ලැබී ඇති බැවින් කිසිදු ඉදිකිරීමක් නොකරන ලෙසට උපදෙස් ලබා දුන්නා. මෙම ඉඩම පර්චස් 1කින් සමන්විත හිස් ඉඩම කැබැල්ලකි. පැමිණිලිකාරිය විසින් මෙම ඉඩම ඇයට අයත් ඉඩමක් බව පවසන අතර වගඋත්තර කරුවන් විසින් එම ඉඩම ඔවුන්ට අයත් එකක් බව පවසා සිටියි. මෙම ඉඩම පිටුපස වගඋත්තර කරුගේ නිවස පිහිටා ඇත. මෙම ඉඩම කැබැල්ලට වම් පස පැමිණිලිකාරියගේ නිවස පිහිටා ඇත”.

As such, it clearly proves that there was no existing Three-wheeler repairing garage run by the 1<sup>st</sup> Appellant in the disputed premises. If the 1<sup>st</sup> Appellant had been running a Three-wheeler repairing garage for the last 10 years, it should be visible to the investigating officer. Since the investigating officer observed that it's a bare land, the learned Primary Court Judge had come

to the correct findings of fact and had come to the conclusion that the 1<sup>st</sup> Respondent was dispossessed by the 1<sup>st</sup> Appellant on the date the dispute arose among the parties.

In this instance, Court observes that the documents 2014-2028 submitted by the 1<sup>st</sup> Appellant are the letters obtained from various people to establish that the 1<sup>st</sup> Appellant had been running a Three-wheeler repairing garage at the disputed premises. Since it was established that the 1<sup>st</sup> Appellant had not been carrying on a business, running a Three-wheeler repairing garage, it is seen that there is no evidentiary value of those letters 2014-2028.

Thus, it seems that those letters were obtained by the 1<sup>st</sup> Appellant for the sake of getting an advantage in the instant Case in his favour.

Apparently, upon the evidence placed before the Primary Court Judge, it is patently clear that the facts of the instant case are properly evaluated in the correct perspective thus the Order of the Primary Court Judge is well-founded.

As such, it is not necessary to interfere with the Judgment of the learned High Court Judge, who affirmed the Order of the learned Primary Court Judge.

In view of the aforesaid factual and legal matrix, I uphold the impugned Orders of the learned Primary Court Judge dated 27.04.2011 and the learned High Court Judge dated 04.10.2013. Accordingly, the Appeal is dismissed with costs.

**JUDGE OF THE COURT OF APPEAL**

**Khema Swarnadhipathi, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**