IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

CA (PHC) 160/2014

High Court Colombo Case No. HCRA 202/2014

MC Nugegoda Case No. 1789/ (66)

In the matter of an Appeal under and in terms of Article 154 read with Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

The Officer-in-Charge,
Police Station-Mirihana

Complainant

Vs.

Don Sumandasa Ranasinghe

1st Party

Rev. Amunumulle Jinarathana

2nd Party

Ernest Bilopitha Jayanath Gunathilaka

2nd Intervening Party

AND BETWEEN

Rev. Amunumulle Jinarathana

2nd Party-Petitioner

Vs.

Don Sumandasa Ranasinghe

1st Party-Respondent

AND NOW BETWEEN

Rev. Amunumulle Jinarathana,
Sri Vijayarama Raja Maha Viharaya,
Gangodawila, Nugegoda.

2nd Party-Petitioner-Appellant

Vs.

Don Sumandasa Ranasinghe,
No. 18/7, Vidyadhara Mawatha,
Maharagama.

1st Party-Respondent-Respondent

Before:	**Prasantha De Silva, J.**
	K.K.A.V. Swarnadhipathi, J.
Counsel:	Chandana Wijesooriya AAL with Wathsala Dulanjanie AAL for Petitioner-Appellant.
	Kamal Dissanayake AAL with Dulna De Alwis AAL for the 1st Party-Respondent.
Written Submissions Tendered on:	17.02.2021 by 2nd Party-Petitioner-Appellant 30.12.2021 by 1st Party-Respondent-Respondent
Argued on:	22.10.2021
Decided on:	15.02.2022

Prasantha De Silva, J.

Judgment

This Appeal emanates from the Order of the Provincial High Court of the Western Province holden in Colombo in case bearing No. HCRA 202/2014, where the 2nd Party-Petitioner-Appellant canvassed the Order of the learned Magistrate of Nugegoda acting as the Primary Court Judge in case bearing No. 1789/ (66).

It appears that the information was filed by the Officer-in-Charge of Mirihana Police Station in terms of Section 66 of the Primary Courts' Procedure Act on 29.05.2014. After following the relevant procedure stipulated in the said Act, the matter was fixed for inquiry. At the conclusion of the Inquiry, the learned Magistrate of Nugegoda acting as the Primary Court Judge, declared

that the 1st Party-Respondent was entitled to the possession of the subject matter as at the date on which the information was filed.

Being aggrieved by the said Order, the 2nd Party-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Colombo. The learned High Court Judge of Colombo affirmed the Order of the learned Magistrate of Nugegoda dated 05.10.2014 by his Order dated 20.10.2012. Having been dissatisfied with the said Order of the learned High Court Judge, the 2nd Party-Petitioner-Appellant has preferred this appeal.

The facts of the instant case are as follows;
The 1st Party-Respondent-Respondent (hereinafter sometimes referred to as the Respondent), has made a complaint to the Police Station of Mirihana against the 2nd Party-Petitioner-Appellant (hereinafter sometimes referred to as the Appellant), alleging that the Appellant had intruded the land in dispute which had been possessed by the 1st Party-Respondent and also that the Appellant had started constructing a building on the said land.

It was the contention of the Appellant that on the day of the incident, the 2nd Party-Petitioner-Appellant was constructing a building for his temple on the disputed land that he had been in possession of, continuously for over thirty years upon a valid legal title.

However, after the conclusion of the inquiry, the learned Magistrate held that the 1st Party-Respondent had been dispossessed within a period of two months immediately prior to the date on which the information was filed in terms of Section 66 of the Primary Courts' Procedure Act and was restored to possession under Section 68 of the said Act. In view of Section 68 of the act, it is the duty of the Primary Court Judge to ascertain and determine who had been in possession of the land in dispute as at the date of filing of the information and make an Order as to who is entitled to possession of such land and part thereof.

The learned Primary Court Judge, having given consideration to the information filed by the Mirihana Police, affidavits, counter affidavits and the documents filed by the 1st Party-Respondent and the 2nd Party-Petitioner Appellant, had determined that 1st Party-Respondent is entitled to

possession of the land in dispute and also decided that neither the 2nd Party-Petitioner-Appellant nor 2nd Intervening Party is entitled to the possession of the land in dispute.

It was alleged by the Appellant that the learned Primary Court Judge had not properly weighed the evidentiary value of the documents marked on behalf of the 2nd Party-Petitioner-Appellant in substantiating his possession over the disputed land.

It is worthy to note the documents tendered by the Appellant in the Magistrate's Court. The document 2පා1 is a Deed of Declaration and 2පා4 is a Deed of Gift and 2පා8 is a Lease Agreement. It appears that 2පා2 is a letter-requesting approval to filling of a paddy field and 2පා3 is a cash receipt issued by the Land Reclamation and Development Corporation. The document 2පා5 is a letter sent by Central Environmental Authority to Commissioner General-Buddhist Affairs, and 2පා6 is a letter sent to Appellant by the Department of Buddhist Affairs. Moreover, 2පා9 is a statement made by the Grama Niladhari, which states that the disputed land is one owned by the temple of the Appellant.

When deciding who is entitled to possession of the land in dispute, it is apparent that the contents of the said documents 2පා1, 2පා2, 2පා3, 2පා4, 2පා6 and 2පා9 do not substantiate that the Appellant was in possession of the disputed portion of land on the date of filing of the information. The documents 2පා10-2පා10උ, 2පා10ඌ, 2පා10ඍ, 2පා10ඎ and 2පා10ඏ are the affidavits given by the neighbours from the houses adjacent to the disputed land stating that it was the Appellant who was in possession of the disputed land and not the Respondent.

These affidavits also stated that since year 2008, the 2nd Party Intervenient (the person who carried on a garage in the disputed land) was also in the possession of the disputed land under the permission of the Appellant. Moreover, the 2nd Party Intervenient had admitted that he was maintaining his garage in the disputed land with permission of the 1st Party-Respondent-Respondent as per the document marked 2පා13.

It is worthy to note the letter 2පා7, which was sent to the Appellant by the Assistant Commissioner-Buddhist Affairs, which states that the Viharadhipathi had informed the Appellant that the impugned garage is not being carried out on a land belonging to the Navinna Raja Maha Viharaya.

Hence, it appears that the contents of the said affidavits are misleading. Thus, the learned Magistrate had very correctly disregarded those when he arrived at the conclusion with regard to the determination of the question of Appellant's possession.

It was alleged by the Appellant that the learned Primary Court Judge had never considered the documents marked as 2පා10ඒ, 2පා10ඒ and 2පා10ඔ which also state that;
".....අංක 124/F දරණ බිම් කොටස ගංගොඩවිල ශ්‍රී විජයාරාම රජමහා විහාරයට අයත් ඉඩමක් බවත්, එකී ඉඩම වර්ෂ 2008 පමණ සිට ගරාජයක් පවත්වාගෙන යන ලද බවත් ප්‍රකාශ කර සිටිමි.

එහි ගරාජය පවත්වා ගෙන යනු ලැබුවේ ජයනාත් ගුණතිලක විසින් බවත්, 2014 මාර්තු මාසයේ සිට ඔහු එයින් ඉවත්ව ගිය බවත්, එකී ඉඩම වර්ෂ 2014 මාර්තු මාසයේ සිට පූජ්‍ය අමුණුමුල්ලේ ජිනරතන හිමි විසින් ගොඩනැගිල්ලක් ඉදිකිරීමට කටයුතු යොදා ඇති බවත් මා ප්‍රකාශ කර සිටිමි.

තවද මම එම ඉඩමෙහි ඉතා ආසන්නයෙහි වර්ෂ ගණනක සිට ජීවත්වන තැනැත්තෙකි.

මෙම ඉඩම කිසිදිනක දොන් සුමනදාස රණසිංහ නමැති අය භුක්ති නොවිඳි බවත්, මෙම ඉඩම ශ්‍රී විජයාරාම රජමහා විහාරයට අයත් ඉඩමක් බවත්, මෙම ඉඩම විහාරාධිපති වන අමුණුමුල්ලේ ජිනරතන ස්වාමීන් වහන්සේ විසින් භුක්ති විඳින බවත් මම ප්‍රකාශ කර සිටිමි".

However, it appears that the said documents 2පා10ඒ, 2පා10ඒ and 2පා10ඔ contradict the position taken up by the 2nd Party Intervenient Jayanath Gunathilake and the document 2පා7 by the Assistant Commissioner of Buddhist Affairs. Therefore, those documents cannot be considered when determining the question of possession of the Appellant.

The aforesaid reasons clearly manifest that the learned Primary Court Judge had come to the correct findings of fact and Law and determined the instant case in terms of Section 68 (1) of the Act, stating that the 1st Party-Respondent-Respondent is entitled to the possession of the disputed

portion of land and that he was dispossessed by the 2nd Party-Petitioner-Appellant within a period of two months immediately before the date on which the information was filed.

Therefore, the learned Primary Court Judge has ordered to restore the possession of the 1st Party-Respondent-Respondent. Hence, it is clear that the Order of the learned Primary Court Judge is well founded, thus, the learned High Court Judge need not be interfered with the Order of the learned Primary Court Judge.

For the foregoing reasons, we affirm the Order of the learned Primary Court Judge dated 09.10.2014 and the Order made by the learned High Court Judge dated 20.10.2014 and dismiss the appeal with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL