

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

Aseervatham Samson,
Kaththankulam,
Kattakandal.

Complainant

Court of Appeal PHC No: CA
(PHC) 229/15

Vs.

Mohamen Nazeer,
Ward No. 08,
Erukalampidy.

Respondent

High Court Revision
Application No. 09/2012

Primary Court of Mannar Case
No: 4091

AND

Aseervatham Samson,
Kaththankulam,
Kattakandal.

Complainant-Petitioner

Vs.

Mohamen Nazeer,
Ward No. 08,
Erukalampidy.

Respondent-Respondent

AND NOW BETWEEN

Aseervatham Samson,
Kaththankulam,
Kattakandal.

Complainant-Petitioner-Appellant

Vs.

Mohamen Nazeer,
Ward No. 08,
Erukalampidy.

Respondent-Respondent-Respondent

Before:

**Prasantha De Silva, J.
K.K.A.V. Swarnadhipathi, J.**

Counsel: K. Raveendran with Dushit Johnthasan and N. Fernando for the Complainant-Petitioner-Appellant.
Sabry Nilamudeen for the Respondent-Respondent.

Written Submissions 30.12.2021 by the Respondent.
tendered on:

Argued on: 29.11.2021

Decided on: 22.02.2022

Prasantha De Silva, J.

Judgment

This appeal emanates from the Order of the Provincial High Court of the Northern Province holden in Vavuniya in HCRA 232/2012, where the Complainant-Petitioner canvassed the Order of the learned Primary Court Judge in case bearing No. 4091 of the Primary Court of Mannar.

The Complainant-Petitioner-Appellant [hereinafter sometimes referred to as the Complainant] filed information dated 08.10.2010 under and in terms of the provisions of Section 66 (1) (b) of the Primary Courts' Procedure Act No. 44 of 1979 informing the breach of peace affecting the land in dispute.

The learned Primary Court Judge of Mannar directed the notices to be served on the Respondent-Respondent-Respondent [hereinafter referred to as the Respondent] and affixed on the land after being satisfied of the possible breach of peace as stated above. Subsequently, the parties filed their respective affidavits and counter affidavits, and the learned Primary Court Judge allowed the parties to file written submissions.

It appears that the position taken up by the Complainant is as follows;

- Subject matter was seized and possessed by Saveri Soosaipillai and his predecessors since 1904;
- The Complainant has constructed a house and engaged in cultivation;
- The subject matter was mortgaged on several occasions by virtue of deeds of transfer; [M₁ to M₄]

- However, the possession of the subject matter remained with him and he cultivated the land except the time he was internally displaced and resettled;
- When he ploughed the land for cultivation on 29.09.2012, he was threatened to leave the paddy land by the Vidathaltheevu Police at the instigation of the Respondent.

However, the Respondent had stated in his affidavits as follows;

- The subject matter was purchased for a valuable consideration by him and his brother in 1983;
- He and his brother cultivated the subject matter in 1983 , 1984 and 1985 and had to leave that area due to pressure by a terrorist group;
- He could not visit there until the area was fully liberated by the Government;
- He cleared the land in August 2010 and erected a fence.

It was the position of the Respondent that he was occupying the said land in dispute from 1983 to 1990. After the riots, the Respondent was evacuated from the said land in dispute and the Respondent returned to the said land in 1997.

From 1997 onwards the Respondent has been cultivating the said paddy land in dispute without any disturbances. On or around 2010, the Appellant forcibly entered into the said land in dispute in order to cultivate the paddy and the Respondents complained to the Police who gave instructions to both parties not to enter into the said land in dispute. Subsequently, the Complainant has filed the instant case in terms of Section 66 under Primary Code Procedure.

It was submitted on behalf of the Respondent that the Respondent has purchased the said land in dispute in 1983 and was in possession from 1983 onwards except during the civil war period which is an exceptional circumstance. According to the complaint made on 16.11.2010 by the Respondent to the Police, it clearly indicates that the Respondent was in possession of the disputed land in 2010. The said complaint made by the Respondent to the Police Station of Vidataltivu on 16.11.2010 is filed on record. The Complainant-Petitioner-Appellant had instituted the instant action marking documents P1-P12. Subsequently, Respondent-Respondent-Respondent had filed the affidavits with documents marked R1-R15. Since the dispute is relating to the possession of land, it is the duty of the learned Primary Court Judge to ascertain who was in possession of the

land in dispute at the time of filing the information under Section 66 of the Primary Courts' Procedure Act and make Order as to who is entitled to the possession of the land in dispute.

The Complainant-Petitioner-Appellant marked and produced documents M₅-M₁₂ with the affidavit and had claimed possession of the disputed land relying on the said documents. However, counter affidavit of the Respondent states that the Police Officers have directed both parties not to enter the land in dispute.

Furthermore, the Complainant-Respondent-Appellant submitted that according to the documents marked as M₅-M₁₂, it establishes the Complainant-Respondent-Appellant was in exclusive possession of the disputed land and that he was engaged in cultivating the same. Nevertheless, it is worthy to peruse those documents marked and produced as M₅, M₆, M₇, M₈, M₉, M₁₀, M₁₁ and M₁₂.

It was the contention of the Complainant that the disputed paddy land was in control of the Complainant-Respondent-Appellant thus, he is entitled for an order in terms of Section 68 of the Primary Courts' Procedure Act. Similarly, Court shall inquire in terms of Section 68 (3) of the Act, to the question whether such person was dispossessed of such possession for the last two months before granting an order in respect of the right of possession.

As such, it was contended by Complainant-Respondent-Appellant, that the learned Primary Court Judge and the learned Provincial High Court Judge had erred in Law by failing to examine the question of possession and right to cultivate in deciding that the Respondent was entitled to the possession of the subject matter.

It is to be observed that the said documents M₅-M₁₂ do not establish the possession of the Complainant-Respondent-Appellant relevant to the period of instituting the action on 06.12.2010. On the other hand, in view of the complaint made by Respondent-Respondent-Respondent on 16.11.2010 to the Vidataltivu Police Station, it substantiates that the Complainant-Respondent-Appellant had forcibly entered into the land in dispute and had removed the barbed wire fence erected on the boundary of the disputed land.

Therefore, it establishes that the Respondent had been dispossessed from the disputed land within a period of two months immediately before the date of instituting the instant action under Section 66 of the Act.

In terms of Section 68 (3) of the Act, the Respondent's possession be restored to the disputed land.

Therefore, we see no reason for us to interfere with the Order of the learned Magistrate of Mannar and the Order of the learned Provincial High Court Judge of Vavuniya.

Hence, we affirm the Order dated 10.01.2012 by the learned Magistrate of Mannar and the Order of the learned Provincial High Court Judge dated 28.02.2015 and dismiss this Appeal of the Complainant-Respondent-Appellant with costs.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL