

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

**LANKA**

Kokmaduwa Parana Gunawathie of  
No.10, Chinakoratuwa Mada Road,  
Galle.

**Petitioner**

**Vs.**

Court of Appeal Case No:  
**CA (PHC) 207/14**

Provincial High Court of Galle Case No:  
**Rev/11/2013**

Magistrate's Court of Galle Case No:  
**93243**

1. Welendawa Acharuge Priyantha  
Alison
2. Minha Wadood Alison
3. Welendawa Acharige Alison  
All of No .40, Hemananda Mawatha,  
Galle.

**Respondent**

**AND BETWEEN**

1. Welendawa Acharuge Priyantha  
Alison
2. Minha Wadood Alison
3. Welendawa Acharige Alison  
All of No .40, Hemananda Mawatha,  
Galle.

**Respondent-Petitioners**

**Vs.**

Kokmaduwa Parana Gunawathie of  
No.10, Chinakoratuwa Mada Road,  
Galle.

**Petitioner-Respondent**

**AND NOW**

1. Welendawa Acharuge Priyantha  
Alison
2. Minha Wadood Alison
3. Welendawa Acharige Alison  
All of No .40, Hemananda Mawatha,  
Galle.

**Respondent-Petitioner-Appellants**

**Vs.**

Kokmaduwa Parana Gunawathie of  
No.10, Chinakoratuwa Mada Road,  
Galle.

**Petitioner-Respondent-  
Respondent**

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

**Counsel:** Ashan Stanislaus AAL with Crshivah Jabir AAL instructed  
by P.H.A. Hettiarachchi for the Respondent-Petitioner-  
Appellant.  
Dr. Sunil Cooray with Buddika Gamage for the  
Petitioner- Respondent-Respondent.

Parties agreed to dispose the matter by way of written submissions.

Written Submissions 27.07.2019 by the Respondent-Petitioner-Appellants.  
tendered on: 07.02.2022 by the Petitioner-Respondent-Respondent.

Decided on: 04.10.2022

**Prasantha De Silva, J.**

### **Judgment**

This appeal stems from the Order dated 11.11.2014 made by the learned High Court Judge of the Southern Province holden in Galle in case bearing No. Rev/11/2013, which was filed against the Order of the Magistrate's Court of Galle in case bearing No. 93247.

It appears that the Petitioner-Respondent-Respondent above named (hereinafter sometimes referred to as Respondent) had instituted Magistrate's Court case No.93247 on 17<sup>th</sup> July 2012 by filing a private plaint in terms of Section 66(1)(b) of the Primary Courts' Procedure Act No.44 of 1979, alleging *inter-alia*;

- That she purchased premises No.10, Centre Road, Cheenakoratuwa, Galle for a sum of Rs.200,000/- which is of more than Rs 300,000/- in value,
- That the subject matter of dispute complained is the building standing on the said premises No.10, which is a divided portion of the land called Kekiribokkawatta,

- That whilst she was in possession of the entire disputed premises, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent-Petitioner-Appellants caused obstructions to the Respondent's peaceful possession thereon.

Thereafter, the Respondent had sought the intervention of the Magistrate's Court,

- To prevent the obstructions caused to her personal possession of the subject matter;
- To safeguard the rights and possession of the Respondent therein;
- To issue an Order preventing the 1<sup>st</sup> and 2<sup>nd</sup> Appellants from entering the premises.

It was submitted by the Appellants that the complaint made by the Respondent on 30.06.2012 marked as P4 is an independent statement of the Respondent before she obtained legal assistance, and that P4 proves beyond any doubt that the Respondent was occupying only one room in the premises. Moreover, she has accepted the fact that she was in possession of only one room in the upstairs of the building and the 1<sup>st</sup> and 2<sup>nd</sup> Appellants have dispossessed the Respondent from there.

It was further submitted that the Appellants have admitted the fact that the Respondent was in possession of one room in the premises and the Respondent too has clearly admitted that. The Appellants have clearly stated in their affidavits and counter affidavits that the subject matter of the case is "only one room of the entire premises".

However, it was the finding of the learned Magistrate who was acting as the Primary Court Judge that the Respondent and the 3<sup>rd</sup> Appellant (deceased) had been in possession of the disputed premises for a long period of time.

“ඒ අනුව ඉහත විග්‍රහ කරන ලද සාක්ෂි මත ආරවුල් ගත විශය වස්තුවේ සන්නකය දීර්ඝ කාලයක් තිස්සේ මෙම නඩුවේ 3 වන වගඋත්තරකරු සහ පෙත්සම්කාරිය එක්ව දරා ඇති බව තහවුරු වන අතර, 2012 ජනවාරි මසින් පසු තුන්වන වගඋත්තරකරු ආරවුල් ගත විශය වස්තුවේ සන්නකය පෙත්සම්කාරියට හිමිකර දී විෂය වස්තුව වස්තුවෙන් පිටව ඇති බව තහවුරු වෙයි.”

It is worthy to note the said position is substantiated by the complaints made by the Respondent on 30.06.2012 marked 'පෞ4' and the subsequent complaint dated 12.07.2012.

The said complaint 034 states;

“ලොකු පුතා වන ඒ. ප්‍රියන්ත හා ඔහුගේ බිරිද මිත්හා වඩුඩි, ඔවුන් දෙදෙනාගේ පුතා වන අකලංකද ගමේ ග්‍රාමසේවක රාළහාමි එක්ක ඇවිත් මරණවා කියලා තර්ජනය කරා. මගේ කොන්ඩෙන් අල්ලලා මරණවා කියලා තර්ජනය කරා. මගේ දෙවන පුරුෂයාට අයත් පදිංචි ඉඩම මම බලෙන් ලියා ගන්නා කියලා මට කිව්වා. ඉන්න ගේ ජනේල කුඩු කරලා දැමීමා. ග්‍රාමසේවක රාළහාමිත් එක්ක ඇවිත් පැය දෙකකින් ඉස්සරවෙලා ගෙදරින් යන්න කියලා කිව්වා. ගෙයි දොර යතුරත් අරගෙන ගියා..... මගේ කාමරේ දොර වහලා යතුර අරගෙනවිත් තිබුනා.”

Moreover, the Respondent had made another complaint to the Galle Police Station on 12.07.2012, which states;

“මා ඉහත ලිපිනයේ පදිංචි අතර මා දැනට පදිංචිව සිටින නිවස ට තාප්පයක් බැඳ තියෙනවා. මෙම නිවස දෙමහල් නිවසකි මා පදිංචිව සිටින්නේ උඩුමහලේ ය. එයට යාමට පඩිපෙලේ දෙකක් ඇත. එම පඩිපෙලවල් දෙකින් එක් පඩි පෙලක් 2012.07.12 දින උදේ 8.30 ට පමණ ප්‍රියන්ත ඇලිසන් යන අය සේවකයෙකු ගෙන්වාගෙන, එම පඩිපෙල ගලවා දැමීමට සූදානම් වුණා.....”

According to the said complaints, it clearly demonstrates that the Respondent had been in possession of the upper floor of the disputed premises and 1<sup>st</sup> and 2<sup>nd</sup> Appellants were also in possession of the same.

In terms of Section 68(1) of the Primary Courts’ Procedure Act,

“Where the dispute relates to the possession of any land or part thereof it shall be the duty of the Judge of the Primary Court holding the inquiry to determine as to who was in possession of the land or the part on the date of the filing of the information under Section 66 and make order as to who is entitled to possession of such land or part thereof”.

Section 68(1) of the Act is concerned with the determination as to who was in possession of the land on the date on which information was filed in Court.

Since the information (private plaint) had been filed on the 17<sup>th</sup> of July 2012 and the aforesaid complaints made on 30<sup>th</sup> June 2012 and 12<sup>th</sup> July 2012, it clearly manifests that the Respondent was in possession of the upper floor of the disputed premises.

Thus, it is seen that according to the evidence placed before the learned Magistrate, he had come to the correct findings of fact and law and had concluded that the Appellant is entitled to the possession of the disputed premises except the rooms rented for Sisira Restaurant and Nalin Cellular.

However, the Appellant had moved in revision to the Provincial High Court of the Southern Province holden in Galle to revise or set aside the said Order of the learned Magistrate. It is settled law that revision is an extraordinary jurisdiction vested in Court to be exercised under exceptional circumstances, if no other remedies are available. Thus, revision is not available if other remedies are available to the party concerned.

It is interesting to note the case *U.K. Edirimanne Vs. K. Kandiyah and another* appeal bearing *No. 1115/84 (unreported), CA Minutes 12.07.1991* where Justice *Wijetunge* emphasized:

“It seems to me that when the legislature in its wisdom provide in Section 74(2) of the Primary Courts’ Procedure Act that an appeal shall not lie against any determination or Order under Part VII of the Act, it intended that a party adversely affected by such determination or Order should ordinarily seek his remedy in a Civil Court, as the provision of Section 74(1) appears to suggest. It is only when there are exceptional circumstances that Court would interfere with such determination or Order and such situation would be the exception rather than the rule.”

It is to be noted that, it was revealed in evidence and also mentioned in the Order of the learned Magistrate that the Appellants had instituted action bearing No.16577/L in the District Court of Galle to eject the Respondent from the premises in dispute.

It has been held in the case of *Punchi Nona vs Padumasena and Others [1994] 2 SLR 117*, that Primary Court exercising special jurisdiction under Section 66 of the Primary Courts’ Procedure Act, is not involved in an investigation of title or the right to possession, which is the function of a Civil Court. What the Primary Court is required to do is to take a preventive action and make a Provisional Order pending final adjudication of rights of the parties in a Civil Court.

It appears that the Appellants had sought another remedy seeking a declaration of title and ejection of the Respondent from the premises in dispute. The learned High Court Judge held against the Appellants and dismissed the application for revision made by the Appellants as Appellants had not given any reason why the alternative remedy is not sought. Thus, the Appellants had not shown any exceptional grounds to invoke the revisionary jurisdiction of the High Court.

Therefore, in view of the aforesaid reasons, we see no reason for us to interfere with the Order dated 11.11.2014 made by the learned High Court Judge and the Order made by the learned Magistrate on 14.12.2012.

Hence, we dismiss this appeal with costs fixed at Rs.35,000/-.

**JUDGE OF THE COURT OF APPEAL**

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

I agree.

**JUDGE OF THE COURT OF APPEAL**