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

In the matter of an Application under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Rev) Application No:
CA (PHC) 239/2017

High Court Ratnapura Case No:
RA 19/2015

Magistrate's Court Kalawana Case No:
14032

Officer-in-Charge,
Police Station,
Kalawana.

Complainant

Vs.

01. Pallege Arachchilage Thissa,
Karunaratne,
Bandarawatta,
Kalawana.

02. Pannila Mohottalalage
Wanshapala,
No.104, Hangarangala,
Kalawana.

03. Chandrani Dasanayake,
No.104, Hangaranagala,
Kalawana.

Parties

AND

Pallege Arachchilage Thissa
Karunaratne,
Bandarawatta,
Kalawana.

1st Party Petitioner

Vs.

01. Pannila Mohottalalage
Wanshapala
No.104, Hangarangala,
Kalawana.

02. Chandrani Dasanayake,
No.104, Hangaranagala,
Kalawana.
2nd & 3rd Party-Respondents

03. Officer-in-Charge,
Police Station,
Kalawana.
Complainant-Respondent

AND NOW BETWEEN

Pallege Arachchilage Thissa Karunaratne,
Bandarawatta,
Kalawana.
1st Party Petitioner-Appellant

Vs.

01. Pannila Mohottalalage Wanshapala,
No.104, Hangarangala,
Kalawana.

02. Chandrani Dasanayake
No.104, Hangaranagala,
Kalawana.
2nd & 3rd Party Respondent-Respondents

03. Officer-in-Charge,
Police Station,
Kalawana.
Complainant-Respondent-Respondent

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

Counsel: T. Liyanage with Dheemath Mohotti for the 1st Party Petitioner-Appellant.

	Ranil Samarasooriya with Yohan Gamage for the 2nd & 3rd Party Respondent-Respondents.
Written Submissions tendered on:	05.08.2022 by the 2nd & 3rd Party Respondent-Respondents.
Argued on:	01.06.2022
Decided on:	18.10.2022

Prasantha De Silva, J.

Judgment

This appeal emanates from the Order made by the Provincial High Court of Ratnapura exercising revisionary jurisdiction in case bearing No: RA 19/2017 against the Order of the learned Magistrate of Kalawana in case bearing No: 14032 made on 22.04.2015 in terms of Section 66 of the Primary Courts' Procedure Act No. 44 of 1979.

It appears that the Officer-in-Charge of the Police Station, Kalawana had filed an information in terms of Section 66(1) (a) of the Primary Courts' Procedure Act on the premise that there is a breach of the peace threatened or likely to be threatened as a result of a dispute over possession of the land in question between the 1st Party Petitioner and 2nd and 3rd Party Respondents.

The learned Magistrate who was acting as a Primary Court Judge allowed parties to file affidavits, counter affidavits and also written submissions. Consequently, the learned Magistrate delivered the Order on 22.04.2015, in favour of the 2nd and 3rd Party Respondents, granting possession of the disputed land. Being aggrieved by the said Order, the 1st Party Petitioner had made an application, bearing No: RA 19/2017 in the Provincial High Court of Sabaragamuwa Province Holden at Ratnapura exercising the revisionary jurisdiction.

The learned High Court Judge having inquired into the matter on the evidence placed before him, delivered the Order on 29.08.2017 in favour of the Respondents confirming the decision of the learned Magistrate of Kalawana. Being aggrieved by

the said Order, the 1st Party Petitioner-Appellant had preferred an appeal to this Court.

Since the dispute between parties is related to possession of the land in dispute, it is clear that Section 68 of the Primary Courts' Procedure Act applies. However, the Appellant argues that the Order of the learned Magistrate is illegal as the provisions under Section 68(3) of the Primary Courts' Procedure Act applies in these circumstances.

According to Section 66 of the Primary Courts' Procedure Act No. 44 of 1979, when there is a dispute over possession of a land or a part of land before the Magistrate's Court, under Section 68(1) of the Primary Courts' Procedure Act No. 44 of 1979, the duty of the Magistrate is to hold an inquiry to determine as to who was in possession of the land or part of the land in question on the date on which information was filed under Section 66 and make an Order as to who is entitled to possession of such land or part thereof.

Furthermore, as per Section 66 of the Primary Courts' Procedure Act No. 44 of 1979, when there is a dispute before a Magistrate's Court over possession of a land or part of a land, under Section 68(3) of the Primary Courts' Procedure Act No. 44 of 1979, if the Magistrate is satisfied that any person who had been in possession of the land or part has been forcibly dispossessed within a period of 2 months immediately before the date on which the information was filed under Section 66, he or she may make a determination to that effect and make an Order directing that the party dispossessed be restored to possession and prohibiting all disturbances of such possession otherwise than under the authority of an order or decree of a competent court.

It is seen that there were no facts regarding a forcible dispossession among the parties of this case. Hence, the duty of the said learned Magistrate of Kalawana was to make an Order under the Section 68(1) of the Primary Courts' Procedure Act No. 44 of 1979.

It appears that the Counsel for the Appellant raised a new contention regarding the identification of the land in question before us at the argument stage alleging that

the land in dispute had not been properly identified and that the learned Magistrate cannot make an Order in respect of an unidentified land.

It is worthy to note that the learned Magistrate of Kalawana in his Order dated 22.04.2015 had made a specific finding with regard to the identification of the land in dispute.

It states *inter alia*,

> "දළ සැලැස්මේ A වශයෙන් සඳහන් කර ඇති කොටසෙහි අයිනිය පළමු පාර්ශ්වකරුගේ බව 2, 3 පාර්ශවකරුවන් පිළිගෙන ඇත. ඔවුන් හබ කිරීමක් කරනු ලබන්නේ B සහ C නමැති කොටස් දෙක සම්බන්ධයෙනි. එයින්ද ආරවුල හටගෙන ඇත්තේ මෙම B නමැති කොටසෙහි බව ප්‍රකාශ කොට ඇත. එකී දළ සැලැස්ම ප්‍රකාරව අදාල B කොටස මෙම ආරවුලට බදුන් වී ඇති කොටස බවට පාර්ශවකරුවන්ද පිළිගෙන ඇත. ඒ අනුව මෙකී ආරවුල හටගෙන ඇත්තේ මෙම දළ සැලැස්මේ B ලෙස සඳහන් කොටසේ බවට සෑහීමකට පත් වෙමි."

Appellant had not challenged the said finding of the learned Magistrate in the High Court of Ratnapura neither had it been raised as an issue in the petition of appeal filed, addressed to this Court.

On this premise, it was argued on behalf of the Respondents that the Appellant's new contention with regard to the identification of the land in dispute cannot be considered at the appeal stage. It is settled law that only new questions of law comprising matters purely on law can be considered at any stage in an appeal or revision application and not of fact. Only questions of law can be considered in an appeal.

It is needless to say the identification of the land in dispute is a matter that consists purely based on facts and not on questions of law. Thus, it cannot be considered at this stage.

Accordingly, the parties of this case had to prove their position in respect of the possession of the said disputed land.

It is observable that the documents submitted by the Appellant and the Respondents were carefully considered by the learned Magistrate of Kalawana, and later the learned High Court Judge of Ratnapura, when deciding on who could prove they had possession of the land in dispute.

It was submitted on behalf of the Respondents that the learned Magistrate of Kalawana, having examined the documents tendered by the Appellant made the following observations in the Order dated 22.04.2015:

i. The Grama Niladhari Report marked "1අ14" does not clearly states whether the Appellant has possession of the land in dispute,
ii. The documents relating to the Appellant obtaining an electricity connection marked "1අ11" shows that the said connection has been obtained for a house, but the disputed land does not contain a house.
iii. The license to grow tea marked "1අ14" states that the land is 1 Acre in extent, but the Appellant's first Affidavit contradicts this as it states the disputed land is 1½ Acres in extent.
iv. The tax documents marked "1අ12" and "1අ13" also contradict each other as they state that the land is 1 Acre and 1 Acre 2 Roods in extent respectively.

Due to the above reasons, the learned Magistrate concluded that the documents tendered by the Appellant are not relevant to the land in dispute and that as a result of it, it should be disregarded.

The learned High Court Judge of Ratnapura, having carefully examined the evidence put forward by the parties before the Magistrate had made the same observations as that of the learned Magistrate, regarding the documents tendered by the Appellant. The conclusion reached is also the same; the documents tendered by the Appellant are not relevant to the land in dispute and do not prove the Appellant's possession with regard to the said land.

However, in contrast to the above, the learned Magistrate and the learned High Court Judge concluded that the documents tendered by the Respondents show that the Respondents were in possession. Furthermore, it is observed that documents

such as the Grama Niladhari documents marked “2, 3අ6” and “2, 3අ11” obtained from the same Grama Niladhari Officer clearly stated that the Respondents were in possession of the land in dispute which is identified by name in the said documents.

According to the observation notes of the Police Officer and the affidavits of both parties filed in Magistrate’s Court of Kalawana, it is clear that the disputed land is the land which is marked as “B” in the observation notes of the Police. It is pertinent to note that the learned Magistrate had stated in the Judgment that both parties do not dispute the identity of the disputed land marked “B” in the observation notes of the Police.

It appears that the Appellant has attempted to show the land called “Medakumbhure Godella” and the land called “Karuhene Kumbhure Godella” are the same land and he has tried to prove that he has possession of the land called “Karuhene Kumbhure Godella”.

However, it is relevant to note that the Appellant had not been able to substantiate the said position by the documents marked as 1අ14, 1අ15, 1අ16 and 1අ17 submitted on behalf of the Appellant, to prove the said contention that the documents are not relevant to Lot B depicted in the sketch, the land identified by the police, as the disputed land. Therefore, the Appellant has not proved that he has been in possession of the disputed portion of land two months prior to the date on which the information was filed.

It is worthy to note that the documents 2, 3අ3, 2, 3අ4, 2, 3අ5, 2, 3අ6 and 2, 3අ7 tendered as proved by the Respondents clearly tally with the investigation conducted by the Police and the claims made by the Respondents as to the identification of the disputed land.

It is apparent that as per the evidence placed before the learned Magistrate, the Appellant had not proved his possession to the disputed land. However, the Respondent has proved his continuous possession to the disputed land.

Furthermore, it is seen that the learned High Court Judge has also analyzed the documents submitted by the Appellant as well as that of the Respondents with their

affidavits and had come to the correct finding of fact and law and confirmed the Order of the learned Magistrate and thereupon decided to dismiss the revision application filed by the Appellant.

Therefore, the Appellant is not entitled to seek relief under the provisions of the Primary Courts' Procedure Act with regard to the possession of the disputed land.

However, the 2nd and 3rd Party Respondent-Respondents have been in possession of the disputed portion of land continuously and the Appellant had disturbed their peaceful possession of the land in dispute.

Hence, we see no reason for us to interfere with the Order of the learned Magistrate dated 22.04.2015 and the Order of the learned High Court Judge dated 29.08.2017.

Thus, we dismiss the appeal of the 1st Party Petitioner-Appellant with cost.

JUDGE OF THE COURT OF APPEAL

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

JUDGE OF THE COURT OF APPEAL