

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

Officer-in-Charge,
Police Station,
Pussellawa.

Plaintiff

Court of Appeal Case No:
CA (PHC) 82/2015

High Court of Kandy Case No:
84/2008 REV

Magistrate's Court of Helboda Case No:
18814

Vs.

01. M. Koneswaran,
No. 429, Nuwara eliya Road,
Pussellawa.

02. S. M. Aseez,
No. 427, Nuwara eliya Road,
Pussellawa.

03. M. M. Rasheek,
No. 425, Nuwara eliya Road,
Pussellawa.

04. M. Muniyandi,
No. 429, Nuwara eliya Road,
Pussellawa.

Respondents

AND BETWEEN

01. M. Koneswaran,
No. 429, Nuwara eliya Road,
Pussellawa.

02. M. Muniyandi,
No. 429, Nuwara eliya Road,
Pussellawa.

1st and 4th Respondent-Petitioners

Vs.

01. S. M. Aseez,
No. 427, Nuwara eliya Road,
Pussellawa.

02. M. M. Rasheek,

No. 425, Nuwara eliya Road,
Pussellawa.
2nd and 3rd Respondent-Respondents

AND NOW BETWEEN

01. M. Koneshwaran,
No. 429, Nuwara eliya Road,
Pussellawa.

02. M. Muniyandi,
No. 429, Nuwara eliya Road,
Pussellawa.

**1st and 4th Respondent-Petitioner-
Appellants**

Vs.

01. S. M. Aseez,
No. 427, Nuwara eliya Road,
Pussellawa.

02. M. M. Rasheek,
No. 425, Nuwara eliya Road,
Pussellawa.

**2nd and 3rd Respondent-Respondent-
Respondents**

Before: Prasantha De Silva, J.

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

Counsel: Palitha Bandaranayake with D. M. Siriwardena and Dilini Jayanetti for the 2nd and 3rd Respondent-Respondent-Respondents.
Dr. Sunil Abeyratne with Mihiri Kodituwakku for the 1st and 4th Respondent-Petitioner-Appellants are absent and unrepresented.

Court decided to dispose the matter by way of Written Submissions already filed

Written Submissions 01.04.2019 and 19.12.2019 by the 2nd and 3rd Respondent-
tendered on: Respondent-Respondents.

30.10.2019 by the 1st and 4th Respondent-Petitioner-Appellants.

Decided on: 08.12.2022

Prasantha De Silva, J.

Judgment

The Officer-in-Charge of Police Station-Pussellawa had filed an information at the Primary Court of Helboda on 07.10.2006 in terms of Section 66 of the Primary Courts' Procedure Act No. 44 of 1979, regarding a dispute between 1st Respondent and 2nd Respondent over a possession of a land. Subsequently, 3rd Respondent and 4th Respondent too intervened in the matter.

The learned Primary Court Judge having inquired into the matter, delivered the Order on 23.04.2008 in favour of the 2nd and 3rd Respondents confirming their possession of the disputed land and further ordered 1st and 4th Respondents not to interfere with the possession of 2nd and 3rd Respondents and bound them over to keep of peace.

Being aggrieved by the said order of the learned Primary Court Judge, the 1st and the 4th Respondent-Petitioners invoked the revisionary jurisdiction of the Provincial High Court of Nuwara Eliya on the basis that the dispute which arose between the parties was not for the possession of the land situated behind the boutique but for a land situated far behind to the said boutique.

Subsequent to 2nd and 3rd Respondent-Respondents filing objections, parties agreed to dispose the matter by way of written submissions. Consequently, the learned High Court Judge delivered the order on written submissions on the premise that the land in dispute is a state land and that none of the parties are entitled to the possession of the land in dispute and dismissed the application of the 1st and 4th Respondent-Petitioners. Being aggrieved by the said order, the 1st and 4th Respondent-Petitioner-Appellants [hereinafter referred to as the Appellants] had preferred this appeal seeking to set

aside the said Orders of the Primary Court and the Provincial High Court and had sought a direction to fix the matter for a fresh inquiry in the Primary Court.

It appears that the Appellants have urged the grounds of appeal as follows:

1. Whether the learned Primary Court Judge/Magistrate have identified the subject matter in this case incorrectly?
2. Whether the learned Provincial High Court Judge has been misled by items excluded from the jurisdiction of Primary Court under the Judicature Act?
3. Whether the Provincial High Court Judge has failed to consider the requirement under Rule No 03 of the Supreme Court Rules and exceptional circumstances of the case?

If an information regarding a dispute over possession of land is filed in terms of Section 66 of the Primary Courts' Procedure Act, it is a prime duty of a learned Primary Court Judge to first identify the land in dispute before determining the rights of the parties. It is noteworthy that the learned High Court Judge has observed the learned Primary Courts Judge has not properly identified the land in question.

The learned High Court Judge has drawn the attention to the information filed by the police [X1], the statement of the 1st Respondent dated 07.10.2006 [X2] and the sketch and report prepared by the Sub Inspector Dharmasena [X4] and had thereupon identified the land in dispute as a land situated far behind the boutique premises shown as No.1-5 in sketch [X4] marked as 'D' and 'E'.

According to sketch [X4], it is seen that boutique premises bearing No. 4 and 5 are possessed by 1st and 4th Respondent-Appellants and premises No. 2 and 3 are possessed by 3rd and 2nd Respondent-Respondents respectively.

It is to be noted that the portion of land, which is 30 feet wide situated behind the said boutique premises is also depicted in the said sketch [X4]. As such, the learned High Court Judge has properly identified the disputed portion of land upon the material placed before the Primary Court as 'D' and 'E' in the said sketch [X4].

Hence, the learned High Court Judge has been correct in holding that the learned Primary Court Judge had determined the rights of parties to a land that is not in dispute and therefore, had not properly identified the land relating to the dispute. Therefore, the Order dated 23.04.2008 by the Primary Court is erroneous and has to be revised or set aside.

The learned High Court Judge having considered the evidence placed before the Primary Court had observed that the land in dispute is situated adjacent to the Holy Trinity College, which is a government school. Apparently, it happened to be a state reservation. However, the learned High Court Judge has considered the right to possession of the parties to the disputed portions of land marked 'D' and 'E' in the said sketch X4.

Moreover, the learned High Court Judge has held that the 2nd and 3rd Respondent-Respondents failed to establish their possession to the land in dispute referred in the information in spite of the documents tendered in the Primary Court which relate to possession of the portions of land situated behind the boutique premises Nos 1-5.

The learned High Court Judge has considered the right to possession of the 1st and 4th Appellants in relation to the disputed portions of land.

It was observed by the learned High Court Judge that the said plan [4⊕1] was prepared in 1989 and the surveyor had reported that one H. P. W. Wijegunatileke is occupying Lot 2. As such, it is evident that the said H. P. W. Wijegunatileke was in possession of the land in dispute at least at the time of preparing the said plan in 1989.

Furthermore, the 4th Respondent-Appellant had stated that he harvested jack and clove trees on the disputed portions of land. However, according to the observation notes and sketch [X4], there is no reference to jack or clove trees on the disputed land.

As such, it is obvious that the 4th Respondent-Appellant had not proved his contention that he had been in possession of the disputed land for well over 40 years. Thus, it appears that the truthfulness of the contents of his affidavit are impeached.

It is noteworthy, the learned High Court Judge held that the 1st and 4th Respondent-Appellants have not been forcibly dispossessed by the 2nd and 3rd Respondent-Respondents from the impugned land in question within a period of 2 months immediately before the date on which the information was filed in the Primary Court.

Since the 1st and 4th Respondent-Appellants have failed to prove that they were in possession of the land in dispute on the date of filing the information or that they had been dispossessed by the 2nd and 3rd Respondent-Respondents from the impugned land in question within a period of 2 months immediately before the date on which the information was filed under Section 66 of the Primary Courts' Procedure Act, it is apparent that neither Section 68(1) nor Section 68(3) is applicable in this regard.

Thus, the learned High Court Judge was correct when he held that neither 1st and 4th Respondent-Appellants nor the 2nd and 3rd Respondent-Respondents are entitled to possess the land in dispute.

As such, we see no reason to interfere with the Judgment of the learned High Court Judge dated 16.07.2015.

Hence the appeal is dismissed with cost.

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

JUDGE OF THE COURT OF APPEAL

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