

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

In the matter of an application under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Officer in Charge,
Police Station,
Nawa Kurunduwatta,
Nawalapitiya.

Plaintiff

Court of Appeal Case No:
CA/PHC/APN/88/2020

Vs.

High Court Kandy Revision
Application No: **91/19**

Dinesh Sunanda Welagedara,
Osanda Plantation (Pvt) Ltd.,
Dolosbage.

1st Party

Magistrate's Court Nawalapitiya
Case No: **80473**

Mulaweera Ralalage Dhammika Lakshani
Abeyratne,
No. 326/1, Colombo Road,
Pepiliyana,
Boralesgamuwa.

2nd Party

AND

Dinesh Sunanda Welagedara,
Osanda Plantation (Pvt) Ltd.,
Dolosbage.

1st Party-Petitioner

Vs.

Officer in Charge,
New Kurunduwatta Police Station,
Dolosbage.

Plaintiff-Respondent

Mulaweera Ralalage Dhammika Lakshmi
Abeyratne,
No. 326/1, Colombo Road,
Pepiliyana,
Boralesgamuwa.

2nd Party-Respondent

AND NOW

Mulaweera Ralalage Dhammika Lakshmi
Abeyratne,
No. 326/1, Colombo Road,
Pepiliyana,
Boralesgamuwa.

2nd Party-Respondent-Petitioner

Vs.

Officer in Charge,
New Kurunduwatta Police Station,
Dolosbage.

Plaintiff-Respondent-Respondent

Dinesh Sunanda Welagedara.
Osanda Plantation (Pvt) Ltd.,
Dolosbage.

1st Party-Petitioner-Respondent

Before: Prasantha De Silva, J.

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

Counsel: Maithri Gunaratne PC with Ashan Nanayakkara for the 2nd Party-Respondent-Petitioner.

Dr. Sunil Abeyratne with Mihiri Kudakolowa for the 1st Party-Petitioner-Respondent.

Both Parties agreed to dispose the matter by way of Written Submissions.

Written Submissions 30.03.2022 by the 2nd Party-Respondent-Petitioner.

tendered on: 06.05.2022 by the 1st Party-Petitioner-Respondent.

Order delivered on: 02.06.2022

Prasantha De Silva, J.

Order

The Officer-in-Charge of the Police Station-Nawakurunduwatte in Nawalapitiya had filed an information on 19.11.2018 under Section 66 of the Primary Courts' Procedure Act No. 44 of 1979, in the Magistrate's Court of Nawalapitiya.

It was informed that the 1st Party, being the Superintendent of Oshada Estate of Oshada Plantation (Pvt) Ltd has been in occupation of the said estate since 2015. The owner of the said estate is Roshana Dammika Hewa Uluwatta, who resides in Japan and is the husband of the 2nd Party, who claimed rights to the said estate.

The said information was filed in pursuant to a complaint made by the 1st Party to the New Kurunduwatta Police on 03.11.2018 and 14.11.2018. According to these complaints, it appears that Oshada Estate belongs to Oshada Plantation (Pvt) Ltd and Roshana Dammika Hewa Uluwatta is the sole shareholder and Director of the said estate. He has appointed the 1st Party as the Superintendent to manage and administer the estate, since the said Roshana Dammika Hewa Uluwatta lives in Japan. This position is substantiated by the affidavit dated 26.12.2018 [X] given by said Roshana Dammika Hewa Uluwatta.

On 28.10.2018, while the 1st Party was on leave, the 2nd Party had entered the estate and forced the chief clerk Jayasheelan to hand over the bungalow keys to her. Apparently, the 2nd Party had broken the front-side door and had entered the bungalow.

It was submitted by the 1st Party that Roshana Dammika Hewa Uluwatta is the sole shareholder and Director of the said estate and that the 1st Party has been maintaining and administering the Oshada Estate since 2015. Thus, the 2nd Party had entered the estate bungalow forcibly, illegally and fraudulently. The 1st Party's said position was substantiated by the affidavits and the Police complaint of the 1st Party and the said affidavit marked and produced as "X" given by the said Roshana Dammika Hewa Uluwatta.

It was the position taken by the 2nd Party that she is the wife of the said Roshana Dammika Hewa Uluwatta and she was living with him in Japan and had bought the said estate out of their earnings. The 2nd Party draws the attention of Court to paragraph 5 of the plaint dated 28.08.2017 filed in

case bearing No. 2480, at the District Court of Kaduwela (X5) and paragraph 04 of the maintenance application dated 03.05.2018 filed in case bearing No. 92296/9/18 at the Magistrate's Court of Colombo, where the 2nd Party pleaded that she spent half of the money needed to buy the said property Oshada Estate that belongs to Oshada Plantation (Pvt) Ltd.

It was revealed in the affidavit evidence and the exhibits tendered to Court by both parties that Estate-Oshada Plantation (Pvt) Ltd had been purchased by the sole shareholder and Director Roshana Dammika Hewa Uluwatta on 20.10.2007 by Deed bearing No. 1386 dated 20.10.2007 marked as "C". It is worthy to note that the 2nd Party got married to said Roshana Dammika Hewa Uluwatta on 02.01.2010 [marriage certificate is marked as X2], three years after the purchase of Estate-Oshada Plantation (Pvt) Ltd. As such, the genuineness and the truthfulness of the contents of the affidavits submitted by the 2nd Party is refuted.

However, all in all, the learned Magistrate of Nawalapitiya who was acting as the Primary Court Judge had come to the conclusion that the dispute between the 1st Party and her husband is a family matter. Since Section 66 of the Primary Courts' Procedure Act has no relevance to family disputes, the learned Magistrate had dismissed the case on 01.07.2019 and pronounced the Order on 15.07.2019.

Being aggrieved by the said Orders, the 2nd Party Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of the Central Province holden in Kandy. The learned High Court Judge having inquired both parties on the said application, had decided that the learned Magistrate has erred in Law by dismissing the instant action, which amounts to a miscarriage of justice. Thus, the learned High Court Judge has allowed the revision application filed by the 1st Party-Petitioner and had revised the Orders made by the learned Magistrate on 01.07.2019 and 15.07.2019.

Being aggrieved by the Order made by the Provincial High Court dated 11.03.2020, the 2nd Party-Respondent-Petitioner [hereinafter sometimes referred to as the 2nd Party] has moved in revision to this Court to revise or set aside the Order made by the learned High Court Judge on 11.03.2020.

In this respect, it is submitted on behalf of the 2nd Party that the possession of a person, however unreasonable or unlawful, the court is bound to decide who was in exclusive possession of the disputed premises on the date on which the information was filed or who was dispossessed within

two months prior to the date on which information was filed. The Court is bound to maintain possession of such person even if he is a trespasser as against any interference with the rightful owner.

It was the contention of the 2nd Party that she is not a trespasser or illegal occupier in terms of Section 66 of the Primary Courts' Procedure Act and she being the spouse of the said Roshana Dammika Hewa Uluwatta, no one can evict her from the matrimonial home because the Primary Courts' Procedure Act cannot be misused to evict a spouse from the matrimonial house according to the whims and fancies of the other spouse. Thus, living in the matrimonial home is completely different from a trespasser occupying a land forcibly.

The Court draws the attention to case bearing No. SPL 4667 instituted in the District Court of Kalutara on 20.09.2018 by the husband of the 2nd Party, Roshana Dammika Hewa Uluwatta, against the 2nd Party.

It is a case filed to obtain a decree for declaration of nullity of marriage. It is seen in the caption that the Plaintiff-Roshana Dammika Hewa Uluwatta's address is given as No.18, Sir Cyril De Soysa Mawatha, Kalutara South, and the Defendant-2nd Party's address is given as B 2/7, Sanchi Arachchi Watta, Colombo 12. It appears that the 2nd Party had given the same address in the Magistrate's Court-Colombo case bearing No. 92296/9/18, a maintenance application filed by the 2nd Party against the said Roshana Dammika Hewa Uluwatta on 03.05.2018. The 2nd Party, being the Plaintiff had filed a Divorce action on 28.08.2017, against the said Roshana Dammika Hewa Uluwatta of 243/1, Galle Road, Kalutara South and the 2nd Party's address is mentioned in the caption as No. 266, Kaduwela Road, Battaramulla.

It is noteworthy in the complaint made on 05.07.2017 to the Mirihana Police Station by the 2nd Party that her address is indicated as No. 326, Colombo Road, Pepiliyana. Therefore, it is observable that the 2nd Party had given 3 addresses in the aforementioned cases filed against her and filed by her and on the Police complaint dated 05.07.2017, without giving the address of the matrimonial home claimed by the 2nd Party.

It is pertinent to note that the maintenance application filed by the 2nd Party on 03.05.2018, indicates her address as B 2/7, Sanchi Arachchi Watta, Colombo 12. Thus, it is apparent that up to

this date, the 2nd Party had not gone to occupy the Estate bungalow at Oshada Plantation (Pvt) Ltd-Dolosbage.

Be that as it may, since this is a matter where the information was filed with regard to the possession of the premises, Section 68 of the Primary Courts' Procedure Act is applicable.

It is interesting to note that the 2nd Party executed a Deed of Declaration bearing No. 1193 dated 10.08.2018 in respect of the disputed property and has indicated her address as No.320/1B, Colombo Road, Pepiliyana, Boralasgamuwa.

It appears that although the 2nd Party executed the said Deed in respect of Oshada Estate, including the matrimonial home claimed by her, she had not given her address as Oshada Plantation (Pvt) Ltd-Dolosbage and had not substantiated the position that she was occupying the said Estate Bungalow on the relevant date on which the said Deed of Declaration was executed. It shows her secret intention to snatch the property in dispute.

However, the 2nd Party in her affidavit dated 20.01.2019, admitted that she had come to their matrimonial home Oshada Estate bungalow to reside permanently on 19.11.2018. Therefore, it is clear that the 2nd Party had come to occupy the Oshada Estate bungalow on 02.11.2018 and the New Kurunduwatte Police had filed the information on 19.11.2018. Thus, the 2nd Party has failed to establish that the Oshada Estate bungalow is her matrimonial home.

It is seen in evidence that the 2nd Party had entered the Estate on 28.10.2018 and had forced the Chief Clerk, Jayasheelan to hand over the bungalow keys to her, while the 1st Party was on leave. The said position is substantiated by the affidavit of the said Selladore Jayasheelan dated 07.01.2019 marked as 1P_M.

When the Respondent reported back to work on 03.11.2018, he had made a complaint to New Kurunduwatta Police Station [1P3]. The Respondent had maintained and carried administration of the 'Oshada Estate' until he was dispossessed from the premises in dispute on 14.11.2018. The Respondent had filed a complaint [1P4] made to the New Kurunduwatta Police on the same day. The said complaint states that;

“මම අද උදේ 08.45ට මාගේ රාජකාරියට පැමිණි අතර මම පැමිණෙන විට කමිකරුවන් වන්නේ වැඩ කරමින් සිටියා. මම අපේ ඔපිස් එක ළඟට ආවේ ක්ෂේත්‍ර නිලධාරී වන 1 කුමාරසිරි 2 ගුණසේන හා කන්කානම් රාජේන්ද්‍රන් යන අය සමඟයි. මම එතනට ආවට පස්සේ ධම්මිකා ලක්ෂ්මී බංගලාවේ ඉඳලා

ඇවිදින් ඔයාට මේ වත්තට එන්න අයිතියක් නැහැ. ගහලා පන්නනවා කිව්වා. ඒ වෙලාවේ මම වත්ත අයිති ධර්මික සහ ඒ අයගේ නීතිඥ මහත්තයාට දුරකථනයෙන් කතා කළා. ඒ වෙලාවේ මට පොලිසියේ පැමිණිල්ලක් කරන්න කිව්වා. මම නැතුව වත්තේ කම්කරුවන් වැඩ කරන්නේ නැහැ කිව්වා. මේ නිසා වතු ස්ටියක් එකක් එන්න පුළුවන්. මම මේ පැමිණිල්ල කරලා ඉල්ලා සිටින්නේ මම කරන රාජකාරිය බාධාවකින් තොරව කරගෙන යාමට අවශ්‍ය කටයුතු කරන දෙන ලෙසටයි. මට කීමට ඇත්තේ එපමණයි.”

1st Party has been dispossessed from the property within 2 months prior to the date on which the information was filed.

Subsections (1) and (3) of Section 68 of the Primary Courts’ Procedure Act state as follows;

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

(3) Where at an inquiry into a dispute relating to the right to the possession of any land or any part of a land the Judge of the Primary Court is satisfied that any person who had been in possession of the land or part has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under Section 66, he may make a determination to that effect and make an order directing the party dispossessed be restored to possession and prohibiting all disturbance of such possession otherwise than under the authority of an order or decree of a competent Court.

Accordingly, the main issue for the determination under Section 68(1) is, as to who was in possession of the land or part thereof on the date of filing of the information under Section 66 of the Primary Courts’ Procedure Act. However, when there is an allegation of a forcible dispossession, the Court can act under Section 68(3) and make a determination as to whether such dispossession has been affected within two months prior to filing of the information.

According to Section 68(3) of the Act, it emphasizes on the need for a Judge to satisfy with elements of a forcible dispossession.

Since the instant action was instituted under Section 66 of the Primary Courts' Procedure Act due to the dispossession of the Respondent from the disputed premises, the matter has to be determined in terms of Section 68(3) of the Primary Courts' Procedure Act.

According to the complaints made by the Respondent to the New Kurunduwatta Police on 03.11.2018 and 14.11.2018, it amply proves that the 2nd Party had forcibly entered the premises in dispute and dispossessed the 1st Party within a period of two months prior to the filing of the information. Hence, the 1st Party-Petitioner-Respondent's possession has to be restored to the disputed premises in terms of Section 68 (3) of the Primary Courts' Procedure Act.

Therefore, we see no reason for us to interfere with the Order of the learned High Court Judge dated 11.03.2020. Thus, we set aside the Orders made by the learned Magistrate of Nawalapitiya dated 01.07.2019 and 15.07.2019. Therefore, we dismiss this application with cost fixed at Rs.25,000/-.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL