

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

In the matter of an Appeal to the Court of Appeal from an order of the Provincial High Court under and in terms of Section 154(P) of the Constitution read with Part I of the Court of Appeal (Procedure for Appeals from High Courts established by Article 154P of the Constitution) Rules 1988.

C.A.(P.H.C.) No.92/2018

H.C. Rev. No.HC/NE/RE/09/2016

M.C. Nuwara Eliya Case No.63894

Jayaweera Mudiyanseelage Chandrika Priyadharshani,
Competent Authority,
Plantation Management Monitoring Division,
Ministry of Plantation Industries,
2nd Floor, Sethsiripaya 2nd Phase,
Battaramulla.

Applicant

Vs.

Jessie Augustine Bandara,
Magasthota Division,
Pedro Estate,
Nuwara Eliya.

Respondent

AND BETWEEN

Jessie Augustine Bandara,
Magasthota Division,
Pedro Estate,
Nuwara Eliya.

Respondent-Petitioner

Vs.

Jayaweera Mudiyansele Chandrika Priyadharshani,
Competent Authority,
Plantation Management Monitoring Division
Ministry of Plantation Industries,
2nd Floor, Sethsiripaya 2nd Phase,
Battaramulla.

Applicant-Respondent

AND NOW BETWEEN

Jayaweera Mudiyansele Chandrika Priyadharshani,
Competent Authority,
Plantation Management Monitoring Division,
Ministry of Plantation Industries,
2nd Floor, Sethsiripaya 2nd Phase,
Battaramulla.

Applicant-Respondent-Appellant

Vs.

Jessie Augustine Bandara,
Magasthota Division,
Pedro Estate,
Nuwara Eliya.

Respondent-Petitioner-Respondent

BEFORE: **PRASANTHA DE SILVA, J.**
K.K.A.V. SWARNADHIPATHI, J.

COUNSEL: Manori Jinadasa with Rakitha Abeygunawardena
 For the Applicant-Respondent-Appellant.

Upendra Walgamage, Zahara Hassim with Tharushi Senevirathna
 For the Respondent-Petitioner-Respondent.

Date of Argument: 17.11.2022

Date of Judgment: 24.03.2023

K.K.A.V. SWARNADHIPATHI, J.

JUDGMENT

The Applicant-Respondent-Appellant, who will be called as Appellant, instituted action under case No.63894 seeking an eviction order against the Respondent-Petitioner-Respondent [hereinafter referred to as the Respondent) under Section 5 of the State Lands (Recovery of Possession) Act No.7 of 1979 (as amended)

On summons, the Respondent appeared before Court on 16th February 2017 and was given a date to show cause as to why an order should not be made against the Respondent as prayed by the Appellant.

Once the Respondent filed his reasons, the case was fixed for argument by way of written submissions. The order of the learned Magistrate was pronounced on 1st July 2016, ordering to issue the order prayed by the Appellant.

Aggrieved by that order, the Respondent moved to the High Court of *Nuwara Eliya*. Once the objections, counter-objections and written submissions were filed, the learned High Court Judge pronounced the order on 21st June 2018, setting aside the order of the learned Magistrate.

Aggrieved by the said order, the Appellant invoked the jurisdiction of this Court.

The Appellant argued that the learned High Court Judge had arrived at a decision by being misled regarding the law. The Appellant initially employed the Respondent, and he was given a house as a facility for employees. Once his service was terminated, a quit notice was sent.

The Respondents then moved to the Court of Appeal, praying for a writ of certiorari to quash the quit notice. When the application was unsuccessful, he moved to the Supreme Court, where his application was refused without granting leave to appeal on 19th June 2015.

After the order of refusal from the Supreme Court was pronounced, the Appellant sought an eviction order from the Magistrate's Court. The only cause the Respondent could have shown was that he had a valid permit or was in occupation with written authority.

Section 9(1) and (2) of the State Lands (Recovery of Possession) Act No. 7 of 1979 reads as follows:

- (1) At the such inquiry the person on whom summons under Section 5 has been served shall not be entitled to contest any of the matters stated in the application under Section 5 except that such person may establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with any written

law and that such permit or authority is in force and not revoked or otherwise rendered invalid.

- (2) It shall not be competent to the Magistrate's Court to call for any evidence from the competent authority in support of the application under Section 5.

When the Respondent was called upon to show cause at the Magistrate's Court, the Respondent, among other matters, produced deed No.5638 attested by *W.M.U.N.K. Senanayake* (N.P.) dated 8th March 2012.

Relying on this Deed, the Respondent argued that they have a more powerful deed than the permit. The Land Reforms Commission gave the Deed to the Respondent.

The learned Magistrate had discussed the validity of the said Deed and concluded that the Land Reform Commission had no authority to transfer lands. The High Court Judge came to his conclusion on the basis that the learned Magistrate held no authority to investigate the title.

The learned High Court Judge had relied on the decision of *Senanayaka Vs. Damunupola*¹. A perusal of this judgment is clear that it was a case of a boundary dispute and an ancestral property, not State land.

The question to determine is, does the learned Magistrate has the power to discuss the validity of the Deed? If it is the title that was an issue, there is no question that the learned Magistrate had no power.

When the Respondent was called to show cause, as mentioned above, he had only two grounds to show. He had produced the Deed, which is not a permit. In that event, the learned Magistrate cannot accept any written document as a valid written authority, and he must be satisfied whether the produced document is valid.

¹ (1982) 2 SLR 621

Discussing the chain of title is different from identifying whether the document is valid. For a deed to be valid, the person who transfers it must have ownership. Discussing the ownership is not a venture to discuss the title as in a civil case.

When perusing the learned Magistrate's order and submissions, the land in question was owned by Nuwara Eliya Tea Company. Under the Land Reforms Act, it was acquired by the Land Reforms Commission. By Gazette No.815/10 dated 21.04.1994, this land was vested in the Sri Lanka Plantation Corporation. The Sri Lanka Plantations Corporation leased a lease agreement to Kelani Valley Plantations Limited.

When writing deed No.5038, the Land Reform Commission had alienated the land to State Plantation Corporation. In such a situation, if the Land Reform Commission wanted the land back, he should act under Section 27A(4) of the Land Reform Commission Law, whereby steps should be taken to cancel the order of vesting on the Sri Lanka Plantation Corporation.

The learned Magistrate had considered the legal advice given by the Attorney General to the Minister in charge, which shows that the Land Reform Commission had no right to confer the land on the third party in respect of lands vested with the Sri Lanka State Plantation Corporation.

Giving thought to the legal advice from the Attorney General, the learned Magistrate concluded that the Land Reform Commission had executed the Deed when it had no right to do so. Therefore, the Deed becomes an invalid document which will not come under a valid written authority.

The learned Magistrate had considered the opinion of the Attorney General given to the Minister in charge of the subject matter. No one can argue that considering the opinion of the Attorney General, among other things, leads to a study of a chain of titles. When considering the documents placed before the Magistrate, he had carefully considered and analyzed the documents in his judgment. He concluded that the Deed was not a valid written document before the law.

We are of the view that the learned High Court Judge had considered the Magistrate's order on a wrong footing. For the reasons discussed above, we set aside the order of the High Court Judge dated 21st June 2018. We affirm the order of the learned Magistrate dated 1st July 2016.

Judge of the Court of Appeal

PRASANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal