

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

Police Station,
Katugasthota

Court of Appeal Case No:
CA (PHC)09/2014

Plaintiff

HCCA Kandy Case No:
RV 141/11

Vs

Kandy Primary Court Case No:
94904

1. Senaka Kusum Arambawela
2. Rohitha Sanjeewaa Arambewela
3. G. G. Piyasena
4. Sarath Arambewela

Respondents

AND

Rohitha Sanjeewaa Arambewela
No. 15, Wiyalewela, Jambugahapitiya

2 Respondent –Petitioner

1. Ganitha Gedera Piyasena
No. 17/1, Wiyawela, Jambugahapitiya.

2. Senaka Kusum Arambawela
No. 26/1/B, Pangitiwatta Mawatha,
Mirihana.

3rd Respondent – 2nd Respondent

3. Sarath Arambewela
No. 75/15, Galpotha Road,
Nawala, Rajagiriya.

2nd Respondent – 3rd Respondent

4. In Charge of Police,
Police Station, Katugasthota.

Plaintiff – 4th Respondent

AND BETWEEN

1. Ganitha Gedera Piyasena
No. 17/1, Wiyawela, Jambugahapitiya.

2. Senaka Kusum Arambawela

No. 26/1/B, Pangitiwatta
Mawatha, Mirihana.

3. Sarath Arambewela
No. 75/15, Galpotha Road,
Nawala, Rajagiriya

1, 3, 4 Respondents – 1, 2, 3 Respondent

1. In Charge of Police,
Police Station, Katugasthota.

Plaintiff – 4th Respondent - Respondent

2. Rohitha Sanjeewa Arambewela
No. 15, Wiyalewela,
Jambugahapitiya

2 Respondent –Petitioner – Respondent

AND NOW BETWEEN

1. Ganitha Gedera Piyasena
No. 17/1, Wiyawela,
Jambugahapitia. **(Deceased)**

- 1A** Athul Pedi Gedara Ukku Amma,
No. 17/1, Wiyawela,
Jambugahapitia.

2. Senaka Kusum Arambawela
No. 26/1/B, Pangitiwatta
Mawatha, Mirihana.

3. Sarath Arambewela
No. 75/15, Galpotha Road,
Nawala, Rajagiriya

1, 3, 4 Respondents – 1, 2, 3 Respondent - Appellants

VS.

1. In Charge of Police,
Police Station, Katugasthota.

Plaintiff – 4th Respondent - Respondent

2. Rohitha Sanjeewaa Arambewela

No. 15,
Wiyalewela,
Jambugahapitiya

2 Respondent –Petitioner – Respondent

Before: Prasantha De Silva, J.

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

Counsel: Lakshan Dias for the 1, 3 and 4 Respondent - 1, 2, 3 Respondent-Appellants
Rohan Sahabandu, PC with S. Senanayake for the 1st Party- Petitioner-Appellant.

Counsel agreed to this matter by way of written submissions.

Written Submissions: 28.10.2022 for the 1, 3 and 4 Respondent - 1, 2, 3 Respondent-Appellants
filed on 26.10.2022 for the 2 Respondent –Petitioner – Respondent

Delivered on: 10.03.2023

Prasantha De Silva, J.

JUDGMENT

Factual Background:

This appeal emanates from Order dated 25.02.2014 made by the High Court Judge of the Provincial High Court of Central Province holden in Kandy exercising revisionary jurisdiction against the Order dated 05.12.2011 made by the learned Magistrate who was acting as a Primary Court Judge.

The Officer in-charge of Police Station Katugasthota had filed an information in terms of section 66(1)(a) of the Primary Courts' Procedure Act No. 44 of 1979, (hereinafter referred to as the Act) in the Magistrate's Court of Kandy, regarding a dispute between the 2nd Respondent-Petitioner namely Rohitha Sanjeeewa Arambewela and 3rd Respondent-Respondent, namely Ganitha Gedara Piyasena, which had led to a breach of peace.

The learned Magistrate had followed the procedure stipulated in the said Act. The 1st and 4th Respondent-Respondents namely Senaka Kusum Arambewela and Sarath Arambewela had intervened in the Magistrate's Court case as interested parties. Thereafter, all parties had filed affidavits, counter affidavits, and written submissions in order to conclude the inquiry.

After conclusion of the inquiry, the learned Magistrate had delivered the order on 05.12.2011 in terms of Section 68 (3) of the Primary Courts' Procedure Act in favour of the said 3rd Respondent namely, Ganitha Gedara Piyasena.

Being aggrieved by the said order, the said 2nd Respondent-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of the Central Province holden in Kandy seeking to have the said order of the learned Magistrate revised or set aside.

The Learned High Court judge having inquired into the matter had held against the 3rd Respondent -Respondent by revising the said order of the learned Magistrate of Kandy and had granted possession of the disputed premises to the 2nd Respondent-Petitioner namely Rohitha Sanjeewa Arambewela by order dated 25.02 2014. Being dissatisfied with the said order of the learned High Court Judge, 1, 3, 4 Respondent-1, 2, 3 Respondent-Appellants (hereinafter referred to as 1,2, 3 Respondent-Appellants) have preferred an appeal to this court.

The learned High Court Judge has mentioned in his order dated 25.02.2010 that the Officer-in - charge of Police station Katugasthota had filed an information in the Magistrate's Court of Kandy on 08.08.2007 consequent to the complaint made by the 3rd Respondent marked and produced in affidavit evidence as 301, (අ) (x).

It is pertinent to note that the learned High court judge has stated in his order,

1 වන වගඋගන්වරකරු ඔහුගේ පිළිගැනීම මතම පෙත්සම්කරුගේ පියා යටතේ 1958 පමණ සේවකයෙකු වශයෙන් සේවයට පැමිණ ඇත. ඔහු කිසිම දිනකවත් ස්වාධීන සන්නකයක් හෝ බුක්තියක් ඔහුගේ පිළිගැනීම මතම දරා නැත. එබැවින් ඔහුට සන්නකය හෝ බුක්තියක් උගත් මහේස්ත්‍රාත්වරයා 2011.12.05 වන දින හිමිකර දීම දෝශ සහගතය.

The learned High Court Judge is of the view that the said 1st Respondent-Respondent-Appellant (hereinafter referred to as the 1st Appellant) had been employed by the father of the 3rd Appellant, and that therefore, 1st Appellant has not been in independent possession of the disputed premises.

It is to be noted that the said Sarath Arambewela, the 3rd Appellant had got property rights to the disputed property by Deeds bearing No. 2561 and 2539. As he was living abroad, he had asked 1st Appellant to take care of the impugned premises and after the demise of the father of the 2nd and 3rd Appellants, the 1st Appellant had continued to live in the disputed premises with his family.

It should be noted that in the above statement marked 103 - the residential address of the 2nd Respondent is given as No. 99 Kudarathwatta, Kandy and not the address of the disputed premises. The 2nd Respondent had given the address as no. 15, Wiyasewela- Paranagama, Jamugahapitiya in

statement (2), made on 27.07.07. It is to be noted that the said address is the address of the disputed premises. It is also relevant to note that 2nd Respondent had stated in the statement 103 -

“මා විදේශ ගතවෙල සිටි පැමිණ දැනට අවුරුදු පහක් වෙනවා. අවට පසු මම මේ නිවසට ගියා. ඊයේ දින 26.07.2007 මෙම නිවසට ගොස් කිරි උතුරවා පදිංචියට ගියා.”

The 2nd Respondent had stated in his complaint to the Police dated 26.07.2007

“පියාගේ උරුමයෙන් මට අයත් මෙම නිවස සහ දේපල රැක ගැනීම සඳහා 26.07.2007 දින මෙම නිවසට ඇතුළුව පදිංචියට පැමිණියා. මම මෙම නිවාසව සුද්ද පවිත්‍ර කර පදිංචි වූ අතර මෙතෙක් කලක් විදේශ ගතව සිටි නිසාත් මට මෙම නිවසේ පදිංචි වීමට නොහැකි වූ අතර අද දින ම මෙම නිවසේ පදිංචියට පැමිණීම, නිවාස බාරකරුවන ජී. ජී. පියසේන නමැති යේ අකමැත්තෙන් ඇති බව පෙනී යන හෙයින් මේ සම්බන්ධව පොලිසියේ පැමිණිල්ලක් කරමි.”

According to the said complaint, it clearly shows that the 2nd Respondent had come to occupy the premises in dispute four years after his arrival in Sri Lanka.

The 2nd Respondent has admitted that G. G. Piyasena (1st Appellant) has been in possession/occupation of the premises in dispute and that he was given permission to look after the disputed premises by Sarath Arambewela the 3rd Appellant.

However, the learned High Court Judge had relied on the electoral list of the 1st, 2nd and 3rd Appellants; which includes an address of a location which is different to that of the disputed premises. The learned High Court Judge has omitted/failed to consider that the deceased 1st Appellant was a caretaker who was looking after the property in dispute on behalf of the 3rd Appellant. As the 1st Appellant's name was registered in an electoral register in a different location, the learned High Court Judge has come to an erroneous conclusion that the deceased 1st Appellant was not in possession of the disputed premises.

In view of the information filed by the Officer-in-Charge of the Police Station-Katugasthota and the Affidavit filed by Parties, it is revealed that the dispute between parties relates to possession of land under Part VII of the Primary Courts Procedure Act No. 44 of 1979. In an inquiry into a dispute as to the possession of any land under section 68(1) of the Act, the main issue that needs to be considered is who was in possession of the disputed land on the date on which the information was filed under section 66 of the Act.

Section 68 (1) of the Act reads as follows:

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.

2nd Respondent has specifically stated in the said statement 1⊕3 that he was not in occupation of the premises in dispute as he was abroad and that he only came to occupy the premises on 26.07.2007.

It is seen that the information was filed by the OIC of Katugasthota Police station on 08.08.2007, and the 2nd Respondent had come to occupy the premises in dispute on 26.07.2007. Therefore, it is apparent that he was not in actual physical possession of the premises within two months prior to the date on which information was filed. In view of the evidence placed before the learned Magistrate, it is evident that the 2nd Respondent has forcibly entered the disputed premises on 26.07.2007, and thereby dispossessed the 1st Appellant from the disputed premises.

It is clear that section 68 (3) becomes applicable only if the Judge can come to a definite finding that some other party had been forcibly dispossessed within a period of 2 months immediately before the date on which the information was filled under section 66 of the Act (***Ramalaingam v Thangarajah (1982) 2 Sri LR 693***).

Section 68 (3) of the Primary Courts' Procedure Act No. 44 1979 reads as follows:

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 that 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 Primary Court Judge has to determine whether the 1st Appellant who had been in possession of the land or part of the land has been forcibly dispossessed within a period of 2 months immediately before the date on which the information was filed under section 66 (1) of the Act. Thus, the main issues the learned Magistrate had to determine were as follows,

1. Whether the 1st Appellant (Ganitha Gedara Piyasena) was in possession of the premises in dispute on the date of filing of the information by the Police on 26.07.2007 under section 66(1) of the Act; and
2. If the 1st Appellant had been in possession of the premises in dispute, has he been dispossessed within a period of 2 months immediately before the date on which the information was filed by the Police on 26.07.2006.

According to the evidence placed before the learned Primary Court Judge, it is apparent that the deceased 1st Appellant (Ganitha Gedara Piyasena) was in exclusive possession of the premises in

dispute and that he was dispossessed by the 2nd Respondent (Rohitha Sanjeewa Arambewela) on 26.07.2007 from the premises in dispute.

The learned Additional Magistrate/Primary Court Judge has held in terms of Section 68(3) of the Act that the deceased 1st Appellant was dispossessed by the 2nd Respondent within a period of 2 months immediately before the date on which the information was filed by the Police on 26.07.2006.

Therefore, as the learned Additional Magistrate has come to the correct findings of fact and law and held in favour of 1, 2, 3 Respondent-Respondent-Appellants, we see no reason why the learned High Court judge interfered with the said order dated 05.12.2011 of the Additional Magistrate of Kandy. As such, the learned High Court Judge has misdirected himself and come to an erroneous conclusion, when the learned High Court Judge decided that 2nd Respondent is entitled to the possession of the disputed premises.

Therefore, we set aside the order dated 25.02.2014 made by the learned High Court Judge of the Provincial High Court of Western Province holden in Kandy and affirm the order of the Additional Magistrate dated 05.12.2011.

Court directs to eject the 2nd Respondent-Rohitha Sanjeewa Arambewela from the premises in dispute and place 1A, 2, 3 Respondent-Respondent-Appellant in possession of the premises on behalf of the deceased 1st Appellant.

Hence, we allow the Appeal of the 1st, 2nd and 3rd Respondent-Respondent-Appellants.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL