

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

In the matter of an application in terms of Article 154(P)(6) read with Article 138 of the Constitution of Sri Lanka.

Court of Appeal Case No:
CA (PHC) 212_2018

HCRA (Avissawella) No:
07_2017

MC Avissawella :
3364

IN THE MAGISTRATE'S COURT

1. Hissalla Kankanamge Wimalsera
No.524, Vaga (West), Thummodara,
Hissalla

2. Padukka Vidhanalage Amarawathi,
No.524, Vaga (West), Thummodara

Petitioners

Vs.

1. Kathriachchi Pinnawalage Sunil Padmasiri,
No.537/1, Vaga (West), Thummodara

2. Kathriachchi Pinnawalage Chaminda
Pushpakumara,
No.537/3, Vaga (West), Thummodara

Respondents

AND BETWEEN

1. Kathriachchi Pinnawalage Sunil Padmasiri,
No.537/1, Vaga (West), Thummodara

2. Kathriachchi Pinnawalage Chaminda
Pushpakumara,
No.537/3, Vaga (West), Thummodara

Respondent-Petitioners

VS

1. Hissalla Kankanamge Wimalsera
No.524, Vaga (West), Thummodara,

Hissalla

2. Padukka Vidhanalage Amarawathi,
No.524, Vaga (West), Thummodara

Petitioner-Respondent

AND NOW BETWEEN

1. Kathriachchi Pinnawalage Sunil Padmasiri,
No.537/1, Vaga (West), Thummodara
2. Kathriachchi Pinnawalage Chaminda
Pushpakumara,
No.537/3, Vaga (West), Thummodara

Respondent-Petitioner-Appellant

VS

1. Hissalla Kankanamge Wimalaena
No.524, Vaga (West), Thummodara,
Hissalla
2. Padukka Vidhanalage Amarawathi,
No.524, Vaga (West), Thummodara

Petitioner-Respondent-Respondents

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

Counsel: Thanuka Nandasiri with Nuwan Beligahawatta and Manujaya De Silva for
the Respondent-Petitioner-Appellant.

J.M.Wijebandara with Chamodi Dayananda for the Petitioner-
Respondent-Respondents.

Written submissions : 08.04.2022 by the Petitioner-Respondent-Respondents.
tendered on 04.05.2022 by the Respondent-Petitioner-Appellant.

Delivered on: 18.01.2023

Judgment

This is an appeal emanating from the Order dated 03.12.2018 made by the learned High Court Judge exercising revisionary jurisdiction against the Order dated 28.08.2017 made by the learned Magistrate acting as the Primary Court Judge in terms of Primary Courts' Procedure Act No.44 of 1979.

It appears that the Petitioner instituted action against the Respondent in terms of Section 66(1)(b) of the Primary Courts' Procedure Act No. 44 of 1979 in the Magistrate's Court in case bearing No.3364 where the Petitioners had forcibly taken possession of a part of Respondents' land by erecting a fence and covering the part thereon.

The learned Magistrate after following the procedure stipulated in the Primary Courts' Procedure Act allowed parties to file affidavits, counter affidavits along with documents and fixed the matter for inquiry. Upon the evidence placed before Court, the learned Magistrate delivered the Order on 28.08.2017 and held that the Petitioner is entitled to the possession of the disputed portion of land.

Being aggrieved by the said Order, Respondent-Petitioners had invoked the revisionary jurisdiction of the Provincial High Court of the Western Province holden at Avissawella in revision application bearing No. 07/2017. However, the learned High Court Judge affirmed the Order of the learned Magistrate and dismissed the application of the Respondent-Petitioner.

Being aggrieved by the said Order, the Respondent-Petitioner-Appellants has preferred this appeal seeking to set aside the Order of the leaned High Court Judge dated 03.12.2018 and the Order of the learned Magistrate dated 28.08.2017.

It was the contention of the Respondent-Petitioner-Appellant [hereinafter referred to as the Appellant] that the learned Magistrate and the learned High Court Judge had failed to meet the fundamental objectives and requirements of Section 66 and 68 of the Primary Courts' Procedure Act No.44 of 1979.

It is observable that the impugned orders made by the learned Magistrate as well as the learned High Court Judge in terms of section 66(1)(b) of the Primary Courts' Procedure Act are provisional orders in nature and made for the purpose of preserving public peace in a dispute affecting land pending the final adjudication of the rights of parties by a competent civil court.

Matters pertaining to Section 66 of the Primary Courts' Procedure Act are not dealing with an investigation into title of property in dispute or right to possession, which are functions of a civil court. Therefore, it is apparent that the Legislature has introduced Part VII of the Primary Courts' Procedure Act No.44 of 1979 to prevent a breach of the peace and not to embark on a protracted trial investigating the title of the disputed land. Perusing Section 74(1) of the Primary Courts' Procedure Act reflects the said position.

Section 74(1) states:

An order under this Part shall not affect or prejudice any right or interest in any land or part of a land which any person may be able to establish in a civil suit; and it shall be the duty of a Judge of a Primary Court who commences to hold an inquiry under this Part to explain the effect of these sections to the persons concerned in the dispute.

It is interesting to note the case of *Punchi Nona Vs. Padumasena and Others [1994] 2 SLR 117*, where it was held that the Primary Court exercising special jurisdiction under Section 66 of the Primary Courts' Procedure Act is not involved in an investigation into the title or the right to possession, which is the function of a civil court. What the Primary Court is required to do is to take a preventive action and make a provisional order pending final adjudication of rights of the parties in a civil court. It is to be

observed that Section 66 of the Primary Courts' Procedure Act has not granted the legal competency to investigate and ascertain the ownership or title to the disputed rights which is a function of the District Court.

The intention of the legislature in introducing Part VII of Primary Courts' Procedure Act No.44 of 1979 is to prevent a breach of the peace and not to embark on a protracted trial investigating title when deciding the matter in dispute.

As such, it is imperative to note that if an aggrieved party wishes to establish his legal rights to the disputed land, the competent civil jurisdiction has to be invoked. In view of section 74(2) of the Act, no appeal is conferred against the Order of the Primary Court. However, if there is a miscarriage of justice or any injustice caused to a party, the aggrieved party is entitled to invoke the revisionary jurisdiction of the respective Provincial High Court against the Order of the Primary Court and the aggrieved party is entitled to prefer an appeal against the Order of the High Court to the Court of Appeal by operation of law.

It appears that preferring an appeal to the Court of Appeal would not serve the purpose or the intention of Legislature in enacting Part VII of the Primary Courts' Procedure Act No. 44 of 1979. As such, it is desirable for the aggrieved party to invoke the civil jurisdiction of a competent court to have the civil rights of the disputed land adjudicated.

In this respect, it is worthy to note the Judgement by Obeysekara, J. in the case *Aluthewage Harshani Chandrika and others vs Officer in Charge and others [CA PHC 65/2003 - C.A.M 21.09.2020]* which held:

“The Court of Appeal has to look into the matter whether the learned High Court Judge has properly exercised his duty to ascertain any injustice caused to a party or whether there is a miscarriage of justice occurred against the Order of the

learned Magistrate and not that the Court of Appeal is empowered to correct the errors made by the learned Magistrate.”

It is relevant to note that in the instant case, the learned Magistrate has to determine who was in possession of the disputed land two months prior to the date on which the information was filed.

In the case of *Krishnamoorthy Sivakumar Vs. Fathima Johara Packer [CA PHC 122/2018 - C.A.M 27.09.2022]*, De Silva J observed that the Legislature intended to conclude matters in the Primary Court within a 3-month time frame and not conferring a right of appeal against the Order of the Primary Court is to discourage litigants from filing cases on frivolous grounds devoid of merit.

Further it was held in *Krishnamoorthy Sivakumar Vs. Fathima Johara Packer [Supra]*:

“In actual sense the suitable step is to have civil rights of the relevant parties adjudicated in the relevant competent civil court. Therefore, when filing an appeal against a provisional order given under the Primary Courts’ Procedure Act, the party concerned must come to a degree of certainty that their claim has merit and is likely to succeed and thereupon decide on the appropriate platform from which he can receive a fair remedy. It is incumbent upon the learned High Court Judges to direct parties to a competent civil Court for a final adjudication of their legal rights pertaining to the land in question. This will enable us to witness an efficient administration of justice in our Court system”.

Perusing the Order of the learned High Court Judge, it is seen that the learned High Court Judge has analysed the evidence placed before the Magistrate and considered the facts and law relating to the case at hand and had dismissed the revision application made by the Respondent-Petitioner-Appellant. Thus, the learned High Court Judge has come to the correct findings of fact and law.

It is to be observed that the Appellant had not substantiated that there is a miscarriage of justice or that any injustice was caused to the Appellant by the Orders of the learned Magistrate and/or the learned High Court Judge. Thus, it is clear that no exceptional circumstances exist for the Appellant to invoke the revisionary jurisdiction of the Provincial High Court of the Western Province holden at Avissawella.

In view of the aforesaid reasons, we see no reason to interfere with the Order dated 03.12.2018 made by the learned High Court Judge.

Hence, the Appeal is dismissed with cost.

JUDGE OF THE COURT OF APPEAL

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

JUDGE OF THE COURT OF APPEAL