

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

In the matter of an Appeal under Article 154P of the Constitution against the judgement dated 02/08/2017 of the High Court of the Southern Province (holden at Tangalle), delivered in Revision Application bearing case no 20/2017 against the judgement of the Primary Court of Tangalle in case 20575.

IN THE PRIMARY COURT

Court of Appeal Case No:
CA (PHC) 106/2017
CA (PHC) 116/2017

PHC of Southern Province Case No:
20/2017 (Rev)

Tangalle Primary Court:
20575

1. Ran Patabendige Sudath Rashon,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle.
2. Shanthi Andrahennedi,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle.
3. Ran Patabendige Pathum Nilanga,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle.

Petitioners.

Vs

1. Pederzani Pier Luigi Daniel,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle.
2. Pederzani Angelo,
Hingo Padinchiwa, Sitiya Watte,
Kapuhena, Madilla, Tangalle.
3. Wickrema Kaluthotage Shiranga Kumara,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle

Respondents.

IN THE PROVINCIAL HIGH COURT

1. Ran Patabendige Sudath Rashon,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle.
2. Shanthi Andrahennedi,

Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle.

3. Ran Patabendige Pathum Nilanga,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle.

Petitioner-Petitioners

Vs

1. Pederzani Pier Luigi Daniel,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle.
2. Pederzani Angelo,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle.
3. Wickrema Kaluthotage Shiranga Kumara,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle

Respondent-Respondents

NOW, IN THE COURT OF APPEAL

1. Pederzani Pier Luigi Daniel,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle.
2. Pederzani Angelo,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle

**1st and 2nd Respondent-
Respondent-Appellants**

Vs

1. Ran Patabendige Sudath Rashon,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle.
2. Shanthi Andrahennedi,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle.
3. Ran Patabendige Pathum Nilanga,

Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle.

Petitioner-Petitioner
-Respondents

Wickrema Kaluthotage Shiranga Kumara,
Hingo Padinchiwa Sitiya Watte,
Kapuhena, Madilla, Tangalle

3rd Respondent-Respondent
-Respondent

Before: **Prasantha De Silva, J.**

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

Counsel: Dr Sunil Coorey AAL, Buddika Gamage AAL and Anusha Rathnayaka
AAL for the 1st and 2nd Respondent-Respondent-Appellants

Saliya Pieris, P.C with Anjana Rathnasiri AAL for the 1st to 3rd
Petitioner-Petitioner-Respondents

Written Submissions: Written submissions filed on 05/06/2023 by 1st and 2nd Respondent-
filed on Respondent-Appellants

Written submission filed on 13/03/2019 by 1st to 3rd Petitioner-
Petitioner-Respondents [in case CA (PHC) 116/2017]

Delivered on: 26.06.2023

Prasantha De Silva J.

Judgment

CA PHC 106/17

This is an appeal emanating from an order dated 02.08.2017 by the High Court of the Southern Province holden in Tangalle.

It appears that 1st, 2nd and 3rd Petitioners had filed an information by affidavit dated 23.03.2016 in case bearing no 20575 in the Primary Court of Tangalle under section 66(1) (b) of the Primary Courts Procedure Act no 44 of 1979. The case was filed regarding a dispute relating to land which was likely to cause a breach of peace between the Petitioners and the Respondents.

The learned Primary Court Judge had followed the procedure stipulated under section 66 of the Primary Courts Procedure Act and had taken up the matter for inquiry.

Subsequent to completion of the inquiry the learned Primary Court Judge on 08.07.2016 delivered the order in favour of the 1st Petitioner in terms of section 68(1) of the Primary Courts Procedure Act and held that 1st Petitioner is entitled to the possession of the premises in dispute.

Being aggrieved by the said order, 1st and 2nd Respondents had invoked the revisionary jurisdiction of the High Court of the Southern Province holden in Tangalle.

The learned High Court judge having inquired into the matter had concluded that the learned Primary Court Judge had erroneously decided the instant case and set aside the order of the Primary Court Judge. The learned High Court Judge further held that the 1st and 2nd Respondents were entitled to the possession of the premises in dispute.

Being aggrieved by the said order dated 02.08.2017, 1st and 2nd Respondent-Respondent-Appellants [hereinafter referred to as the Appellants] had preferred this appeal seeking to set aside the said order of the learned High Court Judge and to affirm the order of the learned Primary Court Judge dated 02.07.2017. Similarly, the Appellants had simultaneously invoked the revisionary jurisdiction vested in the Court of Appeal to revise the order of the learned High Court Judge made on 02.08.2017.

I will now briefly consider the facts of the instant case. It is evident that the 1st Appellant is the owner of the land in dispute, depicted in plan no 1071 dated 03.09.1995 by virtue of deed of transfer bearing no 3481 dated 17.08.1999, in extent of one rood and 15.25 perches. The Appellants submitted that they constructed a hotel called 'Jessica Beach Anjelo'. The 1st Appellant had appointed the 1st Respondent-Petitioner-Respondent [hereinafter referred to as the 1st Respondent] as his power of Attorney holder by Power of Attorney bearing no 4062 dated 24.08.2002, to look after the said land and premises and to protect the rights of the 1st Appellant.

It was submitted by the Appellants that the Appellants being an Italian national went back and forth between Italy and Sri Lanka from time to time, thus the said hotel 'Jessica Beach Anjelo' was also managed by the 1st Respondent.

It was further submitted by the Appellants that the Tsunami of 2004 destroyed the said hotel building on 26.12.2004.

It was the grievance of the 1st Appellant that when he came to Sri Lanka with his wife (2nd Appellant) on 28.01.201, they found that without permission or the authority of the Appellants, the 1st Respondent had begun his own business namely an 'Air BnB' rental hotel and had begun to rent out rooms to tourists.

In this instance, it is significant to note that after hotel 'Jessica Beach Anjelo' was destroyed by Tsunami disaster on 26.02.2004, Appellant had visited Sri Lanka on 28.01.2016, only 11 years from the date of the Tsunami. As the hotel building 'Jessica Beach Angelo' was destroyed due to Tsunami disaster there was nothing left to look after other than the land in dispute by the 1st Respondent-Power of Attorney holder under the impugned Power of Attorney.

There was no evidence to support that after the destruction of the hotel building 'Jessica Beach Anjelo' the Appellants had constructed another building to continue the hotel business.

It is worthy to note that the Respondents in Primary Courts of Tangalle, took up the position that the Respondents have been in possession of the impugned land in dispute, and that they have been carrying on a hotel business therein namely 'Tangalle Beach Paradise Villa'. It is apparent that on 22.02.2016 the Respondents had been forcibly evicted by the Appellants from the said hotel.

The Appellants had submitted that 1st Respondent being the Power of Attorney holder is an agent of the 1st Appellant. However, the 1st Respondent had been acting against the instructions of the Appellant and going against his capacity as an agent by starting his own business on a hotel and renting out rooms without the permission of the Appellant.

Therefore, the Appellants had contended that the learned High Court Judge had failed to consider the fact that 'principal is in possession through his agent and the agent cannot assert against the principal that the agent is in possession on his own right.

In this respect, the court draws attention to the position taken up by the 1st Respondent in the instant case.

After the original building was destroyed (the building carrying out the business of 'Jessica Beach Anjelo') on 26.12.2004 from Tsunami, the 1st Appellant had informed the 1st Respondent to vacate the disputed land. The 1st Respondent had not acceded to the request, and subsequently the 1st Appellant had left the country.

Thereafter, the 1st Respondent had built a complete hotel on the subject land namely 'Tangalle Beach Paradise Villa'. Therefore, it is clear that despite the objection of the Appellants the 1st Respondent has been in adverse possession of the land in dispute and built hotel Tangalle Beach Paradise Villa.

As such, the principal and agent relationship between the 1st Appellant and the 1st Respondent before Tsunami regarding the hotel business "Jessica Beach Anjelo" had come to an end due to the destruction of the hotel building.

In any event, the learned Primary Court Judge cannot determine on the existence of a Principal-Agent relationship between the 1st Appellant and the 1st Respondent in an application under section 66 of the Primary Courts Procedure Act no 44 of 1979. It is a matter which solely rests within the competent jurisdiction of a civil court.

As such, if the 1st Appellant has any right to the subject matter of the instant action, it has to be adjudicated by a court exercising competent civil jurisdiction. It is observable that the learned High Court Judge in her judgement had urged the Parties to determine rights over the subject matter in a competent civil court.

It was submitted that after several years later the 1st Appellant had come to Tangalle and stayed in the hotel run by the 1st Respondent and the 1st Appellant had paid for the stay and did not raise any dispute regarding the rights of the hotel.

On 28.01.2016 the 1st and 2nd Appellants and the 3rd Respondent-Respondent-Respondent [hereinafter referred to as the 3rd Respondent] had visited the said hotel and quarreled with the 1st and 2nd Respondents stating that the Appellants also have a right to the hotel. Later the Appellants apologized for their behavior and wanted to reserve three rooms.

Since there were no rooms available at that time Appellants were referred to another hotel. It seems that the Appellants and the 3rd Respondent had again visited the said hotel on 08.02.2016 and booked three rooms to stay for 14 days.

While staying at the hotel, the Appellants and the 3rd Respondent quarreled with the 1st and 2nd Respondents on the assumption that they also have a right to the impugned hotel and demanded the Respondents to hand over the hotel to them.

It was submitted by the Respondents that the Appellants and the 3rd Respondent did not leave the hotel after 14 days as agreed upon on 22.02.2016 and thereby 1st and 2nd Respondents had been forcibly dispossessed of the subject matter by the Appellants and the 3rd Respondent.

Furthermore, the Appellants had made a Complaint to the Tangalle Police station stating that the Respondents had attempted to assault them. Consequently, the Police had reported facts against the Respondents under section 84 of the code of Criminal Procedure Act and under these circumstances the Appellants had illegally taken possession of the impugned hotel premises on 22.02.2016.

In view of the aforesaid evidence placed before the learned Primary Court Judge, it amply proves that the 1st and 2nd Respondents were in possession of the disputed property [hotel premises] and they were dispossessed by the Appellants and the 3rd Respondent on 22.02.2016.

Therefore, the learned High Court Judge had correctly pointed out that as there was a dispossession, section 68(3) [reproduced below] of the Primary Court Procedure Act applies to the aforementioned circumstances.

Section 68(3) stipulates that,

*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.*

As such, it is clear that the learned Primary Court judge has erred in law by deciding the matter in terms of section 68(1) [reproduced below] of the Primary Court Procedure Act and had granted possession of the disputed hotel premises to the 1st and 2nd Appellants.

According to Section 68(1),

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.

Therefore, it appears that section 68(1) is not applicable as there was a **forced dispossession within two months immediately prior to the date on which the information was filed**. Hence, section 68(3) of the Primary Courts Procedure Act applies to the instant case instead. Accordingly, the information in this case was filed on 23.03.2016 by the 1st and 2nd Respondents and the dispossession took place in and around 22.02.2016, which is within the two months period stipulated in section 68(3) of the said Act.

It is noteworthy that learned High Court Judge has correctly set aside the order of the learned Primary Court Judge dated 08.07.2016 and held in terms of section 68(3) of the Primary Court Procedure Act and confirmed that the 1st and 2nd Respondents are entitled to the possession of the disputed hotel premises. Hence, we see no reason for this Court to interfere with the Order made by the learned High Court Judge dated 02.08.2017.

Therefore, we affirm the said order of the learned High Court Judge and direct the learned Primary Court Judge to restore 1st and 2nd Respondents in possession of the disputed hotel premises forthwith.

In view of the foregoing reasons, we dismiss the appeal of the 1st and 2nd Respondent-Respondent-Appellants with costs fixed at Rs. 500,000 /-.

Furthermore, as the Parties agreed to abide by the judgement in appeal bearing case no CA PHC 106/2017 to CA PHC 116/2017, we dismiss the revision Application bearing no CA (PHC) APN 116/2017 without costs.

Appeal dismissed with costs fixed at Rs. 500,000.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL