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

In the matter of a Revision application filed under Article 154P of the Constitution read together with The Court of Appeal (Appeals

The Officer-in-charge,
Police Station,
Avissawella.

Plaintiff

Court of Appeal Case No.:
CA (PHC) 210/2018

Provincial High Court Case No:
11/2016

Magistrate Court of Avissawella Case
No: 92964

Vs.

1. Massalge Don Dinesh Suminda
Wijeratne,
2. Imiyahamillage Priyanthika
Senaratne,

No. 31, Seethawaka,
Avissawella.

1st Party – Respondents

Sooriya Arachchige Maheshika
Lakshani,
No. 29, Seethawaka,
Avissawella.

2nd Party-Respondent

Mohammad Mansoor Mohammad
Subaiar,
Mumtaz Mahal, Military Road,
Dharga Town

Intervent-Party

AND BETWEEN

1. Massalge Don Dinesh Suminda
Wijeratne,
2. Imiyahamillage Priyanthika
Senaratne,

No. 31, Seethawaka,
Avissawella.

1st Party – Respondent
-Petitioners

Vs.

1. Sooriya Arachchige Maheshika
Lakshani,
No. 29, Seethawaka, Avissawella.
2. Mohommad Mansoor Mohommad
Subaiar,
Mumtaz Mahal, Military Road,
Dharga Town

Respondent-Respondents

AND NOW BETWEEN

Mohommad Mansoor Mohommad
Subaiar,
Mumtaz Mahal, Military Road,
Dharga Town

2nd-Respondent-
Respondent-Appellant

Vs.

1. Massalge Don Dinesh Suminda
Wijeratne,
 2. Imiyahamillage Priyanthika
Senaratne,
- No. 31, Seethawaka,
Avissawella.

1st Party – Respondent
-Petitioner-Respondents

Sooriya Arachchige Maheshika
Lakshani,
No. 29, Seethawaka,
Avissawella.

1st Respondent-
Respondent-Respondent

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The Officer-in-charge,
Police Station,
Avisawella.

Plaintiff

Court of Appeal Case No.:
CA (PHC) 210A/2018

Provincial High Court Case No:
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Magistrate Court of Avisawella Case
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Vs.

1. Massalge Don Dinesh Suminda
Wijeratne,
2. Imiyahamillage Priyanthika
Senaratne,

No. 31, Seethawaka,
Avisawella.

1st Party – Respondents

Sooriya Arachchige Maheshika
Lakshani,
No. 29, Seethawaka,
Avisawella.

2nd Party-Respondent

Mohammad Mansoor Mohammad
Subaiar,
Mumtaz Mahal, Military Road,
Dharga Town

Intervenant-Party

AND BETWEEN

1. Massalge Don Dinesh Suminda
Wijeratne,
2. Imiyahamillage Priyanthika
Senaratne,

No. 31, Seethawaka,
Avisawella.

**1st Party – Respondent
-Petitioners**

Vs.

1. Sooriya Arachchige Maheshika
Lakshani,
No. 29, Seethawaka, Avissawella.
2. Mohommad Mansoor Mohommad
Subaiar,
Mumtaz Mahal, Military Road,
Dharga Town

Respondent-Respondents

AND NOW BETWEEN

Sooriya Arachchige Maheshika
Lakshani,
No. 29, Seethawaka,
Avissawella.

**1st Respondent-
Respondent-Appellant**

Vs.

1. Massalge Don Dinesh Suminda
Wijeratne,
 2. Imiyahamillage Priyanthika
Senaratne,
- No. 31, Seethawaka,
Avissawella.

**1st Party – Respondent
-Petitioner-Respondents**

Mohommad Mansoor Mohommad
Subaiar,
Mumtaz Mahal, Military Road,
Dharga Town

**2nd Respondent-
Respondent-Respondent**

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

Counsel: Sanjeewa Dasanayake AAL with Rishi Kamoordeen AAL for the 2nd Respondent-Respondent-Appellant in CA PHC 210/2018
Thishya Weagoda AAL with Dilan Nalaka AAL for the 1st Respondent-Respondent-Appellant in CA PHC 210A/2018
Pradeep Perera AAL with P.D.P. Pathirage AAL for the Respondent-Petitioner-Respondents in both appeals [CA PHC 210/2018 and CA PHC 210A/2018].

Written Submissions: Written submissions filed on 20/04/2022 and 08/07/2022 by 2nd Party-Respondent-Respondent-Appellant
filed on
Written submissions filed on 25/04/2022 and 20/02/2023 by 1st Party-Respondent-Petitioner-Respondents

Delivered on: 04.07.2023

Prasantha De Silva J.

Judgment

The Officer-in-charge of the Police Station Avissawella being the informant has filed an information in case bearing no 92964 on 01.12.2015, in terms of Section 66(1)(a) of the Primary Court Procedure Act No 44 of 1979, against the 1st and 2nd Party Respondents in order to prevent breach of peace among the parties. Thereafter, one Mohamed Mansoor Mohamed Subair had intervened in the said action.

The learned Magistrate acting as the Primary Court Judge had followed the procedure stipulated in Part VII of the Primary Court Procedure Act and had fixed the matter for inquiry. At the conclusion of the inquiry the learned Magistrate who was acting as the Primary Court Judge has delivered the order on 15.03.2016 in favour of the 2nd Party-Respondents.

Being aggrieved by the said order of the Learned Magistrate, the 1st Party-Respondent-Petitioners had invoked the revisionary jurisdiction of the High Court of Western Province holden in Avissawella in case bearing no 11/2016 (Rev).

Thereafter, the 2nd Party-Respondent-Respondent and the Intervenient-Respondent-Respondent had filed their objections to the said revision application followed by counter objections of the 1st Party-Respondent-Petitioner.

After filing of written submissions by all Parties the matter was fixed for order and the learned High Court Judge delivered the order on 07.12.2018 in favour of the 1st Party-Respondent-Petitioners revising the said order of the learned Magistrate.

Being aggrieved by the said order the 2nd Party-Respondent-Respondent-Appellant namely Sooriya Arachchige Maheshika Lakshani and the Intervenant-Respondent-Respondent-Appellant [hereinafter sometimes jointly referred to as the 1st and 2nd Appellants respectively] had preferred Appeals bearing case No. CA PHC 210A/2018 and CA PHC 210/2018 respectively to the Court of Appeal.

Factual Background:

It appears that 1st Party-Respondent-Petitioner-Respondents placed affidavit evidence before the learned Magistrate that 1st Party-Respondent-Petitioner-Respondents were running a communication center and a sub-post office at the disputed premises which is the subject matter of the instant action.

It was the position taken up by the 1st Party-1st and 2nd Respondent-Petitioner-Respondents [hereinafter referred to as the 1st and 2nd Respondents] that they had recruited the 2nd Party-Respondent-Respondent-Appellant in case CA PHC 210A/2018 [hereinafter referred to as the 1st Appellant] as an employee to the said business. Since the 1st Appellant was disloyal to the 1st Respondent, the 1st Appellant's services were terminated from his communication center and the keys of the premises which were in the hands of the 1st Appellant were taken away.

Subsequently, the 1st Appellant had made a complaint to the Police that the 1st Respondent assaulted the 1st Appellant and as a result of the said altercation 1st Appellant was admitted to the hospital.

However, after two weeks' time the 1st Appellant with the aid of the Police had entered the disputed premises and she has been in possession of the premises on the day the dispute arose between the Parties.

It was the position taken up by the 1st Appellant that she was never employed by the 1st Respondent, instead 1st Appellant had leased the premises in dispute, bearing no 16, Seethawaka, Avissawella from the 1st Respondent.

It was submitted by the 1st Appellant that the 1st Respondent never entered into a lease agreement with the 1st Appellant even after she had come into occupation of the disputed

premises. Although the 1st Appellant requested to enter into a lease agreement, 1st Respondent had deliberately neglected to do so.

Due to the suspicious conduct of the 1st Respondent, 1st Appellant had searched the relevant folios in respect of the said premises at the land registry and had come to know that the title holder of the disputed premises is the 2nd-Respondent-Respondent-Appellant in CA PHC 210/2018 namely *Mohamed Mansoor Mohamed Subair* [hereinafter referred to as the 2nd Appellant].

In this instance, court observes that the Respondents have not substantiated the said position that they recruited the 1st Appellant as an employee to their 'Communication shop' and that 1st Appellant's services were terminated.

Thereafter, the 1st Appellant had entered into a lease agreement with the 2nd Appellant in respect of the said disputed premises on 26.10.2015.

In view of the evidence placed before the learned Magistrate, it is seen that the dispute relates to possession of the premises, thus it comes within the purview of section 68(1) or section 68(3) of the Primary Court Procedure Act and as such, court must determine,

- a) who was in possession on the date of filing of the information, or
- b) if there's any dispossession, who was in possession of the disputed premises within two months prior to the date of filing of the information,

and to protect his/her possession until the matter is adjudicated before a competent civil court.

It is worthy to note that the learned Magistrate by order dated 15.03.2016 held that, the 1st Appellant was in possession of the disputed premises until the information was filed on 01.12.2015, thus she is entitled to the possession of the disputed premises.

However, the learned High Court Judge has revised the said order of the learned Magistrate and held that the 1st and 2nd Respondents are entitled to the possession of the said premises in dispute as they were in possession of the disputed premises on the date of filing of the information.

It appears that the learned High Court Judge had come to the conclusion that the 1st Appellant had operated her business namely 'Mahesihka Communication' at no 29, Seethawaka, Avissawella and not in the premises in dispute bearing no 16, Seethawaka Road, Avissawella.

Furthermore, the learned high Court Judge has taken into consideration that the lease agreement dated 26.10.2015 entered by the Appellants had been executed after the date on which the dispute has arisen on 16.10.2015.

It is clear that since the dispute relates to premises bearing no 16, Seethawaka Road, Avissawella, the matter in issue falls within the ambit of section 68 of the Primary Court Procedure Act.

In view of the Complaint made to the Police by the 1st Appellant on 16.10.2015 and the statements made by the 1st Respondent on 02.11.2015 and 17.11.2015, the incident took place on or about 09.10.2015, and the 1st Appellant was in the possession of the disputed premises against the approval of the 1st and 2nd Respondents.

It is observable that the Respondents had complained to the Police only on 02.11.2015 after the complaint made by the 1st Appellant on 16.10.2015 to the Police about forcible dispossession of the 1st Appellant by the 1st and 2nd Respondent from the disputed premises.

It is significant to note that 1st and 2nd Respondents did not make any complaints to the Police regarding the said incident until the 1st Appellant made the complaint to the Police regarding the unlawful dispossession.

According to the complaint dated 16.10.2015 by the 1st Appellant,

“සුමින්ද විජයරත්න යන අයගෙන් කුලියට ගත්තේ කුලියට අරගෙන අවුරුද්දක් විතර වෙනවා... ලියකියවිලි, කොමුනිකේෂන් (communication) එකේ සියලු භාණ්ඩ, computer, photocopy machine, සියල්ල ඇතුළේ තිබියදී මේ සුමින්ද යන අයිතිකාරයා දොර වසා යතුරන් අරගෙන ගියා...”

Police Statement by the 1st Respondent (Suminda Wijeratna) on 02.11.2015 stated that,

“මේ නිසා 2014.10.16 දින මගේ ව්‍යාපාරික ස්ථානයට පැමිණ සිටියා. ඇය දවල් කෑමට දොර වසන විට මම ඇයගෙන් කඩේ දොරෙහි යතුර උදුරාගත්තා”

Hence, it is evident that the 1st Appellant was in possession of the disputed premises in some capacity until 16.10.2015.

According to the Affidavit of the 1st Respondent,

“අද එක් දෙවන පාර්ශවකාරිය මෙම වෙළඳ පරිශ්‍රයෙන් 2015.10.19 වන දින හෝ ඊට ආසන්න දිනයක පොලීසියේ සහය ඇතිව දොරගලු කඩා ඇතුළු වී....”

“පසුව මම ගොස් බලන විට වසා තිබුණු වෙළඳසැලෙහි දොර කඩා මහේෂිකා එහි වෙළඳාම කරගෙන යනවා. ඒ නිසා මම කියන්නේ ඇයට එම ස්ථානයෙන් ඉවත් කර මගේ කඩකාමරය මට නිදහස් කර දෙන්න කියලා.”

Furthermore, the 2nd Respondent has stated in her statement dated 17.11.2015 has states that,

“මේ නිසා මේ මහේෂිකා කියන අය මේ කොමියුනිකේෂන් (*communication*) එකෙන් අයිතිවෙලා මහත්තයාට පවරලා දෙන්න කියන්න”

However, it is in evidence that after the preliminary inquiry and site inspection by the Police, possession was handed over back to the 1st Appellant and that, the 1st and 2nd Respondents have asked for possession of the disputed property by complaints dated 02.11.2015 and on 17.11.2015.

It is also relevant to note that the key to the disputed premises had been forcibly taken by the 1st Respondent from the 1st Appellant which amounts to a dispossession. However, it is evident that the 1st Appellant’s possession was restored on 19.10.2015.

Now I will consider the findings of the learned High Court Judge with regard to the impugned dispute between the Parties. Accordingly, it is stated in the order that,

“ඒ අනුව පෙත්සම්කරුවන් වෙනුවෙන් නිවැරදිව තර්ක කරන පරිදි මෙම නඩුවේ පෙත්සම් කරුවන් සහ 1වන වගඋත්තරකාර වගඋත්තරකාරිය අතර ආරවුල උද්ගත වන අවස්ථාවේදී මෙම නඩුවට විෂය වස්තුව වන දේපළ යතුර 1වන වගඋත්තරකාර වගඋත්තරකාරියගේ සන්තකයේ පැවතීම මෙම නඩුවට විෂය වස්තුව වන දේපළ භුක්තිය 1වන වගඋත්තරකාර වගඋත්තරකාරිය සතුව තිබූ බවට තීරණාත්මක ලෙස උගත් ප්‍රාථමික අධිකරණ විනිශ්චකාරතුමා සලකා ඇති බව පැහැදිලි වේ.

එසේ වුවද ඉහත කී පරිදි අවිස්සාවේල්ල ප්‍රාථමික අධිකරණය වෙත ඉදිරිපත් කොට ඇති තම මුල් දිවුරුම් ප්‍රකාශය මගින් 2014.08.27 වන දින සිට මෙම නඩුවට විෂය වස්තුව වන ස්ථානයේ ‘Maheshika communication’ යන නාමය යටතේ සන්නිවේදන ආයතනයක් පවත්වාගෙන ගිය බව ප්‍රකාශ කොට ඇති 1වන වගඋත්තරකාර වගඋත්තරකාරිය හරස් දිවුරුම් ප්‍රකාශ මගින් ඊට පෙර 2014.02.21 වන දින සිට තම නිවසේ ‘මහේෂිකා කොමියුනිකේෂන්’ යන නාමය යටතේ ව්‍යාපාරයක් පවත්වාගෙන ගිය බවත්...”

[...]

“නමා මෙම නඩුවට විෂය වස්තුව වන දේපලේ ව්‍යාපාරය පවත්වාගෙන යාම ආරම්භ කළ විට නිවසේ පවත්වාගෙන ගිය ව්‍යාපාරයේ නාමපුවරුව මෙම නඩුවට විෂය වස්තුව වන දේපලට සවිකොට ව්‍යාපාරය පවත්වාගෙන ගිය බව තම හරස් දිවුරුම් ප්‍රකාශය මගින් පවසා ඇති 1වන වගඋත්තරකාර වගඋත්තරකාරිය ඊට අදාළ ඡායාරූපයක ඡායාපිටපතක් 2පා44 ලෙස සලකුණු කොට ඉදිරිපත් කොට ඇත.

ඒ අනුව පැහැදිලි වන්නේ මේ නඩුවේ 1වන වගඋත්තරකාර වගඋත්තරකාරිය මෙම නඩුවේ විෂය වස්තුව නොවන අංක 26 [typo, should be 29] සීතාවක අවිස්සාවේල්ල යන ලිපිනයේ ‘Maheshika communication’ යන නාමය යටතේ ව්‍යාපාරයක් පවත්වාගෙන ගොස් ඇති බවයි....”

In this instance, court observes that the said finding of the learned High Court Judge is erroneous. The learned high Court Judge has misdirected himself and had come to a wrong conclusion that the 1st Appellant had been running a Communication at her residence no 29, Seethawaka, Avissawella.

The learned High Court judge has failed to observe that the 1st Appellant was initially running a Communication at no 29, Seethawaka, Avissawella and subsequently it was shifted to no 16, Seethawaka, Avissawella [to the disputed premises] based on an oral agreement with the Respondents.

Therefore, it is apparent that the 1st Appellant had been running the communication shop at the disputed premises on her own and not as an agent of the Respondents.

The court draws the attention to the statement made on 16.10.2015 (the date of the incident) by Milton Wijetunga,

“තුමාලකරු මහේෂික ලක්ෂාණි යන අය කුලියට communication එකක් ගත්තා. ගත්තේ සුමින්ද විජයරත්න යන අයගෙන්. කුලියට අරගෙන අවුරුද්දක් පමණ වෙනවා.

[...]

හේතුව මම දන්නේ නැහැ දුවගේ කොණ්ඩය ඇදලා, අතින් ගහලා 2015.10.16 වන දින දවල් 12.30 ට පමණ සිද්දිය වුනේ. දුව එළියට ඇදගෙන ඇවිත් පයින් ගැහැව්වා.

පසුව, දුවගේ හැන්ඩ් ෆොන් එක, මුදල් කඩේ තිබුණා. ලියකියවිලි, කොමිනිකේෂන් එකේ සියලු භාණ්ඩ, කම්පියුටර්, photocopier, සියල්ල ඇතුලේ තිබියදී මේ මේ සුමින්ද යන අයිතිකාරයා දොර වසා යතුරත් අරගෙන ගියා. මම දැන් දුව රෝහලේ නතර කරලා ආවේ

It is observed that the said Complaint was made on the date on which the dispute arose, and it is seems that the 1st Appellant was forcefully ousted by the 1st Respondent in a violent manner, which is not permitted under the law. The contention of the 1st Appellant was substantiated in the said Complaint as well.

Thus, it is apparent that the learned Magistrate had duly analysed and evaluated the evidence placed before him and had come to correct findings of fact and law and determined that 1st Appellant was in possession of the disputed premises on the date of filing of the information and determined the matter in terms of section 68(1) and (3)

Therefore, I hold that the learned High Court Judge had come to an erroneous conclusion and set aside the order of the learned Magistrate.

Thus, we set aside the order dated 07.12.2018 by the learned High Court Judge and affirm the order dated 15.03.2016 by the learned Magistrate. Hence, we allow both appeals preferred by 1st and 2nd Appellants.

Both Appeals are allowed.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL