

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

In the matter of an appeal made in terms of Article 154P(6) of the Constitution of the Democratic Republic of Sri Lanka.

Officer-in-Charge,
Aayithiyamalai Police Station,
Aayithiyamalai

Complainant

Court of Appeal Case No.:
CA (PHC) 165/2013

Vs.

PHC of Eastern Province holden in
Batticaloa:
Case No HCB/REV/577/12

1. Samithamby Maanikkavasagam,
8/31, 1st Cross,
Selvanayagam Road,
Batticaloa.

Magistrate Court of Eravur:
Case No 416/PC/2011

First Party

2. Santhosam Punniyamoorthy,
No. 15, Nalliah Road,
Batticaloa.

Second Party

1. Vallaichaamy Veluchaamy
09th Colony,
Aayithiyamalai.
2. Seenithamby Sarangan
09th Colony,
Aayithiyamalai.
3. Paalhapodi Maanikkam
09th Colony,
Aayithiyamalai.
4. Seenithamny Gopalapillai
09th Colony,
Aayithiyamalai.
5. Thambirasa Selvarasa
09th Colony,
Aayithiyamalai.
6. Soosai Sivanesan
09th Colony,
Aayithiyamalai.

7. Sangarapillai Yogarajah
09th Colony,
Aayithiyamalai.
8. Kanapathipillai Subramaniam
09th Colony,
Aayithiyamalai.
9. Casupathy Ponnambalam
09th Colony,
Aayithiyamalai.
10. Veerapathiran Sahadevan
09th Colony,
Aayithiyamalai.
11. Soosai Karhigesu
09th Colony,
Aayithiyamalai.

Third Party

AND BETWEEN

Samithamby Maanikkavasagam,
8/31, 1st Cross,
Selvanayagam Road,
Batticaloa.

First Party-Petitioner

Vs

Officer-in-Charge,
Aayithiyamalai Police Station,
Aayithiyamalai

Complainant-Respondent

Santhosam Punniyamoorthy,
No. 15, Nalliah Road,
Batticaloa.

2nd Party-Respondent

1. Vallaichaamy Veluchaamy
09th Colony,
Aayithiyamalai.
2. Seenithamby Sarangan

09th Colony,
Aayithiyamalai.

3. Paalhapodi Maanikkam
09th Colony,
Aayithiyamalai.
4. Seenithamny Gopalapillai
09th Colony,
Aayithiyamalai.
5. Thambirasa Selvarasa
09th Colony,
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09th Colony,
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09th Colony,
Aayithiyamalai.
8. Kanapathipillai Subramaniam
09th Colony,
Aayithiyamalai.
9. Casupathy Ponnambalam
09th Colony,
Aayithiyamalai.
10. Veerapathiran Sahadevan
09th Colony,
Aayithiyamalai.
11. Soosai Karhigesu
09th Colony,
Aayithiyamalai.

3rd Party-Respondents

AND NOW BETWEEN

1. Vallaichaamy Veluchaamy
09th Colony,
Aayithiyamalai.
2. Seenithamby Sarangan
09th Colony,
Aayithiyamalai.

3. Paalhapodi Maanikkam
09th Colony,
Aayithiyamalai.
4. Seenithamny Gopalapillai
09th Colony,
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5. Thambirasa Selvarasa
09th Colony,
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09th Colony,
Aayithiyamalai.
10. Veerapathiran Sahadevan
09th Colony,
Aayithiyamalai.
11. Soosai Karhigesu
09th Colony,
Aayithiyamalai.

3rd Party-
Respondent-Petitioner

Officer-in-Charge,
Aayithiyamalai Police Station,
Aayithiyamalai

Complainant-
Respondent-Respondent

Samithamby Maanikkavasagam,
8/31, 1st Cross,
Selvanayagam Road,
Batticaloa.

**First Party-Petitioner-
Respondent**

Santhosam Punniyamoorthy,
No. 15, Nalliah Road,
Batticaloa.

2nd Party-Respondent-Respondent

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

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

Counsel: M.I.M. Ishar AAL for the 3rd Party-Respondent-Petitioner

V. Pavitharan P.C. with Anuja Rasanayakham AAL and Abiramy Rajasekaran AAL instructed by Sarvanan Neelakandan Law Associate for the 1st Party-Petitioner-Respondent

Written Submissions: Written submissions filed on 10/05/2023 and 21/09/2022 by 1st Party-Petitioner-Respondent
filed on
Written submissions filed on 29/08/2022 and 27/03/2023 by 3rd Party-Respondent-Petitioner

Delivered on: 14.07.2023

Prasantha De Silva J.

Judgement

This is an appeal emanating from the Provincial high Court of Eastern Province holden in Batticaloa against an order dated 10.10.2013 given in the revision application HC Rev 577/2012 setting aside the order of the Learned Magistrate acting as a Primary Court judge dated 26.08.2011 in case no 416/PCA/11.

The Officer-in-charge of the Police station of Aayithiyamalai being the Complainant, had filed an information on 27.04.2011 in the Magistrate court of Eravur under section 66(1)(a) of the Primary Court Procedure Act No 44 of 1979 stating that breach of peace is threatened or likely to be threatened due to a dispute between the 1st Party and the 2nd Party.

The learned Magistrate who was acting as the Primary Court Judge had inquired into the matter between the said Parties and delivered the order on 26.08.2011 in favour of 3rd Party, and held that 3rd Party was dispossessed from the disputed premises and ordered the 3rd Party to be restored to possession of the disputed land.

Thereafter, being aggrieved by the order of the learned Magistrate of Eravur 1st Party filed a revision application before the Provincial High Court of Batticaloa Rev 577/2012.

Factual Background

It appears that 1st Party-Respondent had lodged a complaint that a former member of parliament Mr. Selliah Rajathurai is having 23 ½ acres of paddy land at Kaliyanattu Cholai in Aayithiyamalai and that as MP Rajathurai had gone to India and he had given in writing to the said 1st Party Respondent to manage and maintain the said land. He had given 10 acres to the 2nd Party Respondent namely Santhosam Punniyamoorthy on lease for the period of 2009-2010. It seems that when the 1st Party Respondent requested the 2nd Party Respondent to hand over the said 10 acres land, he had refused to hand over the same. Therefore, the 1st Party sought assistance of the Police to get back the said portion from the 2nd Party Respondent.

Pursuant to the said complaint 2nd Party-Respondent had made a statement to the Police categorically denying that he ever received any land from the 1st Party-Respondent. He further stated that he had received a land from the former MP Selah Rajathurai, and the name of the land is '*Kallachennai*' and not *Kahiyannattu Cholai*. Since, he is cultivating 10 acres of paddy land he has refused to hand over the same.

Thereafter, the 1st Party Respondent once again made a complaint that, while the land dispute between him and the 2nd Party Respondent was on going, stating that the 3rd Party-Respondent had forcibly entered into the disputed land and had taken 02 acres each (all together 22 Acres) and doing work in the said land. Thereafter, 1st Party Respondent had sought assistance of the Police to eject them from the disputed land.

The statements of the said 3rd Party Respondents were also recorded by the Police, where the 3rd Party Respondents claimed that they and their ancestors were cultivating the said land as far back from 1985-1990 and that they were in possession of the said land until now (the date of recording their statement).

Apparently, no settlement was possible among the Parties, Police had filed an information to court on 27.04.2011 under section 66(1)(a) of the Primary Court Procedure Act.

The learned Magistrate who was acting as a Primary Court Judge had followed the Procedure under section 66 of the Primary Court Procedure Act and allowed Parties to file affidavits, counter affidavits and documents followed by Written Submission to conclude the inquiry.

The 2nd Party did not file any documents and had not participated in the proceedings before the Learned Magistrate.

On 26.08.2011 the learned Magistrate delivered the order and held that the 3rd Party Respondents were dispossessed from the possession of the disputed land within two months prior to the date of filing of the information by the informant and made a direction to place them in possession thereof in terms of section 68(2) of the Primary Court Procedure Act.

Being aggrieved by the said order, the 1st Party-Respondent-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Eastern Province holden in Batticaloa.

The learned High Court Judge having inquired the matter delivered the order/ judgement on 10.10.2013 setting aside the order of the learned Magistrate dated 26.08.2011 and ordered to restore the 1st Party Respondent-Petitioner into the possession of the disputed land.

The 3rd Party Respondent-Petitioner being dissatisfied with the order dated 10.10.2013 of the learned high Court Judge had preferred this appeal.

It is, however, noteworthy that the Petition of Appeal dated 29.10.2013 filed by the 3rd Party Respondent-Petitioner (Appellant) has not prayed for reliefs from this Court. It does not contain a prayer for relief. It is ambiguous and does not meet the requirements of our Procedural laws.

As I have held in the case of *Mohomed Naufan Ahamed Karis v Mohomed Subair Mohomed Naufan, CA (PHC) 212/2019 [CAM 04.07.2023]*

“Accordingly, [cursus omissus clause in Primary Court Procedure Act] since the matters pertaining to section 66 of the Primary Court Procedure Act are quasi-criminal and quasi civil, Civil Procedure Code can be applied with suitable adaptations in the interest of justice.”

The Section 78 of the Primary Courts Procedure Act, which is a cursus omissus clause stipulated in Part VII, states that,

‘If any matter should arise for which no provision is made in this Act, the provisions in the Code of Criminal Procedure Act governing a like matter where the case or proceeding is a criminal prosecution or proceeding and the provisions of the Civil Procedure Code

governing a like matter where the case is a civil action or proceeding shall with such suitable adaptations as the justice of the case may require be adopted and applied.'

I will now look at the relevant provision of the Civil Procedure Code and Criminal Procedure code, which govern the procedure for appeals to Court of Appeal and the content of such Petition of Appeal.

According to section 758(1) of the Civil Procedure Code,

(1) The petition of appeal shall be distinctly written upon good and suitable paper, and shall contain the following particulars:

(a) the name of the court in which the case is pending;

(b) the names of the parties to the action;

(c) the names of the appellant and of the respondent;

(d) the address to the Court of Appeal;

(e) a plain and concise statement of the grounds of objection to the judgment, decree, or order appealed against- such statement to be set forth in duly numbered paragraphs, form of relief

(f) a demand of the form of relief claimed.

According to section 332(4) [reproduced below] of the Code of Criminal Procedure, regarding appeals from High Court to Court of Appeal,

Section 332 (4) The petition of appeal shall be distinctly written on good and suitable paper, signed by the appellant or his attorney-at-law and dated and shall contain the following particulars: - (a) the sessions of the High Court where the conviction, sentence or order appealed against was pronounced,

(b) the number of the case,

(c) the names and addresses of the appellant and the respondent,

(d) the address to the Court of Appeal,

(e) the date of pronouncement of the judgment or order as the case may be sought to be appealed against and the nature of such pronouncement, (f) a plain and concise statement of the grounds of appeal,

(g) the relief claimed.

As such, regardless of whether this court treats this as a Criminal case or a Civil case, both Procedural laws applicable clearly states that the Petition of Appeal should state the **relief claimed**.

It seems that there is a very evident defect in the Petition of Appeal of the 3rd Respondent-Petitioner which goes to the fundamental root of the maintainability of this action.

It should be noted that 3rd Respondent-Petitioner (Appellant) [hereinafter sometimes referred to as the Petitioner (Appellant)] when this issue was raised by the 1st Party Respondent-Petitioner-Respondent [hereinafter sometimes referred to as the 1st Respondent] has argued that the Petition should be read entirely to understand the reliefs included therein, making references to the following portions of the Petition of Appeal,

- i. The caption of the Petition of Appeal which states,

‘In the matter of an Appeal made in terms of Article 154P(6) of the Constitution of Democratic Republic of Sri Lanka.’
- ii. Paragraph 16 of the Petition of Appeal which state,

‘Being Dissatisfied with the order of the Honorable High Court Judge of Batticaloa dated 10.10.2013 the Appellants do hereby make this appeal on the following and among other grounds that maybe urged at the hearing of this Appeal.’

Petitioner [Appellant] referring to the above has further stated in their written submissions that,

‘it is crystal clear that the intention of the petitioners were that they were not satisfied with the order made on 10.10.2013 by the Honorable High Court Judge of Batticaloa and they are appealing against the order on several grounds’.

However, at no point has Petitioner [Appellant]’s Petition of Appeal made direct reference to setting aside the order of the Provincial High Court Judge or to reinstatement the order of the Learned Magistrate Court Judge.

In the case of, *Inaya and Another Vs. Fathima (2006) 2 Sri L. R. 124* court held that,

“In the absence of a prayer seeking leave to appeal from a specific order made by the original court and without praying to set aside that order one cannot seek a declaration and a direction to be given to the trial Judge. The application cannot be maintained.”

As such, in the absence of a prayer seeking to set aside the order of the Provincial High Court and to reinstate the order of the Magistrate court, this court cannot give directions to lower courts to that effect.

The *Surangi v. Rodrigo (2003) 3 Sri LR. p.35* citing Section 40(e) of the Civil Procedure Code stated that demand of the relief which the Plaintiff claims must be specified as an essential particular in

a plaint. Gamini Amaratunga J. adverting to the above at p.38 of the judgment stated that no court is entitled or has jurisdiction to grant relief to a party which are not prayed for in the prayer to the plaint.

I would also like to draw attention to the case *Meera Maar Beach Hotel Co. Ltd., v Heethaka Disilin Nona de Soysa and Others C.A. Case No. 1118/1999(F) [CAM 05.12.2017]* where A.H.M.D. Nawaz, J. extensively analysed the requirement under section 758(1)(f).

In that case, Nawaz J. held that,

“The invocation "the plaintiff's action be dismissed" certainly qualifies to be a form of relief as contemplated within the ambit of Section 758(1)(f) of the Civil Procedure Code.’

He further stated that,

“As I said before, the case before me does not present a situation where no relief has been demanded in the petition of appeal.”

It should be noted that A.H.M.D. Nawaz, J. has differentiated existing case law in the area (some of which I have cited above) to conclude that the phrase “the plaintiff's action be dismissed” as sufficient to meet the standard of the relief claimed. It seems to me that A.H.M.D. Nawaz J’s judgement is the exception and not the rule. In any case, A.H.M.D. Nawaz, J. has stated that Court can grant relief if the reliefs are requested in some express manner without setting out the nature of relief in detail. Thus, creating an exception to the rule regarding mandatory nature of the section 758(1)(f).

The case before me, however, is different to the situations considered by A.H.M.D. Nawaz, J. as there is no prayer set out in this case at all. There is no express request, requiring this court to set aside the judgement of the Provincial High Court or to re-instate the judgement of the learned Magistrate. In such an event, this court cannot grant relief which has not been sought by the Petitioner (Appellant).

Furthermore, in any event it is unlikely that the forum to resolve this dispute lies within this Court as the factual issues raised in this matter warrant an in-depth investigation into who was in possession of the disputed land and the connection of the disputed land to the land named ‘Kallachensai.’

It is to be noted in the Case of *Punchi Nona Vs. Padumasena and Others [1994] 2 SLR 117*, it was held that the primary court exercising special jurisdiction under section 66 of the 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 preventive action and make a provisional

order pending the final adjudication of the rights of the parties in a civil court. It is to be observed that section 66 of the Act has not granted legal competency to investigate and ascertain the ownership or title to the disputed premises which is a function of the District Court.

In *Krishnamoorthy Sivakumar vs. Pathima Johara Packer [CA (PHC) 122/18 C.A.M 27.09.2022]* this court elucidated the purpose behind Part VII of the Primary Courts Procedure Law and held that,

“It essentially is to prevent a breach of peace and evidently not to embark on a protracted trial investigating the title. Thus, if the Appellant wishes to establish his legal rights to the disputed portion of land, it is both fitting and proper to invoke the civil jurisdiction of a competent court rather than preferring an appeal and/or an application to the Court of Appeal.”

In the case of *Wijesinghe Arachchige Rasika Gangadara vs. Anura Samarajeewa and Others CA PHC 110 /2015 [CAM 06.04.2023]* it was held that,

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

In light of the aforementioned case law, even if this appeal was considered on the merits of the dispute, it is unlikely that this court will allow this appeal as the questions raised before this court requires this court to go beyond the statutory framework of inquiry provided under the Primary Courts Procedure Act and to conduct a through inquiry into the possession and title of the lands in dispute.

In any case, this appeal cannot be allowed to be maintained as the Petition of Appeal is ambiguous, incomplete and does not follow the procedural requirements set out in the law.

In the renowned and often cited decision rendered by A.R.B. Amerasinghe J. in the case of *Fernando v. Sybil Fernando and others (1997) 3 Sri. L.R. 1*, it was established that,

"There is the substantive law and there is the procedural law. Procedural law is not secondary: The maxim *ubi ius ibi remedium* reflects the complementary character of civil procedure law. The two branches are also interdependent. It is by procedure that the law is put into motion, and it is procedural law which puts life into substantive law, gives it remedy and effectiveness and brings it into action."

As such, it is the procedural laws that facilitate the rights and provide means to pursue that right. It is the duty of the counsels to ensure that such procedure is followed with diligence.

In *Illangakoon Mudiyansele Gnanathilaka Illangakoon v. Anula Kumarihami, S.C .H.C.C.A.LA 277/2011 [SC minutes of 05.04.2013]*, Sripavan, J. (as His Lordship then was) made the following observations as to the importance of applying diligence required of an Attorney-at-law,

"I must emphasize that when accepting any professional matter from a client, it shall be the duty of any attorney-at-law to exercise his skill with due diligence in drafting the necessary papers with due regard to its duty to Court and to the client."

Therefore, it is my view that, there maybe certain instances where this court will not uphold procedural laws as mandatory in the interest of justice but in the instant case, the procedural element that is omitted goes to the root of the jurisdiction of this court. It relates to the reliefs this court can provide to the litigant.

Therefore, this court cannot provide relief when non has been /prayed for before this court in the Petition of Appeal which is filed to invoke the jurisdiction of this court. Thus, this court will not interfere with the order given by the Provincial High Court of Eastern Province holden in Batticaloa.

Hence this appeal is dismissed without cost.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL