

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

In the matter of an application made under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CA (PHC) APN 52/2017

PHC of Sabaragamuwa Province holden
in Ratnapura Case No:
HC RA 28/15

MC Kalawana Case No:
13791

Gammadda Widanalage Nilantha Rohana
Abewardhana
No 292, Ratnapura Road,
Kalawana.

Petitioner

Vs.

Pannila Mohottilage Jayathilaka
Near the Bekariya,
Kalawana.

Respondent

AND

Gammadda Widanalage Nilantha Rohana
Abewardhana
No 292, Ratnapura Road,
Kalawana.

Petitioner-Petitioner

Vs.

Pannila Mohottilage Jayathilaka
Near the Bekanya,
Kalawana.

Respondent-Respondent

AND NOW BETWEEN

Gammadda Widanalage Nilantha Rohana
Abewardhana
No 292, Ratnapura Road,
Kalawana.

Petitioner-Petitioner-Petitioner

Vs.

Pannila Mohottilage Jayathilaka
Near the Bekariya,
Kalawana.

**Respondent-Respondent-
Respondent**

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

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

Counsel: Upul Kumarapperuma AAL with Radha Kuruwitabandara AAL, for the
Petitioner-Petitioner-Petitioner

Ranil Samarasooriya AAL with Thiwanka Marasinghe AAL for the
Respondent-Respondent-Respondent

[for both cases: CA (PHC) APN 52/2017 and CA PHC 111/2017]

Written Submissions: Written submissions filed on 02.06.2023 and 16.11.2018 by
filed on thePetitioner-Petitioner-Petitioner.

Written submissions filed on 26.11.2018 and 27.04.2023 by the
Respondent-Respondent-Respondent.

Delivered on: 10.08.2023

Prasantha De Silva J.,

Judgment

The Petitioner namely Gammedda Widanelage Nilantha Rohana Abeywardhana being the informant instituted action against the Respondent in terms of Section 66(1)(b) of the Primary Court Procedure Act No 44 of 1979, alleging that the Respondent had obstructed the Petitioner's free movement by erecting a concrete fence along the land in question, in which the Petitioner was residing.

The learned magistrate who was acting as the Primary Court Judge after having inquired the dispute between the parties by way of affidavits, counter affidavits, documents and written submissions, delivered the Order on 13.05.2015 dismissing the application of the Petitioner.

Being aggrieved by the said dismissal, the Petitioner-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Sabaragamuwa Province holden at Ratnapura. However, the learned High Court Judge too had dismissed the revision application of the Petitioner.

Thereafter, the Petitioner-Petitioner-Petitioner [hereinafter sometimes referred to as the Petitioner] had preferred an Appeal bearing no CA PHC 111/2017 and had also made an application by way of revision CA Application No CA (PHC) APN 52/2017.

The said revision application was supported on 18.07.2017 and Court issued notice on the Respondent-Respondent-Respondent [hereinafter referred to as the Respondent] and Court also granted an interim order as prayed in prayer (d) of the Petition.

Subsequently, the Respondent filed a statement of objections and Petitioner had filed counter objections. After the competition of the pleadings in the said revision application, the matter was fixed for hearing.

It appears that the Petitioner has filed written submissions on 16.11.2018 and the Respondent also filed written submissions on 27.11.2018. Although the matter was fixed for inquiry, it has been postponed several times for various reasons.

When this matter was mentioned on 24.05.2022, Court refixed the matter for inquiry along with CA PHC 111/2017 for 14.09. 2022. On this date also the matter was postponed, and it was refixed for a hearing on 25.02.2023.

According to the journal entry dated 28.02.2023, Counsels for the Petitioner as well as the Respondent agreed to dispose of CA (PHC) APN 52/2017 by way of written submissions and also agreed to abide by the Order of this revision application in appeal case no. CA (PHC) 111/2017.

It is seen that the Learned Magistrate had dismissed the application of the Petitioner on the ground that the Petitioner had instituted the action after lapse of two months period by filing information on 05.03.2014 and hence not entitled to a remedy under section 68(3) of the Primary Court Procedure Act.

The learned Magistrate in order dated 13.05.2015 had stated as follows,

“...එහදී පෙත්සම්කරු සඳහන් කර ඇත්තේ 2014.01.15 වන දින තමන්ව නිබුක්තික කර ඇති බවයි. ඒ අනුව අදාළ බුක්තියෙන් පහ කිරීම සිදු කළ දින සිට මාස 2 ක් ඇතුළත අදාළ තොරතුරු වාර්තාව ගොනු කළ යුතු වේ. එහෙත් නඩු වාර්තාවට අවධානය යොමු කිරීමේදී මෙම තොරතුරු වාර්තාව ගොනු කොට ඇත්තේ 2014.03.05 වන දින දීය. ඒ අනුව බැඳු බැඳීමටම අදාළ මාස 2 ක කාල සීමාව ඉකුත්ව ගොස් ඇති බව පෙනී යයි.”

[...]

“...මාස 2 ක කාලයකට වඩා වැඩි කාලයක් වගඋත්තරකරු මෙම ඉඩම බුක්ති විඳ ඇති බවට පැහැදිලිවම පෙත්සම්කරුගේ තොරතුරු වාර්තාව ගොනු කිරීම තුළින්ම පෙනී යන හෙයින් වග උත්තරකරුගේ වාසියට නියෝගයක් දානය කරමි.”

It is settled law that section 68(3) of the Primary Court Procedure Act becomes applicable only if the Judge of the Primary Court can come to a definite finding that some other Party had been forcibly dispossessed within a period of two months immediately before the date on which the information had been filed under section 66 of the Primary Court Procedure Act.

It appears that in the information dated 05.03.2014 filed by the Petitioner in the instant case, has described the subject matter of the action.

It was alleged by the Petitioner that on 05.01.2014 that the Respondent had disturbed the peaceful possession of the Petitioner by forcibly erecting concrete posts and thereby encroaching a portion of land, where Petitioner had been in possession. The Petitioner had made a complaint to the Pollice station Kalawana against the Respondent on the same day and had informed that the Respondent had disturbed and interrupted the free enjoyment of the subject premises by the Petitioner.

It is seen that the Petitioner had filed a Police complaint for the second time on 17.02.2014 stating that the Respondent's act of erecting the fence had obstructed the Petitioner's entry to the garage and entry to the main road from the garage.

The Petitioner had made another complaint on 24.02.2014 to the Police station of Kalawana, alleging that the Respondent had initiated cleaning the strips of land and when the Petitioner questioned about the same, the Respondent quarreled with the Petitioner and had attempted to assault the Petitioner with a mamoty.

Pursuant to the complaint made to the Police station of Kalawana, the courts attention was drawn to the observation notes made by PC 42816 Ranjith and the sketch drawn to describe the scene by PC 36424 Sarath.

Which stated that,

“වගඋත්තරකරුවන් පැමිණිලිකරුගේ නිවසේ ජේමන්ටි එක අසලින්ම කොන්ක්‍රීට් කණු හතරක් සිටුවා එම කම්බිකණු යා වන ආකාරයට බිමට කොන්ක්‍රීට් යොදා ඇත....

...පැරණි වැට යැයි පැමිණිලිකරු පෙන්වාදුන් ලාඛ්ජපා ගසක්, රඹුටන් ගසක්, පැරණි පොල් මුලක්, හා ලාඛ්ජපා මැරුණු මුලක් පෙන්වා දුන්නා. මේ වැට මායිමේ පැමිණිලිකරුගේ ඇන්ටනාව, වතුර පයිප්පය, දකින්නට ඇති අතර”

In view of the aforementioned complaints made to the Police station – Kalawana, it is evident that Respondent had continuously disturbed the peaceful possession of the Petitioner in respect of the disputed land. Moreover, it also clearly shows that the Respondent had encroached a portion of the land in which the Petitioner had been in possession. Thereby, it is apparent that the Petitioner was forcibly dispossessed from the said encroached portion of the land.

Therefore, it clearly manifest that the impugned dispute between the Parties has to be determined in terms of section 68(3) of the Primary Court Procedure Act.

*(3) 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.*

Since the first complaint was filed on 05.01.2014 on the date on which the Respondent encroached on the land and the information was filed on 05.03.2014, it is evident that the information was filed exactly within a period of two months immediately before the date on which the information was filed as stipulated in the Act.

Thus, it clearly establishes that the Petitioner was in possession of the disputed portion of land within two months immediately prior to the date on which the information was filed under section 66 of the Primary Court Procedure Act.

It is to be observed that the Learned Magistrate has miscalculated the period and thereby misdirected himself and held that the information was filed by the Petitioner after the lapse of two months period from the date of dispossession and further held that the Respondent had possessed the land in dispute for more than a period of two months.

Therefore, it is imperative to note that the learned Magistrate had erred in law and facts and held against the Petitioner.

It is to be noted that the Learned Provincial high Court Judge in his order dated 16.03.2017 had state that,

“සිය නියෝගය දෙමින් උගත් මහේස්ත්‍රාත්වරයා නිගමනය කර ඇත්තේ පෙත්සම්කරු බුද්ධියෙන් නෙරපා හැර මාස දෙකක කාලයක් තුළ සිය තොරතුරු වාර්තාව ඉදිරිපත් කර නොමැති බවයි. එක් නියෝගය පරික්ෂා කිරීමේදී උගත් මහේස්ත්‍රාත්වරයා විසින් එළඹ ඇති නිගමනය නිවැරදි බව පැහැදිලි වන හෙයින්, පෙත්සම්කරුගේ ප්‍රතිශෝධන ඉල්ලීම නිෂ්ප්‍රභා කරමි.”

Accordingly, the learned High Court Judge had dismissed the revision application made by the Petitioner on the basis that the learned Magistrate has come to the correct conclusion that the Petitioner had failed to file the information within two months from the date of dispossession.

In view of the foregoing reasons, it clearly shows that the Petitioner had been in possession of the disputed premises for the relevant period and their possession was disturbed by the Respondent on 05.01.2014 and thereby dispossessing the Petitioner from the disputed portion of land within two months prior to filing of the information on 05.03.2014

Thus, we set aside the order dated 16.03.2017 by the Learned Provincial High Court Judge and the order of the Learned Magistrate dated 15.05.2016.

Hence, we allow the revision application dated 03.04.2017 of the Petitioner-Petitioner-Petitioner. As such, in terms of Section 68(3) of the Primary Court Procedure Act, the Petitioner

is entitled to the possession of the encroached portion of the land and the Petitioner should be restored to the disputed premises and all disturbances of such possession otherwise than under the authority of an order or decree of a competent court are hereby prohibited.

Since Parties agreed to abide by the order in this revision application bearing no CA PHC APN 52/2017 to CA PHC 111/2017, both matters are concluded herewith.

Revision application is allowed.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL