

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

In the matter of an appeal in terms of Article 154P(6) against the order of the Provincial High Court of the Eastern Province holden at Batticaloa Revision Application No: HCB/ Rev/548 /09.

Court of Appeal Case No.  
**CA PHC 128/10**

The Officer in Charge  
Police Station,  
Kaluwanchikudy.

PHC of Eastern Province holden  
in Batticaloa Case No:  
EP/HCB/Rev/548/09

**Informant**

**Vs**

MC of Batticaloa Case No:  
MCB/1298/PCA/09

1. Maheswaran Ramaniyamma  
No. 49, Pillayar Kovil Road,  
Kallady, Batticaloa.
2. Kathamuthu Yogamma of  
Main Street,  
Munaitheevu.

**1<sup>st</sup> Party-Petitioners**

**Vs**

1. Palasundaram Vasuni  
Main Street, Periya Poratheevu,  
Poratheevu.
2. Palasundaram Yogeswaran  
Vavikarai Street,  
Kaluwanchikudy.

**2<sup>nd</sup> Party-Respondents**

**AND NOW BETWEEN**

1. Palasundaram Vasuni  
Main Street, Periya Poratheevu,  
Poratheevu.
2. Palasundaram Yogeswaran  
Vavikarai Street,  
Kaluwanchikudy.

**2<sup>nd</sup> Party-Respondent-Appellants**

**Vs**

1. Maheswaran Ramaniyamma  
No. 49, Pillayar Kovil Road,  
Kallady, Batticaloa.
2. Kathamuthu Yogamma of  
Main Street,  
Munaitheevu.

**1<sup>st</sup> Party-Petitioner-Respondents**

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

Counsel: S. Mandaleswaran AAL with S. Abinaga AAL for the 2<sup>nd</sup> Party-  
Respondent-Appellants.  
Sriranganathan Ragul AAL instructed by S.A Kifsiya Banu AAL for the  
2<sup>nd</sup> named of the 1<sup>st</sup> Party Petitioner-Respondents.

Written Submissions: Written submissions filed on 31.01.2023 by the 2<sup>nd</sup> party of 1<sup>st</sup> Party  
filed on Petitioner-Respondents.  
Written submissions filed on 13.12.2021 by the 2<sup>nd</sup> Party-Respondent-  
Appellants.

Delivered on: 29.08.2023

**Prasantha De Silva J.,**

**Judgment**

The Officer-in-Charge of Kaluwanchikudy Police Station had filed an information in terms of Section 66 (1) of the Primary Court Procedure Act, No. 44 of 1979 in the Magistrate Court of Batticaloa in case bearing No. 1298/PCA based on the following complaints:

On 11.02.2009 the 1<sup>st</sup> complaint was made by Maheswaran Ramaniammah (the 1<sup>st</sup> Party of the 1<sup>st</sup> Party-Petitioner-Respondent (hereinafter sometimes referred to as the '1<sup>st</sup> Petitioner-Respondent') to Kaluwanchikudy Police station. She stated inter alia in the said complaint that her mother had a piece of land bearing lot No. 1287 situated at Kalikovilady, Main Street,

Periyaporativu and that Palsundaram Vasin unlawfully and forcefully entered into the land and had constructed a hut in the said land. She further stated that as her mother was not well, she made the complaint to the Kaluwanchikudy Police Station on behalf of her mother.

On 12.02.2009 another complaint was filed by the 2<sup>nd</sup> party of the 1<sup>st</sup> Party -Petitioner-Respondent, Kathaimuthu Yagamma (hereinafter sometimes referred to as the '2<sup>nd</sup> Respondent') to the Kaluwanchikudy Police station and stated inter alia that she owned a portion of land bearing deed No.7287 situated at Vammiyady, Main Street, Periya Poratheevu, and that the said land was given to her as a dowry. She further stated that she had been cultivating paddy for 42 years in the said land. However, she was not able to cultivate paddy for the last 4 years. She further stated she had fenced the land using concrete posts. However, when she returned from Vavuniya, on 12.02.2009, she found that Palasuntharam Vasini of Periyaporativu (the 1<sup>st</sup> party of the 2<sup>nd</sup> Party Respondent-Appellant) had broken open the fence and forcefully and unlawfully entered into the land and had started occupying the same.

Furthermore, Palasuntharam Vasini (the 1<sup>st</sup> party of the 2<sup>nd</sup> Party-Respondent-Appellant (hereinafter sometimes referred to as the '1<sup>st</sup> Appellant') had also given a statement to the Police on 19.02.2009, where she stated that the land in dispute was given to her as dowry by her father that on 16.01.2009 and that she had constructed a temporary house and planted coconut trees, plantains and bushes in the said land.

Palasundaram Logeswaran (the 2<sup>nd</sup> party of the 2<sup>nd</sup> Party Respondents-Appellants (hereinafter referred to as the '2<sup>nd</sup> Respondent-Appellant') had also given a statement on 19.02.2009. In his statement, he stated that his father was cultivating paddy in the land in dispute and that there was no building in the said land at that time when this area was not under a government-controlled area.

It seems that Yogammah had made a complaint to the Kaval Thurai (LTTE Police) who supported the said Yogamma. Thereafter, the said Yogammah made a complaint to the Police station of Kalawanchikudy.

It appears that in the Magistrate Court, the 1<sup>st</sup> Party filed their affidavit with documents marked P1 to P5. On the other hand, the 2<sup>nd</sup> Party had failed to file affidavits even though they had appeared in court

Having inquired into the matter, the Learned Magistrate made an order on 12.06.2009 under Section 66(8)(b) of the Primary Court Procedure Act, confirming the possession of the 2<sup>nd</sup> Party.

Consequently, the 1<sup>st</sup> Party-Petitioners had invoked the revisionary jurisdiction of the Provincial High Court of the Eastern province holden at Batticaloa against the said order in case bearing No. HCB/Rev/548/09.

It was submitted on behalf of the 2<sup>nd</sup> Party-Respondent-Appellants that the said revision application was made on the following grounds:

- a) The said order is contrary to law and against the weight of the evidence,
- b) The Learned Magistrate failed to find out as to who had been dispossessed and was in possession during the relevant period and has come to the wrong conclusion that the 1<sup>st</sup> Petitioner-Respondent was in possession,
- c) The learned Magistrate has failed to consider the constructive possession of the Petitioner-Respondents to the land in dispute.
- d) The learned Magistrate has misconstrued the facts and law of this case.

Subsequently, the Learned Provincial High Court Judge allowed the Parties to file their written submissions and after hearing oral submissions by the parties, the order was reserved for 04.10.2010. The Learned Provincial High Court Judge of Batticaloa delivered his order revising the order of the Learned Magistrate of Batticaloa.

Being aggrieved by the said order, the 2<sup>nd</sup> Party-Respondent-Appellants [hereinafter sometimes referred to as the 'Appellants'] preferred an appeal seeking to set aside the said order of the Learned Provincial High Court Judge on the following grounds;

- a) The said order is contrary to law and was made without due regard to the available facts.
- b) The Honourable High Court Judge failed to consider the evidential value of the documents marked P 1 to P 5, filed by the Petitioner-Respondents.
- c) It is submitted that the said documents marked P 2 to P 5, do not support the fact that the Petitioner-Respondents possessed the land and dispossessed therefrom.
- d) The 1<sup>st</sup> complaint dated 11-02-2009 made by 1<sup>st</sup> Petitioner-Respondent, which is spontaneous, does not show that the Petitioner-Respondents possessed the land and they were dispossessed therefrom.
- e) It was submitted that the complaint dated 12.02.2009 made by the 2<sup>nd</sup> Petitioner - Respondent states that for the last 4 years, she could not cultivate the land, which suggests that she was not in possession.

f) It is further submitted that the Honorable High Court Judge came to the incorrect conclusion that there was a fence around the disputed land erected by the Petitioner-Respondents though there was no positive evidence to support the fact.

g) Moreover, the Petitioners -Respondents pleaded as ground 'C' in their petition that the Learned Magistrate failed to consider the constructive possession of the Petitioners. This means that they did not have physical possession of the land, but in the affidavit, they stated that they had physical possession.

h) According to the complaint made to the Police by the 1<sup>st</sup> Petitioner-Respondent, they had never possessed the land but the Honourable High Court Judge failed to consider the said spontaneous 1<sup>st</sup> complaint of the 1<sup>st</sup> Petitioner-Respondent.

The Appellant contended that the Learned Provincial High Court Judge failed to properly evaluate the evidence placed before the learned Magistrate.

In this respect, Court draws the attention to Section 72 of the Primary Court Procedure Act.

Section 72 stipulates that,

*A determination and order under this part shall be made after examination and consideration of;*

*a) the information filed and the affidavits and documents furnished;*

*b) such other evidence on any matter arising on the affidavits or documents furnished as the court may permit to be led on that matter; and*

*c) such oral or written submission as may be permitted by the Judge of the Primary Court in his discretion.*

In view of Section 72, it is imperative to note that the court is required to consider the affidavits filed by the parties with documents and any other evidence pertaining to the complaint, statements made by the parties, observation notes by the Police and the written submissions, to determine the matter.

It appears that the Appellants had not filed affidavits, documents, or written submissions. As such, the learned Magistrate concluded the matter under Section 66(8)(b) of the Primary Court Procedure Act.

According to Section 66 (8)(b) of the Act, it states;

*“(b) Where a party fails to appear or having appeared fails to file his affidavit and also his documents (if any) he shall be deemed to be in default and not be entitled to*

*participate at the inquiry but the court shall consider such material as is before it respecting the claims of such party in making its determination and order.”*

Therefore, it is seen that the court has to consider the evidence of the party who failed to appear before court. Accordingly, court has to analyse the available evidence on behalf of the 2nd Party in respect of his claim.

In this respect, it is relevant to consider the statement made to the Police by the 1<sup>st</sup> party of the Appellants on 19.02.2009 regarding the dispute. ‘She has stated that she was living in a rented house and only on 16.01.2009, she constructed a temporary house and a well on that land and that she planted plantains, bushes, and coconut trees in January only.

According to the Police report dated 13.03.2009, in the disputed land, there was a newly built house, a well, a plantain cultivation and coconut trees that were newly planted.

It is seen that everything in the disputed land was constructed/planted within a short period of time and these facts are closely connected with the affidavit filed by the 1<sup>st</sup> Party Petitioner-Respondent.

Furthermore, it was the findings of the Learned Provincial High Court Judge that the 1<sup>st</sup> Party Petitioner-Respondents [hereinafter sometimes referred to as the Respondents] had fenced the land and had been cultivating the land as stated in their affidavits dated 20.01.2009. It was further held that the Appellants had constructed the house in the disputed land and thus the Respondents were dispossessed from the peaceful possession of the land in dispute.

Similarly, with regard to the statement made by the 1<sup>st</sup> party of the Appellants on 19.01.2009,

“she was living in the rental house and only on 16.01.2009 she constructed a temporary house and a well in the land in dispute and planted plantains and coconut plants in January only”.

It is relevant to note that the learned Magistrate has accepted the fact that Appellants were in possession from 16.01.2019. The information filed by the police on 06.03.2009 substantiated the said position.

The said information report further stated that; “in this land [disputed land] there is a temporary house that was built within one night. There are newly planted plantain and coconut trees and a newly built small well.” According to the observations of the investigations officer, all these things in the land have been made within a very short period of time.

In view of the aforesaid documentary evidence, it is noteworthy that the Appellant had entered the land in dispute on 16.02.2009 without the knowledge of the Respondents. The 1st party of the Respondents got to know of this on 19.01.2009 and the 2nd party of the Respondents got to know of this on 20.01.2009.

Therefore, it clearly demonstrates that the Respondents were forcibly dispossessed by the Appellant from the disputed premises on or around 19.01.2009.

Since the said information was filed by the police on 06.03.2009, it clearly shows that the Respondents were forcibly dispossessed from the disputed portion of land by the Appellants within two months immediately before the date on which the information was filed under Section 66 of the Primary Court Procedure Act.

Thus, the Learned Magistrate who was acting as the Primary Court Judge misdirected himself and had to come to an erroneous conclusion that Appellants are entitled to be in possession of the land in dispute on the basis that two months prior to filing of the information, and at the time of filing of the information =, the Appellants were in possession of the land.

Since it is evident that the Respondents have established ownership and possession of the land in question based on the material placed before the Magistrate Court, the Learned Magistrate had come to a wrong finding of fact and law by holding against the Respondents.

Therefore, I hold that the Learned Magistrate erred in law and facts and held against the Respondent and as such I affirm the order of the Learned Provincial High Court Judge dated 04.10.2010 which set aside the order of the Learned Magistrate dated 12.06.2009 and

Hence, the appeal is dismissed with costs fixed at Rs. 52,500/-.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

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

I agree.

**JUDGE OF THE COURT OF APPEAL**