

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

Court of Appeal No. 158/2011(PHC)

R.M.Anurapala
Kehelwatte, Lunugala

H.C.Badulla No. 33/2010(Rev)
M.C.Passara No. 14477

Respondent Petitioner
VS

R.M.C.Jagath Ratnayake,
KaRunika, Diulgaswatta,
Gonagala, Passara

Complainant-Respondent

AND

R.M.C.Jagath Ratnayake,
KaRunika, Diulgaswatta,
Gonagala, Passara

Complainant-Respondent

Appellant

R.M.Arunasiri
Kehelwatte, Lunugala

11th Respondent-Petitioner

Respondent

BEFORE A.W.A. Salam J
 Sunil Rajapakse J.,

COUNSEL: Ranjith Meegaswatta for the Complainant Respondent Appellant

ARGUED ON: 26.07.2013

DECIDED ON: 22.01.2014

Sunil Rajapakse J.,

This is an application in Revision from the order dated 08.11.2011 made by the High Court Judge of the Uva Province holden at Badulla dismissing an application for Revision of an Order made by the Magistrate of Passara Magistrate Court sitting as the Primary Court Judge on 29.04.2010.

After the inquiry the learned Magistrate of Passara made an order awarding possession of the disputed land to the Petitioner-Appellant. Being aggrieved by the said order the Respondent-Respondent made a Revision application to the High Court of Badulla. Thereafter the Appellant tendered objections and written submissions were tendered by both parties. The learned High Court Judge in his Order dated 08.11.2011 set aside the learned Magistrate's Order on the ground that there is no breach of peace or threatening or likely to threaten. Further the learned High Court Judge ordered status quo to remain in the disputed land. In this case the complainant Appellant sought to have the said Order dated 08.11.2011 revised.

The grounds urged in the petition are that :

- i) The High Court Judge had mis-directed himself in regard to the order in not taking into consideration who should be in actual physical possession of the disputed land two months prior to the date of complaint to the police;
- ii) The learned High Court Judge has not given due consideration in his judgment regarding the breach of peace or imminent breach of peace.

FACTS OF THIS CASE ARE BRIEFLY SUMMARISED AS FOLLOWS :

The Appellant obtains income and profit from the disputed land which he acquired by a Deed of Gift and he is in actual physical possession of the land since 2007. Further the Appellant submitted that the Respondents had forcibly entered to his land and took the possession of the said land on

08.12.2009. Thereafter the Appellant made a complaint to the Lahugala Police. After the above incident when the Complainant-Respondent Appellant went to his land on 14.12.2009 he found the Respondents clearing the disputed land. Further the Appellant states that the Respondent threatened him with death and continued to clean the land. Then the Appellant lodged a complaint to the Lahugala Police on 14.12.2009. However, police did not take action against the Respondents. Thereafter the Appellant has filed information by way of an affidavit under Section 66(1)(b) of the Primary Court Procedure Act No. 44 of 1979 to the Passara Magistrate's Court. The Magistrate took up this matter for inquiry on 11.02.2010. Thereafter the learned Primary Court Judge at the conclusion of the inquiry found the fact that the Petitioner Appellant is in actual possession of the disputed land and made an order on 29.04.2010 awarding possession of the disputed land to the Appellant-Complainant.

Being aggrieved by the learned Magistrate's Order the Respondent filed a Revision Application in the High Court of Badulla. At the High Court the Respondent's position was that the said Magistrate Order is based on wrong findings which had resulted in a wrong decision.

I shall now deal with the first ground on which the Order of the learned High Court Judge has been challenged. It is the duty of the Judge, in an inquiry under Section 66 to determine who was in actual possession of the land two months prior to the filing of the first information under Section 68 of the Primary Court Procedure Act. The primary Court Judge need not inquire into the question as to how the possession was obtained. After analyzing the documents filed by both parties I am of the view that the Magistrate has correctly stated that he declares the Petitioner Appellant is entitled to possession of the land which is the subject matter of this dispute. But the learned High Court Judge has not given due consideration to Section 68 of the Primary Court Procedure Act and set aside the learned Magistrate's Order. The basis of learned High Court Judge's Order is that the police complaint dated 14.12.2009 does not refer to a breach of peace or

imminent breach of peace and the Magistrate acted without jurisdiction. I don't agree with the learned High Court Judge's findings. I am of the view that the Petitioner Appellant's first complaint to the police clearly stated that the Respondents threatened him with death. As per the complaint P4 dated 14.12.2009 filed in the Magistrate's Court reveals that the Respondents threatened Appellant with death. Further I note that the learned High Court Judge has not correctly considered this issue. Therefore I hold that the acts of the Respondents lead to a breach of peace. The learned High Court Judge has misdirected himself when he stated that there is no breach of peace or imminent breach of peace.

Further I note that the learned High Court Judge has not made a proper Order regarding the possession. In this regard I would like to quote the following passage from the Order of the High Court Judge.

“ මෙම නඩුවේ පෙත්සම්කරු සහ වගඋත්තරකාර වගඋත්තරකරුවන් මෙම ඉඩම භුක්ති විඳින බවට ඔවුන් විසින් ඉදිරිපත් කර ඇති ලේඛණ වලට අවධානය යොමු කිරීමේදී පෙනී යන බැවින් මුල් අවස්ථාවේදීම සාමය කඩවීමේ තත්ත්වයක් නිශ්චිතව තිබෙන බවත් පැහැදිලිව දක්නට නොලැබෙන නමුදු මෙම වගඋත්තරකරුට ඔප්පු මත තිබෙන අයිතිවාසිකම් නියමිත දිසා අධිකරණයක නඩු පැවරීමෙන් ලබා ගන්නා තෙක් විෂය වස්තුව පවතින ආකාරයෙන් පැවතීමට නියෝග කිරීම උචිත බව පෙනී යන බැවින් මා කාන්තිලතා සහ තවත් අය එදිරිව විමලරත්න සහ තවත් අය නඩුවේ සඳහන් කරුණු වලට අවධානය යොමු කිරීමෙන් පසුව විෂය වස්තුව පවතින ආකාරයෙන්ම තිබිය යුතු බවට නියම කරමි. Status quo should remain as it is.”

The learned High Court Judge in his order directed that status quo will remain in the disputed land. He has not made an order regarding who should be in possession of the disputed land. Further I hold since there had been no objection by the Respondents during the surveying of the disputed land, the

Magistrate had correctly adjudicated that the Appellant had been in possession of the disputed land prior to the first complaint. I am of the opinion that the learned High Court Judge's order dated 08.11.2011 is contrary to the law and the facts in this case. Therefore the learned High Court Judge's order amounts to an error in law. Further I have gone through the proceedings before the High Court and note that the Respondent-Respondent has not established an exceptional circumstances in the High Court. The learned High Court Judge has not properly considered this matter. In these circumstances I hold that the learned High Court Judge was in error when he decided to set aside the judgment of the learned Primary Court Judge.

For the above reasons we set aside the judgment of the learned High Court Judge dated 08.11.2011 and affirm the Order of the learned Primary Court Judge dated 29.04.2010.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

Salam J.,

I agree.

JUDGE OF THE COURT OF APPEAL.