

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

**CA (PHC) 30/07**

PHC-GALLE-478/05  
MC-Baddegama-7911

D.G. Senaratne  
Karagoda,  
Yatalamatta,  
Galle.

**Appellant**

**Vs.**

OIC  
Police Station,  
Nagoda.

Hon. Attorney General  
Attorney General's Department  
Colombo-12

**Respondents**

CA (PHC) 30/07

PHC-GALLE-478/05

MC-Baddegama-7911

Before : K.T. Chitrasiri, J. &  
P.R. Walgama, J.

Counsel : S.Gunawardena for the 1<sup>st</sup> Respondent-  
Petitioner-Respondent  
Clifford Fernando for the 2<sup>nd</sup> Respondent-  
Respondent-Appellant

Argued &

Decided on : 26.01.2015

K.T. Chitrasiri, J.

Heard both counsel in support of their respective cases. This is an appeal filed by the 2<sup>nd</sup> Respondent-Respondent-Appellant seeking to set aside the decision dated 04.04.2007 of the learned High Court Judge of Galle. In that decision the learned High Court Judge made order to hand over the possession of the land subjected to in this case to the 1<sup>st</sup> Respondent-Petitioner-Respondent having set aside the order dated 26.01.2005 of the learned Magistrate of Baddegama.

Officer in Charge of the Police Station Nagoda filed information in the Magistrate's Court of Baddegama under Section 66 of the Primary Courts Procedure Act No. 44 of 1979. Learned Magistrate, having considered the material before him

made order in favour of the 2<sup>nd</sup> Respondent-Respondent-Appellant having given the possession of the land in question to him.

Being aggrieved by the aforesaid decision, the 1<sup>st</sup> Respondent-Petitioner-Respondent filed a revision application in the High Court of Galle. Learned High Court Judge having reversed the decision of the learned Magistrate made order to handover the possession of the land to the 1<sup>st</sup> Respondent-Petitioner-Respondent. In that decision the learned High Court Judge has taken into consideration the report dated 17/08/2004 issued by the Divisional Secretary and also the other material in connection with the possession of the land in dispute.

Section 68(1) of the Primary Court Procedure Act provides the manner in which an order should be made in an application filed under Section 66 of the said Act. Accordingly, it is the duty of the Primary Court judge to determine who was in possession of the land in dispute at the time the information was filed in Court.

Learned Magistrate seems to have not considered the contents in the Documents marked 2V3(at page 184 in the appeal brief) and the 2 (at page 185 in the appeal brief)and also the reports filed by the Police. In those documents it is clearly stated that lot No. 11 in Plan 1V1 which is the land in question had been in the possession of the 1<sup>st</sup> Respondent-Petitioner-Respondent. Affidavit filed by the 2<sup>nd</sup> Respondent-Respondent-Appellant does not reveal the manner in which he

had been in possession of this land. He has merely stated that a part of the land was planted with tea by him.

The relevant material show that the 1<sup>st</sup> Respondent-Petitioner-Respondent had been in possession of the land in dispute at the time the information was filed in Court.

Therefore, we do not see any reason to interfere with the decision of the learned High Court Judge. For the aforesaid reasons; this appeal is dismissed with costs.

**JUDGE OF THE COURT OF APPEAL**

**P.R. Walgama, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**

LA/-