

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

In the matter of an Appeal against the  
order dated 05.09.2011 delivered by  
the Provincial High Court of the  
Southern Province holden at Galle in  
Revision Application No.  
HC/Rev./786/11

The Officer in Charge,  
Police Station,  
Hikkaduwa.

**Informant**

**VS.**

CA Appeal No.169/2011  
HC Application Revision No.  
HC/Rev./786/11  
MC Case No. 59693  
Galle

1. Hewa Giganage Upali Navaratne,  
Leenawatte,  
Narigama,  
Hikkaduwa.

**First Party**

2. Thalatha Mervyn Weihena,  
“Sisira”  
Narigama,  
Hikkaduwa.

**Second Party**

**AND**

Hewa Giganage Upali Navaratne,  
Leenawatte,  
Narigama,  
Hikkaduwa.

**First Party - Petitioner.**

**VS.**

Thalatha Mervyn Weihena,  
“Sisira”,  
Narigama,  
Hikkaduwa.

**Second Party - Respondent**

The Officer in Charge,  
Police Station,  
Hikkaduwa.

**Informant - Respondent**

**NOW BETWEEN**

Hewa Giganage Upali Navaratne,  
Leenawatte,  
Narigama,  
Hikkaduwa.

**First Party-Petitioner-  
Appellant**

**VS.**

Thalatha Mervyn Weihena,  
 “Sisira”,  
 Narigama,  
 Hikkaduwa.

**Second Party- Respondent –  
 Respondent**

The Officer in Charge,  
 Police Station,  
 Hikkaduwa.

**Informant - Respondent-  
 Respondent**

**BEFORE** : **W.M.M. Malinie Gunaratne, J. and  
 P.R. Walgama, J.**

**COUNSEL** : Jacob Joseph with Rohitha Wimalaweera  
 for the 1<sup>st</sup> Party Petitioner-Appellant.  
 Anuruddha Dharmaratne with Indika Jayaweera.  
 for the 2<sup>nd</sup> Party – Respondent-Respondent.

**Argued** : 14.08 2015

**Written submissions  
 filed on** : 17.12.2015

**Decided on** : 24.03.2016

**Malinie Gunaratne, J.**

In this Appeal the Appellant among other reliefs is seeking to set aside the Order of the learned Magistrate dated 28.03.2011 and the Judgment of the learned High Court Judge dated 05.09.2011.

Pursuant to an information filed by Hikkaduwa Police in terms of Section 66 of the Primary Procedure Act, the learned Primary Court Judge of Galle held an inquiry into the dispute between Hewa Giganage Upali Navarathne (hereinafter referred to as the Appellant) and Thalatha Mervin Weihena (hereinafter referred to as the Respondent) in respect of land called Divelwatta and held that the Respondent was in possession of the land and made order restoring possession of the land to her. Further he rejected the claim of the Appellant in regard to the possession of the land.

Being aggrieved by the said Order, the Appellant invoked the Revisionary Jurisdiction of the High Court of Galle, seeking to set aside the learned Magistrate's Order.

The learned High Court Judge having considered the submissions made by both parties, affirmed the learned Magistrate's Order and dismissed the Petition.

The Appellant being aggrieved by the aforesaid order preferred an Appeal to this Court seeking to set aside the Orders made by the learned Primary Court Judge and the learned High Court Judge. The grounds of Appeal are given in Paragraph 12 of the Petition of Appeal.

The case for the Appellant was that the land in dispute was originally owned by the Respondent's husband and he had transferred his rights to two

German Nationals (husband and wife) on 19.12.1994 by Transfer Deed No. 685 (2 Wa 3) attested by the Respondent, in her capacity as a Notary Public. As the Appellant being closely associated with the aforesaid German couple, they requested the Appellant to function as the caretaker of the said property from 1994.

As requested by the said owners, he employed persons to put up a boundary wall and also constructed a well on the said land. After the demise of the German couple, one Tanja Karac nee Resch became the sole legal heir of the property. She appointed the Appellant as her Attorney in Sri Lanka by virtue of a Foreign Power of Attorney dated 14.05.2010 (1 pa 2) which is duly registered in Sri Lanka on 28.06.2010.

The Appellant had employed labourers to attend to the weeding and clearing of the said land in dispute and he had employed two labourers to attend to the work on 03.08.2010. The Respondent arrived at the land and ordered the labourers to stop work stating that she is the owner of the land. The Appellant made a complaint to the Hikkaduwa Police and the Police held an inquiry on 07.08.2010.

On 28.09.2010 he fixed a gate to the boundary wall and the Respondent made a complaint to the Police on 01.10.2010.

The Respondent in her affidavit stated that the land in dispute was purchased by her husband in 1994. The Respondent and her husband were close friends of a German couple namely B.H. Richard Wiffel and E.A. Margret Wiffel and she prepared a Deed of Transfer in their name, for the purpose of a business venture. The possession of the land from 1994 was with her and the husband.

The Appellant, on 03.08.2010 had sent workers to clear the land for the first time; the Respondent did not allow it; the Appellant had made a complaint to the Police; an inquiry was held by the Police; and the Police advised both parties to file a civil action if there is a dispute with regard to the title of the said land.

The issue at hand arose when the Appellant illegally fixed a gate and denied the Respondent free access to the said land on or about 28.09.2010.

In this case, the Primary Court Judge was called upon to reach a decision on the affidavits filed. After considering the contents in those affidavits the Primary Court Judge held, that the Respondent was in possession of the land and made order restoring possession of the land to her.

When this Appeal was taken up for argument on 14.08.2015 Counsel for both parties made their oral submissions in support of their respective case and with permission of the Court subsequently filed written submissions as well.

In an inquiry where the dispute relates to the possession of any land or part thereof on the date of filing of the information under Section 66 and make order as to who is entitled to possession of such land or part thereof. But where a forcible dispossession has taken place within a period of two months immediately before the date on which the information was filed under Section 66, he may make an order directing that the party dispossessed be restored to possession prohibiting all disturbance of such possession otherwise than under the authority of an order or decree of a competent Court.

Thus, the duty of the Judge is to ascertain which party was or deemed to have been in possession on the relevant date, namely, on the date of the filing of the information under Section 66.

This is an application filed by the Police which had been initiated on a complaint made to the Police by the Respondent, alleging that the Appellant has fixed a gate illegally denying free access to the land in dispute.

Hence, the duty of the Judge is to determine whether, the Respondent who had been in possession of the land was dispossessed by the Appellant within a period of two months immediately before the date of filing of the information. If the Primary Court Judge is satisfied that the Respondent had been in possession of the land and he had been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under Section 66, he should make an order directing that the party dispossessed be restored to possession.

In the instant case the learned Primary Court Judge had made a finding that the Respondent was in possession of the land and had been dispossessed within a period of two months immediately before the date of filing of the information.

On perusal of the entirety of the judgment, it is apparent that the learned High Court Judge has taken into consideration the affidavits and documents filed by both parties and has affirmed the Order made by the learned Primary Court Judge.

In the circumstances, I am of the view, that the learned Primary Court Judge of Galle and the learned High Court Judge of Galle have taken into

consideration both the facts and the law when arriving at their respective orders and therefore, I do not wish to disturb their findings.

For the above reasons I hold that there is no merit in this Appeal and accordingly I dismiss the Appeal

**JUDGE OF THE COURT OF APPEAL**

P.R.Walgama, J.

I agree

**JUDGE OF THE COURT OF APPEAL**

Appeal is dismissed