

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

Court of Appeal
No. C.A. (PHC) 11/2010
High Court of Kaluthara
No. 12/2009 Revision
Magistrate Court of Kaluthara
No. 30/2008

1. Jeewarani Samanmala Gunasekara
No.74, Sri Sumangala Road,
Kaluthara North.

**Party of the 1st Part Respondent-
Appellant**

Vs.

1. Indika Balapitiya
2. Thisara Balapitiya
No.235/05, Abrew Road,
Kaluthara North.

**Party of the 2nd Part Petitioner-
Respondent**

Officer in Charge,
Police Station,
Kaluthara North.

**Complainant-Respondent-
Respondent.**

3. The Hon. Attorney General

3rd Respondent-Respondent

Before : Malinie Gunarathne J.
: L.T.B. Dehideniya J.

Counsel : Anil Silva PC. with Nandana Perera for the 1st party Respondent
Appellant.
: Chula Bandara for the 2nd party Petitioner Respondent

Argued on : 18.12.2015

Decided on : 29.04.2016

L.T.B. Dehideniya J.

This is an appeal from the order of the Learned High Court Judge of Kaluthara. The Police filed a report in the Magistrate Court under section 66 of the Primary Court Procedure Act stating that there is a land dispute which is likely or threatened a breach of peace. Party of the first part Respondent Appellant (hereinafter some time called and referred to as the Appellant) on one side and the Party of the second part Petitioner Respondents (hereinafter some time called and referred to as the Respondents) on the other side filed their respective affidavits with the documents before Court. After considering the same, the learned Magistrate delivered the order in favour of the Appellant. Being aggrieved by the said order, the Respondents moved in revision in the High Court of Kaluthara. The Learned High Court Judge reversed the order and held in favour of the Respondents. The Appellant presented this appeal to this Court to set aside the order of the Learned High Court Judge.

The Party of the first part Respondent Appellant is the owner of the premises in dispute. She has given the premises on a 99 year lease to a foreign national who is not a party to these proceedings. Her complaint is that the said foreigner has given a sub lease to the party of the second part Respondents Appellants. The first person of the party of the second part admit that he has entered in to a lease agreement for one year with the said foreigner and state that he was placed in possession of the premises by the said person. The learned Magistrate considered all deeds entered into by the parties and had come to the conclusion that the Appellant had the

constructive possession and she was dispossessed by the Respondents. The Learned High Court Judge reversed the order of the Learned Magistrate mainly on the basis that there was no evidence to establish the constructive possession.

The validity of the sub lease given by the original lessee, the foreigner, is a matter to be decided by a competent civil court. For this application, the person who had the legal possession, the foreigner, had handed over the possession to the Respondent. Once the Appellant had handed over the possession to the lessee and he had handed over the possession to the Respondent, the Appellant cannot claim constructive possession through the lessee. On the other hand there was no evidence what so ever to show that she had the control of the premises. Therefore, it is not possible for the Appellant to say that she was in constructive possession of the premises.

It has been held in the case of *Iqbal v. Majedudeen and others* [1999] 3 Sri L R 213 that;

1. The fact for determining whether a person is in possession of any corporeal thing, such as a house, is to ascertain whether he is in general control of it.

2. The law recognizes two kinds of possession:

(i) When a person has direct physical control over a thing at a given time - actual possession.

(ii) When he though not in actual possession has both the power and intention at a given time to exercise dominion or control over a thing either directly or through another person - constructive possession.

3. *'Forcibly dispossessed' in s. 68 (3) means, that dispossession had taken place against the will of the persons entitled to possess and without authority of the law.*

In the case before us, there was no evidence to show that the Appellant had any sort of control over the premises in question. Therefore there is no constructive possession established by the Appellant.

Under these circumstances, there is no any reason to interfere with the findings of the Learned High Court Judge.

Appeal dismissed. I order no costs.

Judge of the Court of Appeal

Malinie Gunarathne J.

I agree.

Judge of the Court of Appeal