

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

In the matter of an Appeal against an
order of the Provincial High Court in the
exercise of its revisionary jurisdiction.

C A (PHC) / 102 / 2015

Provincial High Court of

Sabaragamuwa Province (Rathnapura)

Case No. HCR RA 31 / 2010

Primary Court Kalawana

Case No. 9402

1. Madhura Nuwan Madhura,
Davigalagama,

Kalawana.

2. Madhura Janaka Jagathpriya,

Davigalagama,

Kalawana.

PETITIONER - PETITIONER -

APPELLANTS

Vs

1. Dona Malkanthi Abewickrema,

Davigalagama,

Kalawana.

2. Thapassara Muhandiramlage Nishantha,

Davigalagama,

Kalawana.

3. Thapassara Muhandiramlage Achala

Kumari,

Davigalagama,

Kalawana.

4. I W Anuruddha Saman Kumara,

Davigalagama,
Kalawana.

RESPONDENT - RESPONDENT -
RESPONDENTS

Before: K K Wickremasinghe J
P. Padman Surasena J

Counsel; Chula Bandara with Mangala Jeewendra for the Petitioner -
 Petitioner - Appellants.

Yadeesh Tennakoon for the Respondent - Respondent -
Respondents.

Argued on: 2017-09-04.

Decided on : 2017-10-30

JUDGMENT

P Padman Surasena J

Learned counsel for both parties agreed that the cases namely C A (PHC) / 102/ 2015 as well as C A (PHC) APN 55/2015 are both cases filed to challenge one and the same Primary Court order. The former is the appeal and the latter is the application for revision. Thus, the issues to be decided by this court in respect of both these cases are the same. Therefore, this judgment must apply to both the above cases.

The Petitioner - Petitioner - Appellants (hereinafter sometimes referred to as the Appellants) had instituted this case against the Respondent - Respondent - Respondents (hereinafter sometimes referred to as the Respondents) in the Primary Court of Kalawana under the Primary Courts Procedure Act (hereinafter sometimes referred to as the Act). The said case was filed under section 66 (1) (b) of the Act as a private information, seeking an order declaring that the Appellants are entitled to have the possession of the impugned land.

Learned Primary Court Judge having inquired into the complaint, by his order dated 2010-04-21, had concluded that the Respondents are entitled to have the possession of the land which is the subject matter of the dispute.

Being aggrieved by the said order made by the learned Primary Court Judge, the Appellants had filed an application for revision in the Provincial High Court of Sabaragamuwa Province holden at Rathnapura seeking a revision of the order of the Primary Court.

The Provincial High Court after hearing had refused the said revision application on the basis that the findings entered into by the learned Primary Court Judge is correct.

It is against that judgment of the Provincial High Court that the Appellant has appealed to this Court.

It was the submission of the learned counsel for the Appellant that the learned Primary Court Judge had misunderstood and misapplied the provisions of the Act relevant to this dispute.

It is section 68 (1) of the Primary Courts Procedure Act No. 44 of 1979 which is relevant to the instant case. It is as follows;

Section. 68

(1) Where the dispute relates to the possession of any land or part thereof it shall be the duty of the Judge of the Primary Court holding the inquiry to determine as to who was in possession of the land or the part on the date of the filing of the information under section 66 and make order as to who is entitled to possession of such land or part thereof.

(2) An order under subsection (1) shall declare any one or more persons therein specified to be entitled to the possession of the land or the part in the manner specified in such order until such person or persons are evicted there- from under an order or decree of a competent court, and prohibit all disturbance of such possession otherwise than under the authority of such an order or decree.

(3) Where at an inquiry into a dispute relating to the right to the possession of any land or any part of a land the Judge of the Primary Court is satisfied that any person who had been in possession of the land or part has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under section 66, he may make a determination to that effect and make an order directing that the party dispossessed be restored to possession and prohibiting all disturbance of such possession otherwise than under the authority of an order or decree of a competent court.

(4) An order under subsection (1) may contain in addition to the declaration and prohibition referred to in subsection (2), a direction that any party specified in the order shall be restored to the possession of the land or any part thereof specified in such order.

This Court in the case of Thilak Kumara Udugama V D G Rathnayaka and three others¹ adverted to the several steps that a Court is obliged to follow in adjudicating a dispute of this nature. This Court in that case held that when the dispute relates to the possession of any land or part thereof, it would be desirable for the inquiring Primary Court Judge to adhere to the following steps in their chronological order;

- I. determine as to who was in possession of the land or the part on the date of the filing of the information under section 66
- II. determine whether any person who had been in possession of the land or part has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under section 66
- III. if he is satisfied that a person has been dispossessed as in item II above, make a determination to that effect and make an order that the party dispossessed be restored to possession.

¹ C A (PHC) / 230 / 2001 decided on 2017-10-09.

Further, this Court in an earlier occasion also, in the case of Punchi Nona V Padumasena and others² had held as follows;

" ... Section 68 (1) of the Act is concerned with the determination as to who was in possession of the land on the date of the filing of the information to Court. Section 68 (3) becomes applicable only if the Judge can come to a definite finding that some other party had been forcibly dispossessed within a period of 2 months next preceding the date on which the information was filed. ... "

Therefore the submission made by the learned Counsel for the Appellant that the learned Primary Court Judge has erred when he determined as to who was in possession on the date of filing information in Court is unacceptable. Learned Primary Court Judge had merely exercised the powers that he is obliged to exercise in terms of section 68 (1). He has rightly held that there is no dispossession which would warrant an order under section 68(3) of the Act.

In these circumstances, this Court is of the opinion that the learned Primary Court Judge had correctly identified and applied the law to the set

² 1994 (2) Sri. L R 117.

of facts of this case. Therefore, the learned Provincial high Court Judge has correctly refused the revision application filed by the Appellant.

Hence this Court decides to affirm both the judgment dated 2010-04-21 of the Primary Court and the judgment dated 2015-03-18 of the Provincial High Court and proceed to dismiss this appeal with costs fixed at Rs. 25,000/=.

The revision application filed by the Appellant in respect of the same order bearing No. C A (PHC) APN 55/2015 should also stand dismissed.

Appeal dismissed with costs fixed at Rs. 25,000/=

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL