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

In the matter of an appeal under and in terms of Article 154P(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka

C.A (PHC) No. 284/2006
H.C (Revision) No. HCR 02/2006
Primary Court Puttlam No. 6251 P

Surasinghe Arachchige Mallika Kumudini,
Atuwa, Chilaw.

Petitioner

Vs.

M.A. Sriyamalini,
Baranankattuwa, Mundal.

Respondent

AND

M.A. Sriyamalini,
Baranankattuwa, Mundal.

Respondent-Petitioner

Vs.

Surasinghe Arachchige Mallika Kumudini,
Atuwana, Chilaw.

Petitioner-Respondent

AND NOW BETWEEN

Surasinghe Arachchige Mallika Kumudini,
Atuwana, Chilaw.

Petitioner-Respondent-Petitioner

Vs.
M.A. Sriyamalini,
Baranankattuwa, Mundal.

Respondent-Petitioner-Respondent

Before: **P. Padman Surasena J, President of the Court of Appeal**
Arjuna Obeyesekere J

Counsel: Udaya Bandara for the Petitioner-Respondent- Petitioner

Shyamal Collure with A.P.Jayaweera and P.S.Amerasinghe for the Respondent-Petitioner-Respondent

Written Submissions of the Parties tendered on: 6th February 2018

Argued on: 30th July 2018

Decided on: 12th December 2018

Arjuna Obeyesekere, J

This is an appeal filed by the Petitioner – Respondent – Petitioner (the Appellant) against the judgment of the learned High Court Judge of the Provincial High Court of the North Western Province holden at Puttalam.

The facts of this matter very briefly are as follows.

In October 1998, the State had issued Marasinghe Arachchige Sumanaratne a grant under Section 19(4) of the Land Development Ordinance in respect of a land in extent of 0.768 hectares situated within the Grama Niladhari division of Baranankattuwa in the district of Puttalam. The said land had been described in the said Grant as being Lot No. 6 of Plan No. 95/14/ඇ/43[1]. The boundaries given in the Grant had been amended by a letter dated 8th December 1998 issued by the Divisional Secretary of Mahakumbukkadawela. This Court observes that this letter sets out the amended boundaries of the land referred to in the Grant but does not have a reference to any Plan. This Court also observes that there is a slight discrepancy in the extent of the land between what is given in the Grant and the said letter. However, by a subsequent letter issued in 2005[2], the Divisional Secretary had reverted to the boundaries and the extent given in the Grant, thereby removing any ambiguity in this regard.

Although Sumanaratne was not resident on this land after 2003, he is said to have cultivated this land and had been in possession of this land until he passed away on 13th August 2004. After the passing away of Sumanaratne, the Appellant, who is the widow of Sumanaratne appears to have claimed the said land. By letter dated 15th June 2005, the Secretary, Ministry of Lands, Agriculture, Irrigation and Animal Production Services of the North Western Provincial Council had confirmed that the Appellant is entitled to the life interest under the Grant. The life interest in favour of the Appellant has been registered on 29th June 2005, as borne out by a letter dated 28th June 2005 issued by the Divisional Secretary, Mahakumbukkadawela. This Court observes

[1] A copy of the said Plan has been produced in the Magistrate's Court marked 'V3'.
[2] Letter dated 28th June 2005, marked 'X10'.

that, the boundaries of the land given in this letter are the same boundaries given in the Grant.

On 29th May 2005, the Appellant, had lodged a complaint with the Mundalama Police Station. In the said complaint, she stated that after the death of Sumanaratne, she was in the habit of visiting the said land every week, presumably to pluck coconuts as she says she was living on the income from the said land. She had stated further that while she was away, the said property was kept under lock and key. The Appellant had stated further that when she visited the said land on 29th May 2005, she found that the mother of Sumanaratne and the sister of Sumanaratne who is the Respondent – Petitioner – Respondent (the Respondent) had broken the padlock and forcibly entered the said land and was occupying the said land. The relevant portions of the said statement are re-produced below:

> "මහත්තයාට අයිති අක්කර 02 ක පමණ පොල් ඉඩමක් බරනන්කටටුව පැත්තේ තිබෙනවා. ඒකේ ඔප්පුව තිබෙන්නේ මගේ මහත්තයාගේ නමට. මම සතියකට පමණ වරක් ඉඩමට ඇවිත් යනවා. නමුත් මා අද දින ඉඩමට එද්දි මගේ මහත්තයාගේ අම්මා, නංගි සහ නංගිගේ මහත්තයා ඉඩමේ ගේට්ටුව බලෙන් ඇරගෙන ඒකේ පදිංචිවෙලා ඉන්නවා. මම ඉබ්බෙක් දාලා ගේට්ටුව ලොක් කරලා තිබුනේ."

On 8th June 2005, the Appellant had filed a petition supported with an affidavit in terms of Section 66(1)(b) of the Primary Courts Procedure Act, No. 44 of 1979 (the Act), in the Primary Court of Puttalam.

Section 66(1)(b) of the Act reads as follows:

"Whenever owing to a dispute affecting land a breach of the peace is threatened or likely, any party to such dispute may file an information by affidavit in such Primary Court setting out the facts and the relief sought and specifying as respondents the names and addresses of the other parties to the dispute and then such court shall by its usual process or by registered post notice the parties named to appear in court on the day specified in the notice-such day being not later than two weeks from the day on which the information was filed."

Thus, it is clear that there are two conditions which must be satisfied in order for the Primary Court Judge to assume jurisdiction; that is, there must be a dispute affecting land and a breach of the peace should be threatened or likely owing to the said dispute.

In addition to the aforementioned facts, the Appellant had stated in her petition and affidavit that she had a permanent house and a cadjan hut on the said land and that after the death of Sumanaratne, she had continued with the cultivation and continued to be in possession of the said land until 29th May 2005. She had stated that the Respondent and a few others were forcibly occupying the said property, having entered the property by breaking the gate. She had stated further that her belongings had been thrown all over the land and had produced a photograph as proof. The Appellant had also stated as follows:

"වගඋත්තරකාරිය විසින් පෙත්සම්කාරියව පහත උප ලේඛණයේ විස්තෘත ඉඩමේ සාමකාමී සන්තකයෙන් නෙරපීම නිසා පෙත්සම්කාරියගේ සන්තකයට බාධා ඇති වී ඇති අතර පෙත්සම්කාරියව සන්තකයෙන් පහකර ඇත. ඉන් සාමය කඩවීමක් සිදු වී ඇති බව පෙත්සම්කාරිය වැඩිදුරටත් කියා සිටී.

පෙත්සම්කාරිය පහත උප ලේඛණයේ විස්තෘත ඉඩමේ සන්තකයෙන් පහව් ඇති නිසාත් පෙත්සම්කාරියගේ ඉඩමේ පිහිට පොල් මැස්සේ හා නිවසේ භාණ්ඩ වග උත්තරකාරිය විසින් ඉවත දමා ඇති නිසාත්, පෙත්සම්කාරියව ඉඩමේ සන්තකයෙන් පහකර ඇත."

Thus, on the face of it, the affidavit of the Appellant had satisfied the aforementioned two conditions set out in Section 66(1)(b) of the Act. The learned Primary Court Judge had accordingly issued notices on the Respondent.

The Respondent had filed her objections supported with an affidavit, to which she had annexed the Plan referred to in the grant.[3] This Court observes that except for a general denial of the averments in the affidavit of the Appellant, the Respondent had not specifically answered any of the matters in the said affidavit nor had she specifically denied a breach of the peace, either threatened or likely. The Respondent had however raised a preliminary objection that what had arisen between the Appellant and herself was only a civil dispute which she claimed should be resolved through a civil court, without any further elaboration in this regard.

The Respondent took up the position that her family had permitted Sumanaratne to carry on a koppara business on the said land but that Sumanaratne had left the said land in 2003. She stated further that thereafter she has been in possession of Lot Nos. 5 and 6 in the said Plan. The Respondent had also annexed a letter dated 22nd December 2004, written by her to the District Secretary of Puttalam after the death of Sumanaratne, where she had stated as follows:

[3] A copy of the Plan had been annexed, marked 'V1'.

"ඒ අනුව ඉහත නම් සඳහන් මා හට වෙන්කර දුන් ඉඩමේ ආදායම M.A. සුමනරත්න යන මාගේ සොහොයුරා විසින් මා හට ලබා දුනි. එහෙත් මැතකදි එනම් මාස තුනකට ඉහතදි මාගේ සොහෙයුරා මිය යන ලදි. පසුව මා හට මෙහි ආදායම ලබාගත නොහැකි විය. එයට හේතුව ඔහුගේ නමින් මා හට අයිති ඉඩම් කොටසට ඔප්පුවක් සාදා ගෙන ඇති බැවිනි. එම ඉඩමේ අයිතිය ඔහුගෙන් පසුව ඔහුගේ බිරිඳට අයිති වී ඇත. ඒ බව දැන ගත හැකි වුයේ සොහොයුරාගේ මරණින් පසුවය."

This statement demonstrates that the Respondent was not in possession of the said lots of land but was seeking to prevent the Appellant from acquiring any rights under the Grant, thus confirming the position of the Appellant that she was in possession of the said land even after the death of Sumanaratne.

The learned Primary Court Judge had carried out a site inspection on 7th November 2005, in the presence of the Appellant and the Respondent and their respective Attorneys-at-Law. The learned Primary Court Judge had made the following observations regarding the site:

"මෙම ඉඩමේ පොල් අතු සෙවිලි කල නිවසක් තිබේ. එකි බිත්ති මැටිවලින් බැඳ ඇත. ඊට වම් පසින් පොල් අතු සෙවිලි කරන ලද මැස්සක් තිබේ. එහි වහළය කඩා වැට ඇත. මෙම ඉඩමේ පොල්, දොඩම්, කෙසෙල් වැනි වගාවන් තිබේ. ඉඩම වටකර වැටක් ගසා ඇත. මෙම ඉඩම අක්කර 1 යි රූඩ් 3 පර්චස් 24 ක් පමන බව පෙනේ. පොල් අතු මැස්ස අසල 1 පාර්ශවයේ අයගේ කියනු ලබන යකඩ භාණ්ඩ කිහිපයක් ගොඩගසා ඇති බව පෙනේ. මෙම ඉඩමේ ඇති නිවසේ අද දින පරීක්ෂා කිරීමේදි බංකුවක්, රූපවාහිනි යන්ත්‍රයක්, කුඩා ඔරලෝසුවක්, ඇඳවල් දෙකක්, පුටු හතරක්, ඇඳුම් යනාදි වශයෙන් භාන්ඩ තිබේ. එකි භාණ්ඩ 2 පාර්ශවය සතු ආම්පන්න සහ භාණ්ඩ බැව් කියයි. එසේම 2 වන පාර්ශවකාරිය කියා සිටින්නේ මව සමග මවගේ නිවසේ බරලක්කටටුව නිවසේ ස්වාමි පුරුෂයා සමග පදිංචිව සිටි බවත් ඉන් පසු මැතකදි මෙම භාන්ඩ එම නිවසට මවගේ නිවසේ සිට රැගෙන ආ බව පවසයි. 1 පාර්ශවය කියා සිටින්නේ තමා, තමාගේ ඉඩමට

පැමිණෙද්දි මෙකි පාර්ශවයන් මෙම ඉඩමේ පදිංචිව සිටිනු දැක එදිනම පොලිසියට පැමිනිල්ලක් එනම් 2005.05.29 වන දින ඒ සම්බන්ධයෙන් පැමිණිල්ලක් කරන ලද බවයි."

The above observation of the learned Primary Court Judge confirms the position of the Appellant that the 2nd Respondent had only recently occupied the premises in question.

The power of the Primary Court where the dispute relates to the possession of any land is set out in Section 68, the relevant provisions of which are re-produced below:

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."

Section 68(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."

The manner in which Sections 68(1) and 68(3) of the Act are to be applied have been laid down in the judgment of the Supreme Court in **Ramalingam vs Thangarajah**[4] where it was held as follows:

> In an inquiry into a dispute as to the possession of any land, where a breach of peace is threatened or is likely under Part VII, of the Primary Courts Procedure Act, the main point for decision is the actual possession of the land *on the date of the filing of the information* under section 66; but, where forcible dispossession took *place within two months before the date on which the said information was filed* the main point is, actual possession prior to that alleged date of dispossession. Section 68 is only concerned with the determination as to who was in possession of the land or the part on the date of the filing of the information under section 66. It directs the Judge to declare that the person who was in such possession was entitled to possession of the land or part thereof. 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 two months next proceeding the date on which the information was filed under section 66. The effect of this sub-section is that it enables a party to be treated to be in possession on the date of the filing of the information though actually he may be found to have been dispossessed before that date provided such dispossession took place within the period of two months next preceding the date of the filing of the information. It is only if such a party can be treated or deemed to be in possession on the date of the filing of the information that the person actually in possession can be said not to have been in possession on the date of the filing of the

[4] 1982 (2) Sri LR 693

information. Thus, the duty of the Judge in proceedings under section 68 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.

That person is entitled to possession until he is evicted by due process of law. A Judge should therefore in an inquiry under Part VII of the aforesaid Act, confine himself to the question of actual possession on the date of filing of the information except in a case where a person who had been in possession of the land had been dispossessed within a period of two months immediately before the date of the information."

The order of the Primary Court was delivered on 14th December 2005. In the said Order, she had pointed out that the purpose of an application under Section 66 of the Primary Courts Procedure Act is to resolve land disputes where a breach of the peace is threatened or likely and that in terms of Sections 68(1) and 68(3) of the Primary Courts Procedure Act, the person who can establish that he/she was in possession of the property upto two months prior to the date of *having been dispossessed is* entitled to the possession of the said property

The learned Primary Court Judge had proceeded to hold that Sumanaratne had been in possession of the said land from 1994 until his death and that thereafter the Appellant had come into possession of the said land, as borne out by the letter dated 31st May 2005 issued by the Grama Niladhari. She had stated further that other than her own affidavit and the affidavits of her family members, the Respondent had failed to produce any independent evidence to

establish that she was in possession of the said land. The learned Primary Court Judge, having come to the conclusion that the Appellant had been in possession of the said land and that she had been dispossessed by the Respondent, granted possession of the said land to the Appellant.

Being aggrieved by the said Order of the learned Primary Court Judge, the Respondent filed a revision application in the Provincial High Court of the North Western province, holden at Puttalam. The complaint of the Respondent to the High Court was twofold; firstly that the learned Primary Court Judge could not have made an order under Section 66(1)(b) of the Act as there was no evidence of a breach of the peace; and secondly that the land which is the subject matter of the action has not been identified correctly.

The Learned High Court Judge, by his judgment delivered on 7th December 2006 upheld the said objections and allowed the revision application of the Respondent. In his judgment, the learned High Court Judge had pointed out that power has been conferred on Primary Courts to inquire into disputes affecting land only where a breach of the peace is threatened or likely and hence, it is mandatory that evidence of such a breach of the peace is presented to Court. He had proceeded to hold that although a land dispute between two law abiding citizens must be resolved by a district court, the Primary Court has been conferred this special jurisdiction to resolve a land dispute between two persons who are not law abiding citizens which can lead to a breach of the peace and that therefore, a breach of the peace being threatened or likely is a pre-condition to the Primary Court exercising jurisdiction in land disputes.

The learned High Court Judge had thereafter stated that when an application is filed in terms of Section 66(1)(a) of the Act by the Police, the question of whether a breach of the peace is threatened or likely is decided by the Police but when an application is filed in terms of Section 66(1)(b) of the Act, the first matter that Court must be satisfied is whether there is evidence to establish that a breach of the peace is threatened or likely.

The learned High Court Judge had held that the evidence before him demonstrates that there is only a land dispute between the parties and that there is no evidence that a breach of the peace is threatened or likely. On that basis, he had held that the Primary Court does not have the jurisdiction to inquire into the application filed by the Appellant.

As referred to at the beginning of this judgement, the boundaries of the land set out in the Grant have been amended subsequently. Thus, the Appellant had amalgamated the different boundaries when referring to the land in her petition to the Primary Court. The learned High Court Judge had held that the Appellant has failed to explain why she amalgamated the boundaries set out in the Grant and the subsequent amendment to the boundaries set out in letter dated 8th December 1998. The learned High Court had also adverted to the failure on the part of the Appellant to explain the boundaries of the land which is the subject matter of the dispute and had noted that there is a difficulty in identifying the land which is the subject matter of the dispute. While it is not clear as to how the amalgamated boundaries affected the Appellant's case, it does not appear that the Appellant or her husband had any control or even an explanation to offer to this amendment of boundaries.

This Court observes that the learned High Court Judge has not arrived at any finding with regard to the possession of the Appellant.

Being aggrieved by the said judgment of the learned High Court Judge, the Appellant has filed this appeal seeking to set aside the said judgment of the High Court. The two matters that this Court must therefore consider is whether there was evidence that a breach of the peace was threatened or likely as a result of the acts of the Respondent and secondly, whether there exists any ambiguity with regard to the boundaries of the land in dispute and if so whether that is a ground to reject an application under Section 66(1)(b) of the Act.

This Court is in agreement with the learned High Court Judge that for a Primary Court to assume jurisdiction under Section 66(1)(b) of the Act, a breach of the peace must be threatened or likely. This matter has been considered by this Court in **Punchi Nona vs Padumasena**[5] where it was 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 two months next preceding the date on which the information was filed[6].
>
> However, when an information is filed by a party to the dispute under section 66(1) (b) it is left to the judge to satisfy himself that there is a

[5] 1994 (2) Sri LR 117.
[6] At page 121.

dispute affecting land owing to which a breach of the peace is threatened or likely. As observed in Velupillai and Others v. Sivanathan[7] "... when an information is filed under section 66(1)(b) the only material that the Magistrate would have before him is the affidavit information of an interested person and in such a situation without the benefit of further assistance from a police report, the Magistrate should proceed cautiously and ascertain for himself whether there is a dispute affecting land and whether a breach of the peace is threatened or likely.[8]

The primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land. The Court in exercising this jurisdiction is not involved in an investigation into title or the right to possession which is the function of a civil Court. He is required to take action of a preventive and provisional nature pending final adjudication of rights in a civil Court. It was therefore incumbent upon the Primary Court Judge to have initially satisfied himself as to whether there was a threat or likelihood of a breach of peace and whether he was justified in assuming such a special jurisdiction under the circumstances. The failure of the judge to satisfy himself initially in regard to the threat or likelihood of the breach of peace deprived him of the jurisdiction to proceed with the inquiry."[9]

The position of the Appellant that she was in possession of the said land two months prior to 29th May 2005 and that the Appellant had been dispossessed from the said land has been accepted by the learned Primary Court Judge. As

[7] 1993 (1) SLR 123
[8] At page 122
[9] At page 122

set out earlier, the judgment of the learned High Court Judge does not controvert this finding of the learned Primary Court Judge.

Taking this as the starting point, the evidence of the Appellant is that when she visited the land on 29th May 2005, she found that the padlock and the gate had been broken and the Respondent and her family had forcibly entered the said property. The Appellant's first reaction was to lodge a complaint with the Police instead of taking the law into her own hands. In this complaint, the Appellant had stated as follows:

> "මේ ඉඩමේ පදිංචි වීම නිසා මම ගොඩක් අසරණ වෙලා ඉන්නේ. ඉඩමේ ඔප්පුව තියෙන්නේ මා ලගයි. ඒ නිසා ඉල්ලා සිටින්නේ මේ ඉඩමේ පදිංචි වෙලා ඉන්න අය ඉඩමෙන් අයින් කරලා මට ඉඩමට යන්න .... සලසා දෙන ලෙසයි."

This is the plea of a person who is desperate to get what she is entitled to and is seeking the help of law enforcement authorities prior to the possible escalation of the situation to the use of force and violence which would then lead to a breach of the peace.

There is no material before this Court whether the Police took any action but the fact that the Appellant herself invoked the jurisdiction of the Primary Court, where she stated that a breach of the peace had in fact occurred, is in the view of this Court sufficient compliance with the requirements of Section 66(1)(b).

The filing of the action in the Primary Court and that too within 10 days of the incident, is evidence of the fact that at the least, the Appellant feared a breach

of the peace was threatened or likely which necessitated her to take action under the law and seek redress of Court. In this background, the response of the Respondent to what had taken place on 29th May 2005 was a mere general denial. There was no specific averment in the affidavit filed by the Respondent with regard to the incident that is said to have occurred on 29th May 2005 or with regard to the averment of the Appellant that a breach of the peace had in fact taken place. This Court is of the view that if a breach of the peace had not occurred, then a specific plea to that effect ought to have been set out in the affidavit of the Respondent as opposed to merely stating that what had occurred was only a civil dispute.

What is precisely meant by a breach of the peace being threatened or likely has been considered by our Courts over the years.

In **Iqbal vs Majedudeen**[10], this Court observed as follows:

> "In conclusion, it is to be remarked that it would not be inopportune to add to what I have said above, in regard to the vexed or much discussed question: under what circumstances can it be said that a given dispute is likely to lead to a breach of the peace. A hint or slight indication relative to that question may be helpful, in that it would offer a directing principle in regard to the question whether any given dispute or circumstances are likely to lead to a breach of the peace which expression generally signifies disorderly, dangerous conduct and acts tending to a violation of public tranquillity or order. One may safely conclude that if the entry into possession is done or effected by force or involves force it is, in the nature

[10] 1999 (3) Sri LR 213 at 218.

of things, such an entry as is likely to evoke resistance which would invariably be fraught with the danger that it would be productive of friction. "Breach of the peace is likely" does not mean that the breach of the peace would ensue for a certainty; rather, it means that a breach of the peace (or disorder) is a result such as might well happen or occur or is something that is, so to speak, on the cards."

In **Oliver Millious vs M.H.A.Haleem**[11] this Court held as follows:

"Another submission made by Counsel in this case was that the learned High Court judge failed to consider the preliminary issue that there was an absence of circumstances to warrant the conclusion that there was a likelihood of a breach of the peace, when viewed in the light of the fact that the police had not deemed it fit or necessary to invoke the jurisdiction of the Primary Court in respect of this matter. It should be noted here that Section 66 of the Primary Courts' Procedure Act makes provision not only to the police to file information but provision has been made to any party to such dispute to file an information. Therefore, failure of the police to file an information in this case does not mean that there was no likelihood of a breach of the peace. If there is a dispute affecting land and a breach of the peace is threatened or likely then the Primary Court will have jurisdiction to inquire into the matter. The Court has to consider whether the dispute is such that it is likely to cause a breach of the peace. It is the apprehension of a breach of the peace not any infringement of a private right or dispossession of any of the parties which determines the jurisdiction of the Primary Court Judge. It is

[11] 2001 [BLR] 8.

sufficient for a Primary Court Judge to exercise the powers under this Section if he is satisfied on the material on record that there is a present fear that there will be a breach of the peace stemming from the dispute unless proceedings are taken under the Section. Primary Court Judge should however proceed with great caution where there is no police report and the only material before him are the statements of interested persons. As happened in this case when the hut belonging to the respondents had been burnt down and the barbed wire fence in their land had been dismantled, can one say that there was no likelihood of a breach of the peace?"

It would also be appropriate at this stage for this Court to refer to the judgment of Salam J, in **Wickremasinghe vs Wickremasinghe**[12] where he observed as follows:

"Historically, there has always been a great deal of rivalry in the society stemming from disputes relating to immovable properties, where the breach of the peace is threatened or likely. In the case of Perera Vs. Gunathilake (1900 - 4 N.L.R 181) His Lordship Bonser C.J, with an exceptional foresight, spelt out the rationale well over a century and a decade ago, underlying the principle as to why a court of law should discourage all attempts towards the use of force in the maintenance of the rights of citizens affecting immovable property. To quote His Lordship:

"In a country like this, any attempt of parties to use force in the maintenance of their rights should be promptly discouraged. Slight brawls

[12] CA(PHC APN 17/2006; CA Minutes of 30th September 2011

rapidly blossom into riots with grievous hurt and murder as the fruits. It is therefore, all the more necessary that Courts should be strict in discountenancing all attempts to use force in the assertion of such civil rights."

Taking into consideration the facts of the present case in the light of the abovementioned judgments, this Court is of the view that there was sufficient evidence before the learned Primary Court Judge as set out earlier in this judgement, to assume jurisdiction on the basis that a breach of the peace had occurred or at the least, threatened or likely which necessitated action by the learned Primary Court Judge in terms of the Act. Courts should not insist on actual physical violence as proof of a breach of the peace, but should be guided by the circumstances of each case and the requirements of section 66(1)(b) itself, which is that a breach of the peace should be threatened or likely. Therefore, this Court is not in agreement with the findings of the learned High Court Judge that a breach of the peace was not threatened or likely.

The next question that needs to be considered is whether there was any difficulty in identifying the land which is the subject matter of this application. This Court is in agreement with the observation of the learned High Court Judge that there is a discrepancy in the boundaries of the land given in the Grant and the subsequent amendment. However, in the subsequent letter issued on 28th June 2005 by the Divisional Secretary, the boundaries of the land set out in the Grant have been reiterated, thereby clearing any doubts or ambiguity with regard to the boundaries of the land in dispute. Thus, this Court does not see any difficulty in identifying the land in question. This Court reiterates that the reasons that led to the amendment of the boundaries is not

something which is within the knowledge of the Appellant and for which the Appellant can be faulted.

In the above circumstances, this Court sets aside the judgment of the Provincial High Court of the Western Province dated 07th December 2006 and restores and affirms the order of the learned Primary Court Judge of Puttalam dated 14th December 2005.

Judge of the Court of Appeal

P. Padman Surasena, J/ President of the Court of Appeal

I agree.

President of the Court of Appeal