

Oknapitiya Muhandiramlage
Hasantha Vajira Prabhashana
Oknapitiya,
No. 194B,
School Lane,
Eheliyagoda.
Respondent-Respondent-
Appellant

MC AVISSAWELLA CASE NO: 50726 (66)

Ganegoda Witharamalage Upali
Seneviratne,
No. 77,
Ganegoda,
Getaheththa.
Petitioner-Petitioner-Respondent

Before: K.K. Wickramasinghe, J.
Mahinda Samayawardhena, J.

Counsel: Anuruddha Dharmaratne for the Appellant.

Seevali Amitirigala, P.C., with Pathum

Wijepala for the Respondent.

Decided on: 27.08.2019

Mahinda Samayawardhena, J.

The Respondent (Upali Seneviratne) instituted this action in the Magistrate's Court of Avissawella against the Appellant (Prabhashana Oknapitiya) under section 66 of the Primary Courts' Procedure Act seeking restoration of possession on the ground that the Appellant dispossessed him immediately preceding two months from the date of filing the action. The Appellant sought dismissal of the Respondent's action on the ground that the latter was not in possession. After inquiry, the learned Magistrate held with the Appellant. This order was reversed by the High Court in revision. This appeal is against the Judgment of the High Court.

Both parties admit that Ananda Ganegoda was one time the owner of the land in suit and he obtained possession of the land from the District Court through execution of a writ on 23.09.1994 (vide V3).

It is the position of the Respondent that the said Ananda Ganegoda transferred the land by Deed No. 1011 dated 24.11.1983 to Premachandra, and Premachandra transferred it to the Respondent by Deed No.18537 on 25.12.2010, and

thereafter the Respondent had been in possession until he was dispossessed by the Appellant on or around 28.06.2012.

Conversely, the position of the Appellant is that the said Ananda Ganegoda transferred the land by Deed No. 612 dated 22.06.2012 to Neil Wijeratne, and Neil Wijeratne transferred it to the Appellant by Deed No. 613 dated 23.06.2012, and thereafter the Appellant went into possession of the land. He says that the Respondent was not in possession to dispossess.

Ananda Ganegoda by tendering an affidavit marked V8 denies that he transferred the land to Premachandra, and says that it is a fraudulent Deed. He has made a complaint to that effect to the police (vide V9), and it appears that the police have initiated an investigation into it.

If Ananda Ganegoda transferred the land by Deed No. 1011 dated 24.11.1983 to Premachandra, it is not clear how and why, Ananda Ganegoda, admittedly, got possession of the land from the District Court through execution of a writ on 23.09.1994, that is, more than 10 years after the alleged transfer.

It is the position of Ananda Ganegoda that until he transferred the land to Neil Wijeratne, he was in possession of the land.

The Respondent has produced a number of affidavits from people claiming to be neighbours that the Respondent had been in possession of the land.

Not to be outdone, the Appellant has also tendered a number of affidavits from people claiming to be neighbours that Ananda Ganegoda had been in possession of the land.

Out of these two sets of affidavits, the learned High Court Judge has come to the conclusion that the affidavits tendered by the Respondent are clearer than those of the Appellant on the question of possession in that the Respondent's affidavits explain how the land was possessed by the Respondent. It is on that basis, predominantly, the learned High Court Judge held with the Respondent.

The affidavits tendered by both parties stating completely contradictory positions vis-à-vis possession, in my view, are self-serving documents. Almost all the affidavits tendered by the Respondents (vide P6-P15) which the learned High Court Judge heavily relied on to overturn the order of the Magistrate's Court have been prepared in the same style making slight changes in the computer for the purpose of this case. They cannot, in my view, be taken seriously.

Therefore it is prudent to place reliance on available independent items of evidence to come to a conclusion on possession.

The standpoint taken up by Ananda Ganegoda that the Deed relied on by the Respondent is a fraudulent Deed is important. The fact that he got possession of the land from the District Court in 1994 is also very relevant. V22 police complaint made by Ananda Ganegoda on 13.05.2000 also establishes his continuation of possession. There is no evidence to establish that Ananda Ganegoda surrendered his possession to Premachandra who is the predecessor in title of the Respondent.

For the aforesaid reasons, it is my considered view that the order of the learned Magistrate is correct.

I set aside the Judgment of the High Court and restore the order of the learned Magistrate.

The learned President's Counsel for the Respondent has stated that the learned Magistrate has granted extra reliefs to the Appellant when he has only asked for dismissal of the action of the Respondent. As the Respondent has admitted that the Appellant is in possession of the land on the date of filing the action, and sought restoration of possession, dismissal of the Respondent's action will serve the purpose.

The Respondent can file an action in the District Court to vindicate his rights, if so advised.

I find that the last sentence of the Judgment of the High Court is an order to maintain the *status quo*. That is in consonance with this Judgment.

Appeal allowed. No costs.

Judge of the Court of Appeal

K.K. Wickramasinghe, J.

I agree.

Judge of the Court of Appeal