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

Wellakke Lokuge Sandhya Kumari,
Obada Kanda,
Rakwana.
2nd Respondent-Petitioner-Appellant

**CA CASE NO: CA (PHC) 117/2015**
**PHC RATNAPURA CASE NO: 33/2010/RA**
**MC RAKWANA CASE NO: 40324**

Vs.

Wellakke Lokuge Pushpa Manel,
Obada Kanda,
Rakwana.
1st Respondent-Respondent-Respondent
And Several Other
Respondents

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

Counsel: Anuruddha Dharmaratne for the Appellant.
Shantha Jayawardena for the Respondent.

Decided on: 27.08.2019

Mahinda Samayawardhena, J.

The 2nd respondent-petitioner-appellant (appellant) has filed this appeal against the Judgment of the High Court which affirmed the order of the Magistrate's Court delivered under section 66 of the Primary Courts' Procedure Act.

The Magistrate's Court held with the 1st respondent-respondent-respondent (respondent) who is a sister of the appellant.

The dispute relates to a room of a house which was padlocked by the appellant after the death of their father on the basis that the father gifted the property to the appellant by way a Deed. This has happened within two months before filing the application in Court by the police.

The learned High Court Judge in the impugned Judgment has correctly analyzed the facts of the case when she affirmed the order of the Magistrate's Court. There is no necessity to repeat them here.

The pivotal argument of the learned counsel for the appellant before this Court is that the order of the Magistrate's Court cannot be allowed to stand in view of the agreement reached between the parties to accept an order after a site inspection by the learned Magistrate. It is the contention of the learned counsel that notwithstanding site inspection was done, the learned Magistrate has delivered the order without any reference to the site inspection.

When I peruse the Magistrate's Court case record it is seen that the order was due on 10.03.2010. On that day, it appears to me that the order was ready. Why I say so is that the order delivered on 21.04.2010 is dated 10.03.2010. On 10.03.2010, the parties have informed the Court that they are agreeable to have an order after an inspection by the learned Magistrate. Inspection has been done on 17.03.2010 and according to the inspection notes filed of record, it seems that the learned Magistrate could not come to a just conclusion, and therefore the learned Magistrate has re-fixed the matter for the order for 21.04.2010. In the meantime, the appellant has sent a long letter to the learned Magistrate (vide pages 477-481 of the Brief) explaining the situation after the inspection. By reading that letter, it is clear that there is no settlement and any order allowing both parties to live together in the house would have ended up with serious breach of the peace. Thereafter the learned Magistrate has delivered the order dated 10.03.2010 on 21.04.2010. I see nothing seriously flawed in that procedure. The learned Magistrate has taken extra troubles to amicably settle the matter when the order was ready, and, failing which, the order has been delivered on merits. It is not the submission of the learned counsel for the appellant that if the order were to be delivered purely on inspection, it would have been in favour of the appellant. Inspection notes filed of record do not suggest so. That objection regarding procedure is a technical objection, which has no place in section 66 applications where the sole intention is to make provisional orders to prevent breach of the breach until the substantive dispute is determined by a civil Court.

The 2nd respondent shall vindicate his rights by filing a civil case in the District Court, if so advised.

Appeal is dismissed but without costs.

Judge of the Court of Appeal

K.K. Wickramasinghe, J.
I agree.

Judge of the Court of Appeal