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

Mullangedara Ananda Wijeratne, of
Mundimuruppu,
Vavuniya.

Party of the 1st Part
Petitioner-Appellant

Court of Appeal Case No:
CA (PHC) 14/2013
HC Vavuniya Revision No:
HCV/RV/248/2013
PC Vavuniya Case No:
1581/2011

-Vs-

Logeshwaran Thasayini,
No. 14,
Sindamani Pulliyar Kovil Road,
Katkuli, Vavuniya.

Party of the 2nd Part
Respondent-Respondent

Headquarters Chief Inspector,
Police Station,
Vavuniya.

Informant-Respondent-Respondent

Before : **A.L. Shiran Gooneratne J.**

&

Mahinda Samayawardhena J.

Counsel : Dr. Sunil F.A. Cooray for the 1st Party Petitioner-Appellant.

K.S. Ratnavale with S.M.M. Samsudeen for the 2nd Party Respondent-Respondent.

Written Submissions: By the 1st Party-Petitioner-Appellant on 26/08/2019

By the 2nd Party- Respondent-Respondent on 23/07/2019

Argued on : 05/12/2019

Judgment on : **20/12/2019**

A.L. Shiran Gooneratne J.

The Officer in Charge of the Vavuniya Police filed an information dated 06/01/2012, in the Magistrates Court of Vavuniya in terms of Section 66(1)(a) of the Primary Courts Procedure Act, (hereinafter referred to as the Act) upon a complaint by the Party of the 1st part-Appellant-Petitioner (hereinafter referred to as the Appellant) on 26/11/2011, that unknown persons have dumped building material in the disputed land on 25/11/2011. The Appellant had purchased the said land in 1979 and is presently in possession. The party of the 2nd Part-Respondent-Respondent, (hereinafter referred to as the Respondent) in the statement to the police dated 28/11/2011, stated that due to civil disturbances in the area she moved

to Jaffna and therefore had leased the disputed land to one Indraraj. Having considered the respective affidavits and the documents filed by the parties, the learned Magistrate by order dated 17/01/2013, held that the Respondent was forcibly removed from possession of the disputed land within a period of two months immediately prior to the date of filing of the information and has placed the Respondent in possession. The revision application filed before the High Court of the Northern Province holden in Vavuniya was turned down without notice being issued to the Respondent for want of exceptional circumstances. The Appellant is before this Court to canvas the said order on the basis that the learned Magistrate has erred by holding that the Respondent had been forcibly ejected from the land within the period of two months immediately preceding the date on which the first information was filed.

The learned Counsel for the Respondent has raised the following issues.

- Absence of exceptional circumstances to proceed with this application
- The affidavit filed in the High Court is defective

I will first deal with the merits of the case and thereafter, address the issues raised by the Appellant.

As pointed out by the learned Counsel for the Appellant, in the given facts and circumstances the questions to be addressed by the learned Magistrate in terms of Section 66 of the Act are twofold.

1. Which party was in possession of the land in question, when the information to Court was filed under Section 66(1)(a) and,
2. As to whether any party has been forcibly dispossessed within the period of two months immediately preceding the date of the filing of the first information in Court.

The Respondent takes up the position that, there was no dispossession from the land and has prayed that the Respondent was in actual possession on the date of filing the first information and therefore was entitled to a determination in terms of Section 68(1) of the Act. The Respondent in the affidavit filed of record submits that after the Army released the land, she has been maintaining the disputed land since the latter part of 2009. The Respondent relies on a survey plan of the disputed land dated 02/11/2011, marked "2V3", and a copy of a receipt of payment of Assessment Tax dated 30/05/2011, marked "2V4". The Appellant admits that the said survey was carried out at the time he was in possession of the land.

The Appellant claims that, he has put up a house using tin sheets in which he resides and engage in cultivating the land. The Appellant also tenders a survey plan of the disputed land which he claims to have surveyed on 19/10/2011. In the statement made to the police the Appellant states that on 25/11/2011, unidentified persons disturbed possession of the land by placing stones and sand claiming to build a house. In this context, it is to be noted that the statement given by the

Respondent to the police on 28/11/2011, contradicts the position taken by the Respondent in the counter affidavit tendered to Court. The Respondent in her statement to the police did not say that she was in possession of the said land. The Respondent claimed that the land was leased to one Indraraj and the said indraraj placed building materials on the land. To the contrary in the counter affidavit at paragraph 18, it is claimed that the building materials had been brought to the land by the Respondent. The statement to the police by the Respondent reveals that she did not possess the land and that the dispute arose as a result of Indraraj, who is alleged to have obtained the land on a lease, unloading construction material. There is also no evidence before Court that the Respondent was dispossessed from the land two months prior to the date of filing the information.

When this application was taken up for argument, the submission for the Respondent centered around the fact that a survey by the Respondent of the disputed land could not have taken place, if the Appellant, as claimed, was in possession of the land. It was also submitted that building material could not have been unloaded by unknown persons specially in the vicinity of a high security zone, where the land was located. Such facts in my view cannot be considered as convincing facts to determine that the Appellant was not in possession or dominion over the disputed land.

Therefore, in the given circumstances, I find no material to justify the findings of the learned Magistrate that the Respondent was dispossessed from the land in dispute two months prior to the filing of information.

The learned Counsel for the Respondent submits that the Appellate Court will interfere with an order of a lower court only in exceptional circumstances and states that in the application made before the High Court of Vavuniya, the Appellant has failed to place any exceptional circumstances to the satisfaction of Court and in support has cited the case of ***Urban Development Authority Vs. Ceylon Entertainments Ltd. (2002) BASL Law Journal at page 65,*** where it was held that, *"the existence of exceptional circumstances should be expressly pleaded when an application to invoke the revisionary jurisdiction is made"*

However, in ***Welikakala Withanage Shantha Sri Jayalal and Another Vs. Kusumawathie Pigera and Others*** (CA (PHC) APN 69/2009, C.A.M. 23.07.2013, where Salam J. held (at page 5-6);

"It does not mean, that the Petitioner who invokes the revisionary powers of the court should in his petition state in so many words that "exceptional grounds exist" to invoke the revisionary jurisdiction in addition to pleading the grounds on which the revision is sought...

It is actually for the court find out whether the circumstances enumerated in the petition constitute exceptional circumstances."

In the circumstances, I find that in the instant application there is enough material disclosed by the statements, affidavits and the documents filed of record which could be considered as exceptional circumstances to address an injustice caused to the aggrieved party.

Another issue taken up by the Respondent is that the jurat in the affidavit filed by the Appellant in the High Court does not confirm to the requirements of the Oaths and Affirmations Act No. 13 of 1954, (as amended) on the basis that the certification of the jurat is made by the Appellant instead of the commissioner for oaths.

The learned Counsel for the Appellant has cited the case of ***Kayas Vs. Nazeer and Others (2004) 3 SLR 202,*** where, Weerasuriya J. held that;

"The object of Revision is the due administration of justice and correction of errors and that power can be exercised in respect of any order of a lower court to prevent an injustice on an application by an aggrieved person who is not even a party to the case."

In ***Facy Vs. Sanoon and 5 Others (2006) BLR 58,*** Marsoof J. held that;

"There is no doubt that the jurat clause is the most crucial part of an affidavit, and if the jurat expressly sets out the place and date on which the affidavit was signed, and that the affidavit was sworn or affirmed and signed before a Justice of the Peace, that affidavit is in fact valid."

In the circumstances, I do not see any reason why the Court should consider the affidavit filed by the Appellant as invalid in law.

For all the above reasons, I set aside the impugned orders and allow the application.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL

In the circumstances, I do not see any reason why the Court should consider the affidavit filed by the Appellant as invalid in law.

For all the above reasons, I set aside the impugned orders and allow the application.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL