

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

C.A.(PHC) No. 01/2008

Opatha Kankanamage Sumanasiri

P.H.C Balapitiya 616/2004

Uragasmanhandiya

M.C.Elpiya No. 14995

2<sup>nd</sup> Respondent-Appellant

Vs

Thommaya Hakuru Nandawathie

Uramangashandiya

1<sup>st</sup> Respondent-Respondent

BEFORE :

A.W.A.SALAM J.,

SUNIL RAJAPAKSE j.,

COUNSEL :

Pamoda Jayasekera for the Appellant

Rohana Sampath for the Respondent

ARGUED ON:

08.08.2013

DECIDED ON:

05.05.2014

Sunil Rajapakse J

This appeal has been filed by the Appellant Respondent challenging the Order dated 14.01.2008 of the learned High Court Judge of Balapitiya. The

learned High Court Judge, affirmed the Order made by the learned Magistrate on 23,07.2004 and dismissed the Revision Application filed by the 2<sup>nd</sup> Respondent-Petitioner- Appellant.

The Order of the learned Magistrate had been made in respect of a dispute affecting land where the breach of peace was threatened or likely, in terms of Chapter VII of the Primary Courts Act No. 44 of 1979.

In the Magistrate's Court the information was filed by the OIC of Uragasmanhandiya Police under Section 66(a) of the Primary Courts Procedure Act No. 44 of 1979 regarding a breach of peace arisen owing to a land dispute.

When this case was taken up for argument both parties admitted that the land in dispute is a State land. Therefore the ownership of the said property is admittedly with the Government.

In this case the Appellant's main contention is that the land in dispute is a State land and Primary Courts Judge did not have jurisdiction to hear and determine this case. First of all I shall deal with this argument. The Appellant and the Respondent assert in their affidavits that the corpus is a State land which both parties have received from the Divisional Secretary.

In this regard I cite the following authorities – Kanagalingam vs Jegatheeswaran and another - 2009 1 SLR page 159, it was held *“If a case of rent and ejection is filed in the Primary Court, the Primary Court has no power to go into the matter, but if the dispute is referred to by way of Section 66 application where the jurisdiction is circumscribed and limited to deciding only the issue of possession in order to prevent a breach of the peace, then such action is within the plenary jurisdiction of the Primary Court”*.

In Section 145 Baishnad Pariada vs Subal (1978 CR.LJ 1312 – Bhai at page 1515) it was held *“Where the stand of a parties just to flout the law, it is the duty of the Magistrate to give protection to other party and not to encourage lawlessness”*.

After considering the above judgments I am of the view that the learned Magistrate’s impugned order is within the scope of Primary Courts Procedure Act. The learned Magistrate’s view is that the Divisional Secretary has already at a decision to the effect of the dispute and the court has no jurisdiction either to alter or stay it. Therefore the learned Magistrate has correctly ordered to execute the Divisional Secretary’s order with the necessary police guard. The order of the

has an alternative remedy can invoke revisionary jurisdiction of a superior court only upon establishment of exceptional circumstances.

In this regard I would like to consider a judgment of Justice Udalgama in Devi Property Development (Pte) Limited and another vs Lanka Medical (Pvt) Ltd., - C.A 518/01 decided on 20.06.2001. His Lordship in the said judgment observed thus "Revision is an extraordinary jurisdiction vested in court to be exercised under exceptional circumstances if the other remedies are available. Revision is not available until and unless other remedies available to the Petitioner are exhausted." The Appellant who sought the revisionary jurisdiction of the High Court has an alternative remedy in this case. If the Appellant had dissatisfied the decision he could have made an appeal to the Land Commissioner or would have filed an application for a writ of certiorari challenging the Divisional Secretary's decision. I have gone through the proceedings before High Court and note that the Respondent has not established any exceptional circumstances in the High Court. Therefore, the High Court Judge has correctly dismissed the Revision Application for the above reasons. Therefore I am of the view, that the learned High Court Judge of Balapitiya had come to the correct conclusion by his Order and refused to set aside the said Order in Revision.

For the aforesaid reasons, I affirm the judgment of the learned High Court Judge of Balapitiya dated 14.01.2008 and the order of the learned Magistrate of Elpitiya dated 24.07.2004.

The Appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Salam J.,

I agree.

JUDGE OF THE COURT OF APPEAL.