

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

In the matter of an appeal in terms of Article 154 (P) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the provisions of the High Court of the Province (Special provisions) Act No. 19 of 1990.

Hetti Muhandiramalage Podi Menike,
Pahala Pandeniya – Pallewela,
Gurubewila, Pinnawala,
Balangoda.

1st Party – Petitioner-Appellant.

VS.

**CA(PHC) 08/2007
Ratnapura High Court
No.HCR/RA/63/2005
Balangoda Magistrate's Court
Case No. 99259.
Embilipitiya Magistrate's Court
No. 33179**

01. Ellepola Gedara Premeratne,
Durakanda, Alankara
Panguwa,
Balangoda.

3rd Party-Respondent-Respondent

02. Officer in Charge,
Minor Complaints Unit,
Police Station,
Balangoda.

Applicant-Respondent-Respondent

BEFORE : **W.M.M. Malinie Gunaratne, J. and**
P.R Walgama J.

COUNSEL : Chathura Galhena with Manoja Gunawardena for
the Appellant.

Respondent was absent and unrepresented.

Argued on : 01.08.2015.

Written submissions
filed on : 12.11.2015.

Decided on : 02.02.2016

Malinie Gunaratne, J.

Pursuant to an information filed by the Officer-in-Charge of Balangoda Police Station in terms of Section 66 of the Primary Procedure Act, the learned Primary Court Judge held an inquiry into the dispute between 2nd Party Respondent – Respondent (hereinafter referred to as the Respondent) and 1st Party - Petitioner – Appellant (hereinafter referred to as the Appellant) in respect of the land called Walawewatte, held that he is unable to decide who had been in possession of the land in dispute on the date of the filing of the information under Section 66 of the Primary Court Act (Vide Page H4 of the Brief). Nevertheless, at the end of the Order, the learned Primary Court Judge has decided that the possession of the land in dispute should be given to the Respondent in terms of Section 68 of the Primary Court Procedure Act, (Vide Page H4).

Aggrieved by the said Order, the Appellant sought to revise the said Order by Revision Application No. HCR/RA/63/2005 filed before the High Court Rathnapura.

The learned High Court Judge of Rathnapura having considered the submissions made by both parties dismissed the Revision Application by Order dated 22.01.2007.

The Appellant being aggrieved by the said Order preferred an Appeal to this Court seeking to set aside the Order made by the learned High Court Judge dated 22.01.2007.

When this appeal was taken up for argument, the Respondent was absent and unrepresented. Hence, the Court heard only the submissions made by the Counsel for the Appellant.

It is the first and principal stance of the Counsel for the Appellant, that the finding of the learned Primary Court Judge is contrary to his own findings made in the same Order regarding the possession of the land in dispute.

In an inquiry 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 to determine as to who was in possession of the land or the part thereof on the date of filing of the information under Section 66 and make order as to who is entitled to possession of such land or part thereof. But where a forcible dispossession has taken place within a period of two months immediately before the date on which the information was filed under Section 66, he may make an order directing that the party dispossessed be restored to possession

prohibiting all disturbance of such possession otherwise than under the authority of an order or decree of a competent Court.

Thus, the duty of the Judge 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.

In this case the learned Primary Court Judge has held, that he is unable to decide who had been in possession of the land at the time of filing the information. However, at the same time, in the same order the learned Primary Court Judge has decided the possession of the land in dispute should be given to the Respondent under Section 68 of the Primary Court Act.

I am also agreeable with the contention of the learned Counsel for the Appellant that the second part of the Order made by the learned Primary Court Judge is contrary to his own findings made in the same order. It is seen therefore, that the learned Primary Court Judge has failed to make a correct determination and to make an order in terms of Section 68 (1) of the Primary Court Procedure Act. Therefore the Order of the learned Primary Court Judge has no validity before the law. However, the learned High Court Judge has wrongfully affirmed the Order of the learned Primary Court Judge and dismissed the Revision Application filed by the Appellant.

On perusal of the entirety of the Judgment of the learned High Court Judge, it is apparent that the learned High Court Judge has failed to consider the right question. He has not taken both the facts and the law when arriving at his order. As such, I am of the view that the Order made by the learned

High Court Judge cannot stand before law. Therefore I set aside the Order of the learned High Court Judge made on 22.01.2007.

For the aforesaid reasons I allow the Appeal.

However, it is significant to note that the Appellant has not sought to set aside the Order dated 31.05.2005 made by the learned Primary Court Judge of Balangoda. Hence, the Order of the Primary Court Judge would prevail in favour of the Respondent and against the Appellant.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is allowed.