

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

Sayakkarage Shantha Abeyrathne,
Near No.26,
Yudaganawa Co-operative,
Buttala.

1st Respondent Petitioner

Appellant

Court of Appeal Case No.
CA (PHC) 211/2006

High Court Badulla Case No.
32/2005

Primary/Magistrate Court
Monaragala Case No. 97456

v.

1. Rathnayake Mudiyansele
Kulathunga,
Rathnayake Workshop,
Sevanagala Junction,
Sevanagala.

2. Dissanayake Mudiyansele
Premasiri Ranaweera,
43, Yudaganawa Colony,
Buttala.

3. R.M.Cyril,
Yudaganawa, Buttala.

**01, 02 & 03 Respondents,
Respondents, Respondents.**

Before : Malinie Gunarathne J.
: L.T.B. Dehideniya J.

Counsel : M.P.Ganeshwaran for the 1st Respondent Petitioner
Petitioner.

: N.T.S.Kularathne for the 1st Respondent Respondent
Respondent.

Argued on : 25.01.2016

Written Submissions of the

1st Respondent-Respondent-Respondent filed on : 30.03.2016

Written Submission of the

1st Respondent Petitioner Appellant : Not filed

Decided on : 27.05.2016

L.T.B. Dehideniya J.

This is an application to revise an order of the Learned High Court Judge of Badulla. The facts of the case are briefly as follows. The 1st Respondent Petitioner Appellant (hereinafter sometime called and referred to as the Appellant) made a complaint to Buttala police stating that he received a telephone call that one Ranweera is clearing his land. He made this complaint to the police without going to the land. Thereafter he went to the land with the police and observed that the said Ranaweera, with the Appellant's father in law, clearing his land. The police investigated into the complaint and submitted a report to the Magistrate Court of Monaragala under section 66 of the Primary Court Procedure Act. The Appellant was the 1st party Respondent, his father in law Kulathunga and Ranaweera were the 2nd party Respondents. R.M.

Cyril intervened after affixing notice. The parties tendered their respective affidavits and counter affidavits with the relevant documents.

The Appellant stated that the land described in the schedule A to his affidavit was in his possession and a portion of the said land described as schedule B in the affidavit was cleared and fenced out by his farther in law, the 1st Respondent-Respondent-Respondent (hereinafter sometime called and referred to as the 1st Respondent) and the 2nd Respondent-Respondent-Respondent (hereinafter sometime called and referred to as the 2nd Respondent). The 1st Respondent stated that he was later given an annual permit for the crown land that he was cultivating for a long time. Thereafter, he was given a grant to the land. He said that he divided the land in to three lots and one lot was given to his brother Cyril who has constructed a house and residing in the said block of land and another lot was given to his elder daughter who was married to the Appellant, is also residing in the that block. The third lot was reserved for his younger daughter. He further says that he used to visit his elder daughter regularly and during those visits he looked after the block of land in question and further he advised Cyril who was residing in the adjoining land to look after the land. His contention was that the land in dispute was in his possession though he is not residing.

The learned Magistrate held that the land in dispute was in the 2nd Respondent's possession. The Appellant being aggrieved by the said order moved in revision in the High Court of Badulla, where the order of Magistrate Court was affirmed. This appeal is against the said order of the Learned High Court Judge.

The Appellant argues that the learned Magistrate has not identified the land in question.

The Appellant is married to the daughter of the 1st Respondent. The land where the Appellant is residing is given to them by the 1st Respondent. The 1st Respondent's version is that he gave a portion of land to the Appellant and reserved another block of land to be given to the younger daughter and the Appellant's case is that he was possessing the entire land until a portion was fenced out by the Respondents.

The police officer who investigated in to the dispute has drawn a sketch showing the disputed land. In that sketch he has shown the blocks of lands where Cyril and the Appellant were in possession and the land in dispute. The sketch drawn by the police shows the boundaries of the disputed land as north by the road, east by land belongs to the Appellant, south by the land belongs to Gunaratne and west by the land belongs to Rupasinghe. The learned Magistrate in his order described the disputed land in a different way. The northern boundary according to the order of the learned Magistrate is the commercial land. The police sketch shows a strip of land in the extreme north as a land for commercial purposes, but as per the sketch, the land was divided in to three blocks including the said commercial land. The police reported to court under section 66 that there is a dispute arisen over a land threatening a breach of peace and filed the sketch of the land with the report describing what the disputed land is. The Court is expected to make an order to prevent the breach of peace in relation to the land dispute identified by the police as threatening to peace. The learned Magistrate identified the disputed land as a part of the land granted to the Respondent excluding the commercial land.

It is very significant that the land claimed as the disputed land by the 1st Respondent is only a portion of the commercial land on the north excluding the land granted. As per the schedule of the affidavit of the 1st Respondent, the southern boundary of the disputed land is the land of the

1st Respondent described in the grant no. mo/prs 55261. Southern boundary of the land granted is the land of Gunarathne Banda. The land claimed by the 1st Respondent is the land from the road to the northern boundary of the land granted to the 1st Respondent. That is the strip of the commercial land. According to the order of the learned Magistrate the disputed land is the land from the commercial land to the north up to the land of Gunarathne Banda to the south, which is the land granted to the 1st Respondent. The police reported that the land dispute is in relation to both blocks, the commercial land and the land granted. The 1st Respondent claimed the commercial land as the disputed portion and the learned Magistrate determined that the land granted to the 1st Respondent by grant 55262 is in the 1st Respondent's possession. Nothing was mentioned about the commercial land.

The letter issued by the Divisional Secretary of Buttala marked 2 Waga. 13 explain how the commercial land came in to existences. It was a land auctioned in the year 1955. The 1st Respondent's land consists of two blocks of land, one is the commercial land and the other is the land granted to him by the grant 55262 marked 2 Waga. 4. The letter 2 Waga 13 describes the Appellant's land's northern boundary as the road and the southern boundary as the boundary described in the grant, which means the two blocks - the commercial land and the land described in the grant - as one land.

In this case there is another significant factor that has to be considered. Though the 1st Respondent argues that the learned Magistrate has failed to identify the land properly, there is no disagreement to the identity of the land in dispute. The Appellant describes the land entire land which was in his possession in schedule A of his affidavit. It is the block of land including a part of the commercial land and a part of the

land granted to the 1st Respondent. The disputed portion described in schedule B, which is only a part of commercial land. The boundaries are described in the same manner as I have pointed out earlier. The 1st Respondent is also describing the disputed land as a portion of the commercial land. The police reported that the disputed land is the land consisting of the commercial land and the land granted.

This litigation was started in the year 2004 and it has already taken 12 years. Section 67(1) of the Primary Court Procedure Act provides that an inquiry under that chapter shall bring to an end within three months. A determination under chapter vii of the Act is a temporary measure to prevent the breach of peace until the rights of parties are finally decided in a competent civil Court. As such it is not fair by the parties to send this case for re inquiry.

The learned Magistrate has considered the evidence and came to a finding that the 1st Respondent was in possession of the portion of land granted. He has considered the affidavits and the documentary evidence. The learned Magistrate has not accepted certain affidavits tendered by the Appellant in evidence. He has reasoned out why he is not accepting that evidence. It is for the trial judge to decide whether to accept the evidence or not on legally acceptable reasons. In the instant case, the trial judge has given reasons. It has been held in the case of *Gunwardene v. Cabral* that;

GUNWARDENE v. CABRAL AND OTHERS [1980]2Sri L R 220

(6) The appellate court will set aside inferences drawn by the trial judge only if they amount to findings of fact based on: -

(a) inadmissible evidence; or

(b) after rejecting admissible and relevant evidence; or

(c) if the inferences are unsupported by evidence; or

(d) if the inferences or conclusions are not rationally possible or perverse.

In the instant case the finding of the learned Magistrate that the portion of land blocked out from the land granted to the 1st Respondent was in the possession Respondent need not be interfered.

The portion identified as the disputed portion by the parties is the portion blocked out from the commercial land. The Appellant admit that the possession of the land was with the 1st Respondent at the time of filing the information in Court. He admits that the 1st Respondent cleared the land and fenced out it; means that the 1st Respondent was in possession. It is for the Appellant to prove that he was in possession and was dispossessed within two months prior to the institution of this action.

When the Appellant received the information that Ranaweera was clearing the land, he did not take any interest at least to go to the land and question as to what that person is doing in his land. He directly went to the police station and made a complaint. He was careful enough not to disclose the person who gave him the information. The natural behavior of a person is to go to his land and see what is happening there. The truthfulness of the whole story of the Appellant becomes doubtful.

The Appellant tendered several affidavits to establish his possession. The learned Magistrate has examined these affidavits and expressed the view that they are not reliable. I do not intend to reconsider that finding. I wish to mention at this stage that two persons who sworn affidavits marked 1 wa 9 and 1 wa 10 in favour of the Appellant, have withdrawn their affidavits by the letter marked 2 Waga 8.

The Appellant's residence is not in question. He has tendered evidence to establish that he is residing within the premises. The question

is whether the block of land in dispute was in his possession prior to instituting this action. The Appellant has failed to prove that fact.

I hold that the block of land divided from the commercial land was also in 1st Respondent's possession at the time of institution of this action and the Appellant has failed to establish that he was in possession prior to institution of the action and was dispossessed.

Accordingly, I hold that the land in dispute reported by the police, bounded north by the road, east by land belongs to the Appellant, south by the land belongs to Gunaratne and west by the land belongs to Rupasinghe was in the possession of the 1st Respondent and he is entitle to posses.

The Appeal is dismissed subject to costs fixed at Rs. 10,000/-

At this stage I wish to point out another development in this issue. The Divisional Secretary of Monaraga has seized the property by his letter dated 10.03.2005. This judgment in any manner shall not be interpreted as nullifying the said seizer.

Judge of the Court of Appeal

Malinie Gunarathne J.

I agree.

Judge of the Court of Appeal