

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

In the matter of Appeal made under
Article 154P(3) of the Constitution of
Sri Lanka, read with Section 11 of
High Court of the Provinces (Special
Provisions) Act No. 19 of 1990.

O.I.C

Police Station,
Ambalangoda.

CA (PHC) No. 42/2002

Plaintiff

PHC Balapitiya 323/2000

MC Balapitiya Case No. 16669

Vs.

01.Kankanithanthri Nimalasiri de
Silva,

02.Sembakutti Kanakani Nimmali,

Respondent

AND

Sembakutti Kankani Nimmali,

Poya Seemawa Road,

Ambalangoda.

**2nd Respondent –
Petitioner**

Vs.

Kankanithanthri Nimalasiri de
Silva,
No 52, Maha – Ambalangoda,
Ambalangoda.

**1st Respondent –
Respondent**

Now Between

Sembakutti Kankani Nimmali,
Poya Seemawa Road,
Ambalangoda.

**2nd Respondent –
Petitioner – Appellant**

Before : W.M.M. Malani Gunarathne, J

: P.R.Walgama, J

Counsel : K.G. Jinasena for the Appellant.

: Upali Abeywickrama for the Respondent.

Argued on : 03.12.2015

Decided on: 30.05.2016

P.R.Walgama, J

This appeal lies sequel to the order of the Learned High Court Judge dated 23.07.2001, by which order the order of the Learned Magistrate's was up held. Being aggrieved by the said orders, the 2nd party Respondent has appealed to this Court to have the said impugned orders vacated /set aside.

A brief synopsis of the facts germane to the instant appeal are as follows;

The officer in charge of Ambalangoda police on 19th November 1999 filed an information in the Magistrate Court of Balapitiya in terms of Section 66 of the Primary Court Procedure Act No.44 of 1979, regarding a land dispute which could have culminated to a breach of the peace and the dispute is such that there is a likelihood of a breach of the peace.

The 1st Party Respondent made a complaint on 13.11.1999 against the 2nd Party - Respondent-Appellant stating that the Appellant had started constructing a house on the land belonging to him. It is apparent from the statement made by the 2nd Party - Petitioner - Appellant that she has agreed to stop the construction if the police so advice. Further it was her position that she was not aware that

the suit land belongs to the 1st Party – Respondent – Respondent.

Thus it is abundantly clear that the 2nd Party – Respondent – Appellant has no legal right to the land and by constructing the alleged house on a land belonging to the 1st Party – Respondent, she had forcibly entered the land in issue and dispossessed the 1st party – Respondent.

The Learned Magistrate after considering the facts and documents placed before her has arrived at the conclusion that the 2nd Party – Respondent – Petitioner – Appellant was proceeding with the construction of the alleged house. Therefore the Learned Magistrate by the said order has placed the 1st Party – Respondent in possession of the disputed land.

Being aggrieved by the said order, the 2nd Party – Respondent – Petitioner applied to the High Court by way of Revision to have the said impugned order set aside.

The Learned High Court Judge considering the facts under mentioned arrived at the conclusion that the Learned Magistrate is correct in arriving at the above determination by placing the 1st Party – Respondent in possession of the subject land.

It is alleged by the Petitioner – Appellant that the Learned Magistrate has not properly identify the

land which is the subject matter of this action. But it is seen that the Learned Magistrate has placed the 1st Party Respondent on the land claimed by him. Therefore the Learned Magistrate has ordered that the 1st Party - Respondent should be placed in possession after avoiding the land reserved for the state. Therefore no difficulty will arise in restoring the 1st Party - Respondent in possession.

It is apparent from the statement by the 2nd Party - Petitioner - Appellant made to the police that she built a house with wooden planks on the reserve land of the State, and after she was warned by the Police to remove the structure, she had removed it and built a house towards the south of the said land without knowing the said lot belongs to the 1st Party - Respondent.

Further the Learned High Court Judge had gone beyond the possession of the 1st Party - Respondent and was satisfied with the fact that he is entitled to disputed land, and the southern boundary is the Madampa river. The 2nd Respondent - Petitioner - Appellant's position was that she constructed the house towards south, closer to the river, which is apparently in the land belonging to the 1st Party - Respondent.

In the above context the Learned High Court Judge was of the view that as per information filed in

the case bearing No. 16669 in the Magistrate Court of Balapitiya, the affidavits and the petitions and counter affidavits filed by the parties to the action confirmed the fact that the 2nd Party Respondent – Petitioner – Appellant has forcibly dispossessed the 1st Party – Respondent, two months prior to the information was filed by the police in terms of Section 66 of the Primary Court Procedure Act No.44 of 1979.

In the afore said factual and legal matrix I am persuaded to up hold the impugned orders of the Learned High Court Judge and Learned Magistrate. Accordingly appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malani Gunarathne, J
I agree,

JUDGE OF THE COURT OF APPEAL