

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

CA (PHC) 190/2014

Deepal Sooriyarachchi,
No.423/8, 5th lane, Samagi Mawatha,
Udahamulla, Nugegoda.

1st Party-Petitioner-Appellant

Vs.

Serange Seetha Alwis,
No.423/8, 5th lane, Samagi Mawatha,
Udahamulla, Nugegoda.

2nd Party-Respondent-Respondent

Before : Malini Gunarathne J.

: L.T.B. Dehideniya J.

Counsel : Buddika Gamage for the Appellant.

Upali Abeywickrama for the Respondent.

Argued on 15.12.2015

Written Submissions of the Appellant on : did not file

Written Submissions of the Respondent on: 18.01.2016

Decided on : 16.02.2016

L.T.B. Dehideniya J.

This is an appeal from the order of the Learned High Court Judge of Colombo dismissing a revision application filed to revise the order of the Learned Magistrate of Nugegoda in an application filed by the Police under section 66 of the Primary Procedure Code Act. The first party Petitioner, Appellant, (hereinafter called and referred to as the Appellant) is the son and the second party Respondent, Respondent, (hereinafter called and referred to as the Respondent) is the mother. The Appellant's contention is that he was in possession of a room in the house no. 423/8 and was using the kitchen in common. On a certain day when he came home found that the way to the kitchen had been blocked and he had to force open the door to gain entrance to the kitchen. The Respondent's side of the story is that the house belongs to her and she was in possession of the entire house. She has given certain parts of the house on rent to several persons and the rest was in her possession. The Appellant had entered in to the house forcibly and damaged the doors on 27th February 2014, while she was on a pilgrimage. After an inquiry, the learned Magistrate delivered the order in favour of the Respondent. The Appellant filed a revision application in the High Court which was dismissed in limine. Being aggrieved by the said order, the Appellant presented this appeal.

The information under section 66 of the Primary Procedure Code Act was filed by the police in the Magistrate's Court on 14.03.2014 informing that there is a land dispute threatening a breach of peace. This being a dispute in relation to the possession (a part of a house), the Court has to decide

who was in possession at time of filing the information and whether there was a dispossession within two months prior to filing it.

The Respondent says that she is the owner of the house in dispute and produced the title deed marked as 2 wa 1. Even though the ownership is not the deciding factor in an action under section 66 of the Primary Court Procedure Act, as far as it leads to establish the fact that the owner is in possession, the ownership is material. The Respondent says that the house belongs to her and she is in possession of her house. The Appellant is her son. Under these circumstances, it can be presumed that the house was in Respondent's possession. The electoral lists for the year 2013 and 2014 further strengthen this fact. The Grama Niladhari has given a certificate of residence to the Appellant as well as to the Respondent stating that they are residing at the disputed premises. Therefore it cannot be considered as a conclusive proof on possession.

In the book titled "The Law of Property Volume iii, Actions" by Wijeeyadasa Rajapakse at page 219 it says,

"As Wille define the possession means physical control by a person of a corporal thing with the intention of keeping the control of it for his own benefit. Such possession can be established against the whole world. The physical element of the possession is that the person who claims title had control custody or occupation. The mental element is that he had the intention of possessing it for himself."

In the present case the control of the house was with the Respondent. The Appellant has admitted in the police statement dated 2013.09.16 marked

with 1 PA 4 that the Respondent has given this house on rent to several families. In the statement dated 2013. 11.27, the Appellant has admitted that the Respondent has given a room to a lady. This establishes the fact that the control of the premises, that is the physical part of the possession, was with the Respondent. She has made several complaints to the police to protect her interest which shows the mental part of possessing it for herself.

The Appellant has admitted that he is the son of the Respondent. In the statement dated 2013.09.16 the Appellant admitted that he was residing in this premises since his childhood. A child who is residing with his mother does not get any independent right to possession of a part of that house. The child is licensee and the possession is with the mother. Therefore, even though the Appellant (the son) resided in the premises, he cannot claim possession against the Respondent (his mother). Therefore, I hold that at the time of filing the information, the possession was with the Respondent.

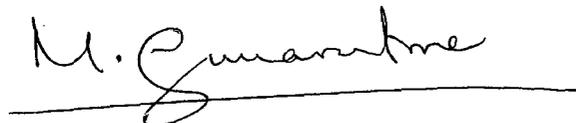
Under these circumstances I see no reason to interfere with the finding of the learned High Court Judge. The appeal is dismissed with costs fixed at Rs.25000.00



Judge of the Court of Appeal

Malini Gunarathne J.

I agree.



Judge of the Court of Appeal