

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

In the matter of an Application for  
a Revision in terms of Article 138 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

Jayaweera Mudiyansele Chandrika  
Priyadharshani,  
Competent Authority,  
Plantation Management Monitoring  
Division,  
Ministry of Plantation Industries,  
No: 55/75, Vauxhal Lane,  
Colombo – 02.

Magistrate Court – Hatton

**Applicant**

Case No: 58988/12

**Court of Appeal**

**Vs.**

**Revision Application**

Sinniah Selvanayagam,

**No: 06/2012**

14/9, Nursing Home Road,  
Hatton.

***NOW BETWEEN***

Sinniah Selvanayagam,

14/9, Nursing Home Road,  
Hatton.

**Respondent – Petitioner**

**Vs.**

01. Jayaweera Mudiyansele  
Chandrika  
Priyadharshani,  
Competent Authority,  
Plantation Management Monitoring  
Division,  
Ministry of Plantation Industries,  
No: 55/75, Vauxhal Lane,  
Colombo – 02.

**Applicant – 1<sup>st</sup> Respondent**

02. The Attorney General,  
Attorney General's Department,  
Hulftsdorp, Colombo – 12.

**2<sup>nd</sup> Respondent**

**Before : P.R.Walgama, J**

**Counsel : S. Kumarasingham for the Petitioner.**

**: K.V.S. Ganesharajan with S. George  
Kamalayogeshwaran & I. Sivalingam for the 1<sup>st</sup>  
Applicant – Respondent.**

**Argued on : 14.01.2016**

**Decided on: 28.06.2016**

**P.R.Walgama, J**

The Applicant – Respondent (in short the Applicant) instituted action in the Magistrate Court of Hatton, in the case bearing No. 58988, against the Respondent – Petitioner (in short the Appellant) in terms of Section 3 of the State Land Recovery of Possession Act No. 07 of 1979.

The primary bone of contention of the Applicant was that the subject land belongs to the State and the Respondent – Petitioner is in illegal possession of the said land without a valid legal document. In the above setting the Applicant has moved for an order in terms of Section 10 of the said Act to eject the Appellant from the above land.

In pursuant to the above application by the Applicant the Learned Magistrate issued notice to the Respondent – Petitioner to appear in Court and show cause as to why the court should not issue an order to eject the Respondent – Petitioner.

In response to the above the Respondent – Petitioner has stated the following;

That the disputed land belonged to the Land Reform Commission and the said Commission has by a deed of sale sold the said land to the wife of the Respondent – Petitioner by deed bearing No. 4170, marked as X1.

Therefore it is contended by the Respondent - Petitioner that the disputed land is not a State Land, a private land belongs to his wife.

It is intensely relevant to note that the Learned Magistrate has arrived at the conclusion that the land described in the schedule to the notice of ejectment, is different from the land described in the schedule to the said deed. Besides it is noted that the extent and the boundaries of these two lands are also different.

In the above setting the Learned Magistrate has arrived at the conclusion that the Respondent - Petitioner is not entitled to be in the said disputed land, as such issued an order for ejectment in terms of Section 10 of the above Act.

Being aggrieved by the impugned order of the Learned Magistrate, the Respondent - Petitioner came by way of revision to this Court to have the said order of the Learned Magistrate set aside or vacate.

In addition it is viewed that the Respondent - Petitioner has produced a plan which depicts the land which he possessed, the said plan is No. 1883 dated 18.07.2000.

It is also alleged by the Respondent - Petitioner that the subject land belongs to his wife. The Applicant has failed to file action against the proper party.

This Court has observed the fact that the Applicant has never challenged the above plan, to say that the Lot No. 2 of the said plan belongs to the State.

In the above back drop, when the impugned order of the Learned Magistrate is reviewed this Court is of the view that the said order cannot stand and should be set aside forthwith.

Thus I set aside the order of the Learned Magistrate and allow the application accordingly.

**JUDGE OF THE COURT OF APPEAL**