

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

In the matter of an appeal against
judgment of Provincial High Court
exercising its revisionary jurisdiction.

CA (PHC) / 161 / 2011

Provincial High Court of

Northern Province (Jaffna)

Case No. Revision 1433 / 2011

Primary Court Jaffna

Case No. PC 37

1. Rajeshwary Sriskantharasa
No. 372,
Point Pedro Road,
Nallur,
Jaffna.

2

2. Krishnapillai Sriskantharasa,

No. 372,

Point Pedro Road,

Nallur,

Jaffna.

(Now deceased)

INFORMANT - RESPONDENT -

APPELLANTS

-Vs-

1. Selvam Vijendrakumar,

2. Sutha Vijendrakumaar,

Both of

Waidya Road,

Dehiwala,

Colombo.

(Presently of

Wellapillayar Kovilady,

Senkuntha Road,
Thirunelvely East,
Jaffna).

3. Thirunavukarasu Santhirakumar,
Senkuntha Road,
Thirunelvely East,
Jaffna.

RESPONDENT - PETITIONER -

RESPONDENT

Before: P. Padman Surasena J (P/CA)

K K Wickremasinghe J

Counsel; Niran Anketell for the Informant - Respondent - Appellant.

V Puvitharan PC with Subhani Kalugamage and Anuja Rajanayagam for the 1st and 2nd Respondent - Petitioner - Respondents.

Argued on : 2017 - 10 - 16

Decided on : 2018 - 02 - 21

JUDGMENT

P Padman Surasena J (P/CA)

The Informant - Respondent - Appellants (hereinafter sometimes referred to as the Appellants) had filed an information in the Primary Court of Jaffna under section 66 (1) (b) as a private information complaining to the learned Primary Court Judge that the Respondent- Petitioner - Respondents (hereinafter sometimes respectively referred to as the 1st 2nd and 3rd Respondents or Respondents) had attempted to disturb the peaceful possession of the land in question.

At the outset the following common grounds must be highlighted for the purposes of convenience and clarity.

- i. The Appellants had filed information under section 66 (1) (b) of the Primary Courts Procedure Act No. 44 of 1979 (hereinafter sometimes referred to as the Act) in the same Court¹ under the Case bearing No. PC 28/09.
- ii. The said case No. PC 28/09 was concluded and an order had been delivered on 2009-12-02 to the effect that the Appellants are entitled to the possession of the impugned land,
- iii. The information in the instant case had been filed with an affidavit dated 2010-02-23. This is less than 03 months after the order in the previous case² was delivered.
- iv. The previous case was filed only against the 3rd Respondent.³
- v. The 3rd Respondent inducing 1st and 2nd Respondents disturbed the possession of the Appellants on 2010-02-04,⁴

¹ Primary Court of Jaffna.

² Case No. PC 28/09

³ Paragraph 18 of the affidavit dated 2010-02-23 filed by the Appellants.

⁴ Paragraph 07 & 15 of the affidavit dated 2010-02-23 filed by the Appellants.

- vi. The 3rd Respondent had stated in his affidavit filed in the previous case that he had been enjoying this property as an agent of the 1st and 2nd Respondents.⁵

Learned Primary Court Judge having inquired into this complaint, had by his order dated 2010-11-30, directed that the Appellants are entitled to the possession of the land in dispute.

It is important to note that the learned Primary Court Judge in his order dated 2010-11-30, makes the following assertions clear.

- I. The incident in the instant case had occurred when attempting to execute the order of the Court in the previous case (i.e. PC 28/09).
- II. The informants should have taken steps to invoke the provision under section 73 of the Act.
- III. He had taken the said view right from the beginning of this case but had proceeded to hold an inquiry upon the consent of both parties.

⁵ Paragraph 21 of the affidavit dated 2010-02-23 filed by the Appellants.

Being aggrieved by the said order made by the learned Primary Court Judge, the Respondents had made a revision application to the Provincial High Court of Northern Province holden in Jaffna urging the Provincial High Court to revise the order made by the learned Primary Court Judge.

The Provincial High Court after hearing parties, by its judgment dated 2011-05-25 had allowed the said application for revision and proceeded to set aside the order of the learned Primary Court Judge.

It is against that judgment that the Appellant has filed this appeal in this Court.

The basis upon which the learned Provincial High Court Commissioner had set aside the judgment of the Primary Court are twofold. They are as follows;

- a) That the parties to a dispute of this nature cannot confer jurisdiction to Court,
- b) Learned Primary Court Judge had failed to consider whether there was a breach of peace before proceeding to inquire into the instant case.

Learned Provincial High Court Commissioner had directed that the status core as at the date of instituting this case should be maintained until the relevant District Court case is decided.

It would be relevant at this juncture to turn to section 69 (2) of the Act which is as follows;

S. 69 (2)

" ...An order under this subsection may declare that any person specified therein shall be entitled to any such right in or respecting the land or in any part of the land as may be specified in the order until such person is deprived such right by virtue of an order or decree of a competent Court, and prohibit all disturbance or interference with the exercise of such right by such party other than under the authority of an order or decree as aforesaid. ..."

Indeed learned Primary Court Judge at the conclusion of his order dated 2009-12-02⁶ had stated that any person who violates that order would be punished under the provisions in section 73 of the Act.

⁶ Previous case bearing No. PC 28/2009

It is unfortunate that the Appellants for the reasons best known to them or to their learned counsel, had not taken any step to deal with the persons who are alleged to have contravened the order of the Primary Court in the case No PC 28/2009.

It is clear that the rival parties in the previous case (i.e. No PC 28/2009) are rival parties in the instant case too. The effect of the order of the Primary Court in the case No PC 28/2009 is that it was the Appellants who are entitled to the possession of the disputed land. This order had been delivered on 2009-12-02. This means that it should be the Appellants who should be entitled to the possession of the said land even as at the date on which the information in the instant case was filed with an affidavit dated 2010-02-23. This is because the previous order of Court is binding on the parties. It is not open for such parties to re agitate the same matter in the same forum after the lapse of such short period. It is unfortunate that learned Primary Court Judge had knowingly entertained this case in such a situation.

For the foregoing reasons this Court decides to set aside both the order dated 2010-11-30 of the learned Primary Court Judge of Jaffna and the order dated 2011-05-25 of learned Provincial High Court Commissioner of

Jaffna. This Court further directs that the order of the Primary Court in the case bearing No. PC 28/2009 must remain in force subject to law, as it is erroneous to entertain a second case on the same matter.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL