

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

In the matter of an appeal against an
order of the Provincial High Court in the
exercise of its revisionary jurisdiction.

C A (PHC) / 124 / 2012

Provincial High Court of

Western Province (Gampaha)

Case No. HC (Rev) 08/ 2011

Primary Court Attanagalla

Case No. 15305

Ponnaiah Adhistravelu,

'Vijaya Bhoomi',

Meerigama Road,
Banduragoda.

PETITIONER - RESPONDENT -

APPELLANT

Vs

1. D R Dharmawardana Dissnayaka,
No. 37,
Balagalla,
Divulapitiya.
2. D R Pushpakumara Dissanayaka No.
159,
Balagalla,
Divulapitiya.

RESPONDENT - PETITIONER -

RESPONDENTS

Before: P. Padman Surasena J (P C/A)

K K Wickremasinghe J

Counsel; S A D S Suraweera for the Petitioner - Respondent - Appellant.

P K Prince Perera for the Respondent - Petitioner - Respondents.

Argued on : 2017-10-16

Decided on : 2018 - 02 - 28

JUDGMENT

P Padman Surasena J (P C/A)

The Petitioner - Respondent - Appellant (hereinafter sometimes referred to as the Appellant) had instituted this case against the Respondent - Petitioner - Respondents (hereinafter sometimes referred to as the

Respondents) in the Primary Court of Attanagalla under section 66 (1) (b) of the Primary Courts Procedure Act No. 44 of 1979, as a private information, seeking an order declaring that he be entitled to have the possession of the impugned premises.

Learned Primary Court Judge having inquired into this complaint, had by his order dated 2011-03-28, had concluded that the Appellant is entitled to the possession of the premises.

Being aggrieved by the said order made by the learned Primary Court Judge, the Respondents had filed an application for revision in the Provincial High Court of Western Province holden in Gampaha seeking a revision of the order made by the learned Primary Court Judge.

The Provincial High Court after hearing parties, set aside the order of the learned Primary Court Judge on the basis that an appeal against the order of the District Court delivered in respect of the same subject matter is pending.

It is against that judgment that the Appellant has appealed to this Court.

It is common ground,

- i. that the said District Court case is in respect of the same subject matter as in the instant case,
- ii. that the District Court had dismissed the action filed by the Respondent praying for the possession of the disputed premises,
- iii. that the District Court in that judgment had held that although the Appellant is an over holding lessee he cannot be evicted because the Rent Act applies to the instant dispute,
- iv. that the breach of peace complained in the instant case occurred when the Appellant went to open the said premises after the District Court judgment was delivered,
- v. that the Appellant had halted his business activities upon an interim order made by the District Court.

Perusal of the judgment of the District Court shows that the Respondent had instituted the said District Court case to evict the Appellant who continues to be in possession even after the lapse of the lease agreement. Indeed this fact was not denied by the learned counsel for the Respondent. This shows that the Respondents had admitted that it was the Appellant who was in the possession of the disputed premises at least as at the date

of filing the said District Court case. Perusal of the enjoining order issued by the District Court shows that the said order had prevented the Appellant from carrying on his business at the impugned premises. This too further buttresses the position that the Appellant had possessed the premises.

It is common ground that the said District Court case has been concluded. As such, there is no order by a competent Court. To the contrary, the judgment of the District Court has confirmed that it was the Appellant who is entitled to the possession. The reason as to why learned District Judge had refused to evict the Appellant is the application of the provisions of the Rent Act to the disputed premises. Therefore, it is the Appellant who has been in possession of the relevant premises on the date of the filing of the information in Primary Court under section 66 of the Primary Courts Procedure Act No. 44 of 1979.

It is a fact that the Respondents had disturbed the peaceful possession of the Appellant. Learned Primary Court Judge has held that the Appellant is entitled to the possession of the said premises. There is no basis for the learned Provincial High Court Judge to set aside the order of the learned Primary Court Judge as the District Court action has been concluded.

For the foregoing reasons this Court is of the opinion that it cannot justify the impugned order made by the learned Provincial High Court Judge.

In these circumstances this Court proceeds to set aside, the order of the learned Provincial High Court Judge dated 2012-08-23 and affirm the order dated 2011-03-28 made by the learned Primary Court Judge of Attanagalla. No cost is granted.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL