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.

C A (PHC) / 116 / 2008

Provincial High Court of

Northern Province (Vaunia)

Case No. Rev 176 / 2007

Magistrate's Court Mannar

Case No. 19087

Mohommed Ratnam Mohommed Naufil,

No. 14/1,

Auburn Side,

Dehiwala.

RESPONDENT - PETITIONER - APPELLENT

-Vs-

1. Annammah Stanley De Mel,
   Divisional Secretary,
   Mannar.

COMPLAINANT - RESPONDENT - RESPONDENT

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

K K Wickremasinghe J

Counsel; N R Sivendran for the Respondent- Petitioner – Appellant.

Chaya Sri Nammuni SC for the Complainant - Respondent – Respondent.

Argued on : 2017-10-16.

Decided on : 2018-02-28.

JUDGMENT

P Padman Surasena J

The Complainant - Respondent - Respondent (hereinafter sometimes referred to as the Respondent) had issued a quit notice on the Respondent - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant), in terms of section 3 of the State Lands (Recovery of Possession) Act (hereinafter sometimes referred to as the Act).

As the Appellant had failed to respond to the said quit notice, the Respondent had thereafter made an application under section 5 of the Act to the Magistrate's Court of Mannar seeking an order to evict the Appellant from the land described in the schedule to the said application.

Learned Magistrate after an inquiry had pronounced the order dated 2007-11-05 evicting the Appellant from the said land on the basis that he had failed to produce a permit or due authority to remain in the said land.

Being aggrieved by the said order made by the learned Magistrate, the Appellant had filed a revision application in the Provincial High Court of Northern Province holden in Vaunia seeking a revision of the order of the learned Magistrate.

The Provincial High Court after the conclusion of the argument, had pronounced its judgment dated 2008 -10-10, holding that there is no basis to deviate from the conclusions arrived at by the learned Magistrate. The Provincial High Court had then proceeded to dismiss the said revision application.

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

It was the submission of the learned counsel for the Appellant that the Appellant had relied on the deed bearing No. 246 to establish that the disputed land is a private land. Further, it was his submission that the said deed had been attested by the particular Magistrate who had delivered the impugned order pertaining to this case when he was practicing as a Notary

Public. It was his submission that the learned Magistrate was bias due to this.

The deed above referred to, appears to have effected a transfer of the land referred to therein. However, it does not set out how and when any title was devolved upon the said vendor mentioned therein. In that sense, it is no more than a declaration (rather than a transfer of an existing title).

Whatever the nature it ought to be, one has to bear in mind that such matters have no relevance for the inquiry before the learned Magistrate under section 9 of the Act. In any case, it is not a case where the learned Magistrate either has been a party to this case or has been a party to the transfer of the land. He is not alleged to have had any other interest in this case. His only involvement remains as the Notary Public who had attested this deed (may be amongst many other deeds attested by him) in the course of his professional duties.

Section 49 (1) of the Judicature Act states as follow;

> " .... Except with the consent of both parties thereto, no Judge shall be competent, and in no case shall any Judge be compellable, to

exercise jurisdiction in any action, prosecution, proceeding or matter in which he is a party or personally interested. .. "

In view of the above, this Court is of the view that the learned Provincial High Court Judge is right when he held that the Appellant had not proved any bias on the part of the learned Magistrate. After all, the deed in question is not a document that has relevance to the inquiry held before the learned Magistrate.

It must be noted that section 9 of the Act sets out the scope of the inquiry to be held before the Magistrate in following terms;

"... At such inquiry the person on whom summons under section 6 has been served shall not be entitled to contest any of the matters stated in the application under section 5 except that such person may establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid. ..."

This Court in the case of Muhandiram vs. Chairman, No.111, Janatha Estate Development Board[1] has re-iterated this position in following terms;

" ... Unless the respondent-petitioner had established before the learned Magistrate that he was in occupation of the land stated in the schedule to the application on a valid permit or other written authority of the State, he cannot continue to occupy the said land and in terms of the State Lands (Recovery of Possession) Act, No. 7 of 1979, the Magistrate has to make an order directing the respondent and his dependents to be ejected from the land. ..."

The Supreme Court in the case of L H M B B Herath, Chief Manager Welfare and Industrial Relations, Sri Lanka Ports Authority V Morgan Engineering (Pvt) Ltd.[2] the Supreme Court in the said judgment had held that section 9 of the Act has placed limitations on the scope of the inquiry which should be conducted by the Magistrate.

As the State Lands (Recovery of Possession) Act has been enacted for the speedy recovery of state lands from unauthorized possession or occupation, the Supreme Court went on to state in the above judgment as follows;

[1] 1992 (1) SLR 110
[2] SC Appeal 214/2012 decided on 2013-06-27.

"... if the language of the enactment is clear and unambiguous, it would not be legitimate for the Courts to add words by implication into the language. It is a settled law of interpretation that the words are to be interpreted as they appear in the provision, simple and grammatical meaning is to be given to them, and nothing can be added or subtracted. The Courts must construe the words as they find it and cannot go outside the ambit of the section and speculate as to what the legislature intended. An interpretation of section 9 which defeats the intent and purpose for which it was enacted should be avoided. ..."

In the instant case, it is clear upon consideration of the material adduced before this Court, that the Appellant has failed to establish that he is in possession or occupation of the said land upon any written authority of the state granted in accordance with any written law and that such authority is in force and not revoked or otherwise rendered invalid as required by section 9 of the Act.

Thus, this Court sees no merits in this appeal.

For the foregoing reasons, this Court decides to dismiss this appeal with costs costs fixed at Rs. 50,000/= payable to the state by the Petitioner.

Appeal is dismissed with costs fixed at Rs. 50,000/=.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL