

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) / 275 / 2003

Provincial High Court of

Southern Province (Hambantota)

Case No. HCA (Rev) 103 / 2002

Primary Court Tangalle

Case No. 66897

1. Pinchahevage Dharmadasa,
Nidahasgama East,
Ranna.

2. Mirissalankage Bandula,

2

Kahandava East,
Ranna.

3. Hewa Angappulige Dayananda,
Nidahasgama West,
Ranna.

4. Kirindagoda Gamage Jayalal,
Nidahasgama West,
Kahandawa,
Ranna.

5. Mirissalankage Gamini,
Nidahasgama West,
Kahandawa,
Ranna.

6. Kihimbiyage Sarathchandra,
Nidahasgama West,

Ranna.

PETITIONER - APPELLANTS

Vs.

1. Wijesekara Arachchige Willie,
Kahandamodara, Levaya Mawatha,
Ranna.

2. 2 (a) Mahamarakkala Kurukulasuriya
Patabandige Hemal Priyanath Perera,
2 (b). Hiran Chaminda Kurukulasuriya,
2 (c). Achala Nadun Kurukulasuriya,

All of No.43,
Chatis Place,
Rawathawatte,
Moratuwa.

3. Hewa Ambepitiyage Sunil,

Nidahasgama East,

Ranna.

4. Wijesekara Arachchige Sirinimal,

Nidahasama East,

Ranna.

5. Kakshchipatambanige Nimal,

Linde Yaya,

Bataathama South,

Ranna

6. Deffuvavala Muhandiramge Sadiris,

Kahandamodara,

Ranna.

RESPONDENT - RESPONDENTS

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

K K Wickremasinghe J

Counsel; Dr. Sunil Cooray with Sudharshani Cooray for the Petitioner -
Petitioner - Appellant.

Hirosha Munasinghe for the 1st 3rd 4th and 5th Respondent -
Respondents.

Argued on : 2017-09-13 and 2017-10-06

Decided on : 2018 - 05 - 24

· JUDGMENT

P Padman Surasena J

The Officer in Charge of Hungama Police Station had filed an information in the Primary Court of Tangalle under section 66 (1) of the Primary Courts Procedure Act No.44 of 1979 (hereinafter referred to as the Act), complaining to the learned Primary Court Judge about an existence of a breach of peace between two parties over a dispute relating to the possession of the land relevant to the dispute in this case.

Learned Primary Court Judge, having inquired into the said complaint, by her order dated 2002-11-26, had held that the Court is not in a position to reconsider the merits of the instant case in view of a previous order of Court in the Primary Court Tangalle case No. 28820. This was because the learned Primary Court Judge had taken the view that the subject matter in the instant case is the same as that in the previous case.

Being aggrieved by the said order of the learned Primary Court Judge, the Appellant had filed a revision application in the Provincial High Court of Southern Province holden in Hambantota, urging the Provincial High Court to revise the order made by the learned Primary Court Judge.

The Provincial High Court, by its order dated 2003-11-18, had refused and dismissed the said revision application on the basis that the conclusion of the learned Primary Court Judge is correct.

It is the said order that the Appellant seeks to canvass in this appeal before this Court.

It is to be noted at the outset that the learned Primary Court Judge in this case, in holding that the Respondents are entitled to possess the relevant land, had totally relied on the order of the previous case bearing No. 28820

of Magistrate's Court of Tangalle. Learned Primary Court Judge had proceeded on the basis that the Corpus pertaining to that case is the same as in the instant case. It was the view taken by the learned Primary Court Judge that the possession of lot 108, which is the corpus in the instant case, has already been handed over to the Respondents by the fiscal of the Court pursuant to the order of Court in the said previous case.

However, it is the position of the Appellants that the entirety of the said lot 108 of plan number F V P 324 was never handed over by the fiscal to the 1st Respondent.

As pointed out by the learned Counsel for the Appellant, this Court observes the followings.

- i. The 1st Respondent in the statement made by him to police on 1997-03-26 had specifically admitted that he was in possession only of 4 acres of land.
- ii. The 1st Respondent had stated in the document produced marked **4** **V 6** that he is in possession of the land in extent of only 4 acres. He had proceeded to give the eastern boundary of his land as the wasteland. (This is an indication that the land referred to, by the 1st

Respondent is a land other than the Corpus relevant to the instant case.)

- iii. Grama Niladhari of the area has confirmed that the 1st Respondent is in possession of only 4 acre land, the boundaries of which have been given in the document produced marked **4 V 7**. According to that document, the eastern boundary of the said land is the wasteland.

This Court observes that the Magistrate's Court case bearing No. 28820, had dealt with a corpus, which is a 4-acre paddy land. However, the corpus relevant to the instant case is the wasteland, which is lying on the eastern boundary of the said 4-acre paddy land.

This Court observes that the learned Magistrate, who has delivered the order in the Magistrate's Court of Tangalle in the case No. 28820, had accepted the fact that the 1st Respondent was in possession of the land the boundaries of which had been explained by the 1st Respondent himself. Accordingly, the fiscal of the Court had handed over the possession of that land in that case as shown by the parties. Thus, it is clear that the corpus in the instant case, which is the lot 108, was never handed over to the 1st Respondent by the fiscal of the Court in the Magistrate's Court case bearing No. 28820.

Further, the Court could not have granted a 10-acre land to the 1st Respondent in that case when he had only claimed a 4-acre land.

Thus, this Court is convinced that both the learned Primary Court Judge and the learned Provincial High Court Judge had failed to consider the aforesaid points and hence had erred in their respective orders. Therefore, this Court cannot permit them to stand any longer.

In these circumstances, this Court proceeds to set aside the order dated 2002-11-26 of the learned Primary Court Judge of Tangalle, as well as the order dated 2003-11-18 of the learned Provincial High Court Judge.

This Court directs the learned Primary Court Judge of Tangalle to consider all relevant material already adduced by the parties before Court and pronounce an order on the merits of the case according to law.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL