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

In the matter of an application in revision under and in terms of Article 138 of the Constitution.

Case No. CA (PHC) APN No:110/2016

PHC Puttalam Case No: HCR 05/2015

MC Puttalam Case No:10095/2014

Rameez Uddeen Mahamoor,

No.5,6th Lane,Nawala,

Rajagiriya.

1st Party-Petitioner-Petitioner

Vs.

Lalith Munasinghe Perera,

18, ¾ Mile Post, Anuradhapura Road,

Ihalapuliyankulama.

2nd Party-Respondent-Respondent

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

D.A.P. Weeraratne for 1st Party-Petitioner-Petitioner

K.V.S. Ganesharaja with S. George and Deepika Yogarajah for 2nd Party-Respondent-Respondent

Written Submissions tendered on:

1st Party-Petitioner-Petitioner on 27.09.2018

Argued on: 30.07.2018

Decided on: 31.10.2018

Janak De Silva J.

This an application in revision made against the order of the learned High Court Judge of Puttalam dated 12.07.2016.

This matter arises out of an information filed by the Officer-in-Charge of the Saliyawewa Police under section 66(1)(a) of the Primary Courts Procedure Act (Act). Information was filed on 25.11.2014. The parties were permitted to file affidavits, counter affidavits and documents. The 1st Party-Petitioner-Petitioner (Petitioner) claimed that he was in possession of the land in dispute from 17.03.2010 whereas the 2nd Party-Respondent-Respondent (Respondent) claimed that he was in possession of the land in dispute for about 20 years.

The parties admitted that the land in dispute is depicted as "G" in the sketch filed by the Police. (Journal Entry dated 25.11.2014).

The learned Magistrate held that the Respondent had established that he was in possession of the land in dispute on the date that information was filed and that the Petitioner had failed to establish the exact day on which he was evicted from the land in dispute by the Respondent. Accordingly, he held that the Respondent was entitled to possession of the land in dispute.

The Petitioner moved in revision to the High Court against the said order. The learned High Court Judge by his order dated 12.07.2016 dismissed the said application on the basis that the Petitioner had failed to establish exceptional circumstances as well as him having an alternative remedy. Hence this application in revision.

One of the main arguments of the learned counsel for the Petitioner is that the land in dispute is not properly identified. He submitted that whereas the land claimed by the Petitioner is identified as *Dangaha Kumbura* the Respondents claimed a portion of land called *Thambigewela*. The learned counsel for the Petitioner relied on *Punchi Nona v. Padumasena and others* [(1994)2 Sri.L.R. 117]. However, as pointed out earlier, parties in the Magistrates Court admitted that the land in dispute is depicted as "G" in the sketch filed by the Police. (Journal Entry dated 25.11.2014).

Section 58 of the Evidence Ordinance reads:

> "No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:
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> Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

Accordingly, an admission can be made in the following ways:

(i) Where the parties or their agents agree to admit a fact at the hearing;

(ii) Where before the hearing, parties agree to admit a fact by any writing under their hands;

(iii) Where, by any rule of pleading in force at the time the parties are deemed to have admitted a fact by their pleadings.

The admission in the instant case as to the identity of the land in dispute was one made within (i) above. An admission of fact made by counsel is binding on the client [Coomaraswamy, *The Law of Evidence*, Vol. I, page 129]. It is sometimes permissible to withdraw admissions on questions of law but admissions on questions of fact cannot be withdrawn [*Uvais v. Punyawathie* (1993) 2 Sri.L.R. 46]. However, in *Sivaratnam and others v. Dissanayake and others* [(2004) 1 Sri.L.R. 144 at 148] Amaratunga J. sought to explain the principle as follows:

> "The decision in Uvais v Punyawathie (supra) is authority for the proposition that a fact specifically admitted at the trial and relied on by the opposite party in deciding how he should present his case cannot be withdrawn or departed from at the stage of the appeal. See also Mariammai v. Pethurupillal. Fernando, J.'s judgment in Uvais's case makes it very clear that what is not permitted is the withdrawal of an admission in circumstances where such withdrawal has the effect of subverting the fundamental principles of the Civil

Procedure Code in regard to pleadings and issues. That judgment is not authority for the broader proposition that an admission once made cannot be withdrawn at all. An admission made in a written statement may be subsequently withdrawn with the permission of the Judge. Muhammad Altof All Khan v Hamid-ud-din. Section 183 proviso of the Code of Criminal Procedure Act, No. 15 of 1979 explicitly demonstrates that an admission can be withdrawn. Thus, the law's refusal to allow the withdrawal of an admission is a matter depending on the circumstances of each case."

In the present case, no attempt was made to withdraw the admission as to the identity of the corpus either in the Magistrate's Court or the High Court. Accordingly, I am of the view that the Petitioner cannot now be permitted to do so and argue that the identity of the corpus is in issue.

In *Ramalingam v. Thangarajah* [(1982) 2 Sri.L.R. 693 at 698] Sharvananda J. (as he was then) stated as follows:

"In an inquiry into a dispute as to the possession of any land, where a breach of peace is threatened or is likely under Part VII of the Primary Courts Procedure Act, the main point for decision is the actual possession of the land on the date of the filing of the information under section 66, but where forcible dispossession took place within two months before the date on which the said information was filed the main point is actual possession prior to the alleged date of dispossession."

The learned counsel for the Petitioner submitted that the documents tendered by the Respondent does not establish that he was in possession of the land in dispute. However, the learned Magistrate has correctly concluded that the evidence tendered on behalf of the Respondent does in fact establish his possession of the land in dispute whereas the Petitioner has failed to do so.

In this regard an important item of evidence is the document marked 2වා1 which is a certified copy of the proceedings in D.C. Puttalam 2109/L which has been filed on 18.12.2013, more than a year prior to information been filed under section 66(1)(a) of the Act, by the Respondent and 5 others against one Ferdinandusz and I.B. Newton Pieris. The plaintiffs claimed that they were in

possession of the land in dispute and sought inter alia a declaration that they are entitled to possess the said land and preventing the defendants evicting them from the said land. The defendants were two of the vendors who had purportedly sold the land in dispute to the Petitioner. This is an important fact which establishes that the Respondent was in possession of the land in dispute at least one year prior to the date when information was filed. The Petitioner failed to establish that he took over possession of the land in dispute thereafter.

On a careful reading of the evidence, I am of the view that the learned High Court Judge correctly concluded that there are no exceptional circumstances to interfere with the assessment of the evidence made by the learned Magistrate.

The Petitioner having moved the High Court by way of revision had a right of appeal to this court against the order of the learned High Court Judge of Puttalam dated 12.07.2016. However, he has filed a revision application instead of an appeal. In *Dharmaratne and another v. Palm Paradise Cabanas ltd. and others* [(2003) 3 Sri.L.R. 24 at 30] Amaratunga J. held:

> "Thus the existence of exceptional circumstances is the process by which the Court selects the cases in respect of which this extra-ordinary method of rectification should be adopted. If such a selection process is not there revisionary jurisdiction of this Court will become a gateway for every litigant to make a second appeal in the garb of a revision application or to make an appeal in situations where the legislature has not given right of appeal.
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> The practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed. The words used by the legislature do not indicate that it ever intended to interfere with this 'rule of practice'."

There are no exceptional circumstances, which justifies this Court exercising the extraordinary powers of revision against the order of the learned High Court Judge of Puttalam dated 12.07.2016.

Accordingly, the appeal is dismissed with costs fixed at Rs. 10,000/=.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal