

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

Francis Chaminda Perera,
No. 264/2,
Asokarama Road,
Aadiambalama.
Substituted 2nd Party
Respondent-Petitioner-Appellant

CA CASE NO: CA (PHC) 171/2012

HIGH COURT OF NEGOMBO CASE NO: HC/RA/106/10

MC NEGOMBO CASE NO: A 24323

Vs.

1. Officer in Charge,
MO Branch,
Police Station,
Negombo.
Complainant-Respondent-
Respondent-Respondent
2. Kurugamage Shelton Fernando,
1st Party Respondent-Respondent-
Respondent
3. Hon. Attorney General,
Respondent-Respondent-
Respondent

Before: K.K. Wickramasinghe, J. (Acting P/CA)
Mahinda Samayawardhena, J.

Counsel: Anslem Kaluarachchi for the 2nd Party
Appellant.
Sudarshani Cooray for the 1st Party
Respondent.

Decided on: 26.03.2019

Samayawardhena, J.

The 2nd party respondent-petitioner-appellant (appellant) filed this appeal against the order of the learned High Court Judge dated 08.11.2012, which affirmed the order of the learned Magistrate dated 19.02.2010.

This is an application filed by the police under section 66 of the Primary Courts' Procedure Act, No. 44 of 1979. The learned Magistrate relying on *Mansoor v. OIC Avissawella [1991] 2 Sri LR 75* held that he had no jurisdiction to make a determination as the dispute is in relation to tenancy rights of a paddy field. That decision is based on the general principle that "*Where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that tribunal and not to others.*"

The paddy field in dispute is alleged to have been cultivating by the 1st party-respondent-respondent (respondent) as the *ande* cultivator under the appellant when the latter as the owner tried to disturb the possession of the former. Therefore the learned Magistrate has ordered the parties to maintain *status quo* and

allowed the respondent to continue with the possession until the matter is determined by a competent Court.

In my view, this should be amended to read as, by allowing the respondent to continue with the possession until the matter is determined by the Commissioner General of Agrarian Services in terms of the scheme provided for by the Agrarian Development Act, No. 46 of 2000, as amended. Even the District Court has no jurisdiction to hear and determine this matter on the aforesaid general principle.

The learned counsel for the appellant finds no fault with the main finding of the order, i.e. the Magistrate's Court/Primary Court has no jurisdiction to determine this matter. His objection is regarding the latter part of the order whereby the learned Magistrate ordered the parties to maintain *status quo*, which, according to the learned counsel, is contrary to his own admission of lack of jurisdiction. To put differently, what the learned counsel for the appellant says is that the learned Magistrate has no jurisdiction to order to maintain *status quo*.

I regret I am unable to agree with that argument. The primary objective of filing a section 66 application is to prevent breach of the peace. Merely because the learned Magistrate does not have jurisdiction to make the final order as the parties ought to go before the special tribunal set up under the Agrarian Development Act to seek relief, that does not and shall not prevent the learned Magistrate to make an order to maintain *status quo* until the parties go before the said Tribunal/Commissioner of Agrarian Development. The Court has inherent power to make such an order for otherwise there will a breach of the peace between the Court deciding that it has

no jurisdiction to make a determination and the parties going before the special Tribunal/Commissioner of Agrarian Development seeking relief. Practically the parties cannot go before the Commissioner on the same day on which the learned Magistrate decides that he has no jurisdiction.

By way of analogy, the position under the Arbitration Act, No. 11 of 1995 can be considered. Section 5 of the Arbitration Act states:

Where a party to an arbitration agreement institutes legal proceedings in a court against another party to such agreement in respect of a matter agreed to be submitted for arbitration under such agreement, the Court shall have no jurisdiction to hear and determine such matter if the other party objects to the court exercising jurisdiction in respect of such matter.

In short, when there is an arbitration clause in an Agreement sought to be enforced, the ordinary Courts have no jurisdiction to determine the matter. However our Courts have held that such ousting of jurisdiction does not prevent the District Court or the Commercial High Court as the case may be to make interim orders to preserve the *status quo* until the matter is taken over by the Arbitration Tribunal.

In *Baksons Textile Industries Ltd v. Hybro Industries Ltd*¹, Edussuriya J. in the Court of Appeal held:

As far as the Arbitration Clause is concerned there is no doubt that the Arbitration Act provides for settlement of

¹ CA No.51/97, argued and decided on 28.04.1997

disputes by Arbitration where the agreement sets out so. It has been contended that the Petitioner has already referred the dispute to Arbitration and also that the Arbitration Act provides for interim order to be made. However it is my considered view that until such time a final order resolving any dispute or an interim order is made by the Arbitrator a party is entitled to come before the District Court and obtain interim relief to maintain the status quo.

In the Supreme Court case of *Elgitread Lanka (Pvt) Ltd v. Bino Tyres (Pvt) Ltd*², Marsoof J. observed at page 140:

A careful reading of section 5 of the Arbitration Act would reveal that it merely provides that “the court shall have no jurisdiction to hear and determine such matter”, but it does not take away the power of court in appropriate circumstances of making other orders supportive of or incidental to the arbitral process, such as for the constitution of the arbitral tribunal or for providing such interim measures as may be necessary to protect or secure the claim which forms the subject matter of the arbitration agreement.

Appeal is dismissed. No costs.

Judge of the Court of Appeal

² [2011] BLR 130

K.K. Wickramasinghe, J. (Acting P/CA)

I agree.

Judge of the Court of Appeal