

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

Punchi Patabendige
Chandraratne,
Godigamuwa,
Tangalle.
Respondent-Petitioner-Appellant

CA CASE NO: CA (PHC) 5/2014
HIGH COURT TANGALLE CASE NO: 12/2012/REV
MAGISTRATE'S COURT OF TANGALLE CASE NO: 8470

Vs.

Punchi Patabendige Premadasa,
No. 10B, Godigamuwa,
Tangalle.
Petitioner-Respondent-
Respondent

Before: K.K. Wickramasinghe, J.
Mahinda Samayawardhena, J.

Counsel: Buddhika Gamage for the Respondent-
Appellant.
Shihan Ananda Hewa Dewage for the
Petitioner-Respondent.

Argued on: 04.04.2019

Decided on: 05.04.2019

Samayawardhena, J.

The petitioner respondent (respondent) instituted these proceedings in the Magistrate's Court against the respondent-appellant (appellant) under section 66(1)(b) of the Primary Courts' Procedure Act, No.44 of 1979, alleging forcible dispossession from Lots 2 and 3 of Plan No. 2000/11 within two months before filing the application in the Magistrate's Court. The learned Magistrate after inquiry has accepted that position and ordered in terms of section 68(3) of the Act to restore the respondent in possession. That order has been affirmed by the High Court in revision. The appellant has come before this Court against the said Judgment of the High Court.

There had been a partition action No.2948/P filed by the respondent (as the plaintiff) to partition the larger land, which included the disputed portion in this case. The appellant is the 7th defendant in that case. According to the plaint filed in the partition action, the appellant is not a co-owner of the land. In the said partition action, an interim injunction has been issued by the District Court at the instance of the respondent preventing the appellant from converting the hut put up by the appellant to a permanent building, making any development work, cutting trees, separating the land by making fences in the corpus. This partition action has been dismissed on 14.02.2012 due to failure to identify the corpus. No appeal has been preferred against that Judgment. According to the respondent, dispossession took place 11 days after the dismissal of the partition action—i.e. on 25.02.2012. The respondent filed the case in the Magistrate's Court on 30.03.2012. By photographs P16 and P17, the respondent has amply satisfied the imminent

breach of the peace over this dispute. What seems to have happened is, soon after the dismissal of the partition action, the appellant has attempted to forcibly enter the disputed portion of the land on the basis that the appellant has lost the partition action. According to the Preliminary Plan No.891021 and its Report marked by the appellant as V2 and V6 in the Magistrate's Court, the hut which the appellant has put up falls outside the disputed portion of the land. That hut is in Lot 6 of the Preliminary Plan No.891021. The disputed portion of land in the section 66 application is Lots 2 and 8 of the said Preliminary Plan. It is that portion which is depicted as Lots 2 and 3 in Plan No. 2000/11—another Plan prepared in the Partition case. Even though the appellant has also claimed Lot 8 of the Preliminary Plan before the surveyor, the respondent by documentary evidence has convinced the learned Magistrate that the respondent was in possession of the disputed portion until he was forcibly dispossessed soon after the dismissal of the partition case.

At the argument, the only point stressed by the learned counsel for the appellant before this Court is that the averments in the respondent's plaint in the partition action alone confirms the appellant's possession in the land since 1988. The learned counsel thereby alludes to the interim injunction application made in the partition case to say that the interim injunction was sought because he was in possession. That possession has been stopped by the interim injunction. Moreover, as I have already stated, the portion where the hut has been put up falls outside the disputed portion. There is no evidence to show that the appellant possessed the disputed portion of the land (Lots 2 and

3 in Plan No.2000/11 or Lots 2 and 8 in Plan No.891021) by some means after the interim injunction was issued.

I see no reason to interfere with the Judgment of the High Court, which affirmed the Magistrate's Court order.

Appeal dismissed without costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal