

Counsel: Champaka Ladduwahetty for the Appellant.
 D.D.P. Dassanayake for the Respondents.

Decided on: 25.10.2019

Mahinda Samayawardhena, J.

The appellant filed this appeal against the Judgment of the High Court whereby the order of the Magistrate's Court made in a section 66 application filed under the Primary Courts' Procedure Act was affirmed.

There is no dispute about the identification of the disputed land.

Both the appellant and the respondent claim ownership to the land.

It is common ground that ownership has no place in section 66 proceedings. What is material and crucial in such proceedings is nothing but possession.

If I may repeat the applicable law in this regard in simple language, the Judge trying a section 66 application shall first consider who was in possession of the land on the date of filing the case in Court and confirm his possession allowing the opposite party to file a case in the District Court to vindicate his rights to the land. (section 68(1) of the Primary Court's Procedure Act) However, if the aforesaid opposite party can convince the Judge that, in fact, it was he who was in possession of the land, but the party now in possession came to such possession by forcibly evicting him within two months immediately before filing the case, he shall be restored in possession, allowing the other party to file a civil case in the

District Court to vindicate his rights to the land. (section 68(3) of the Primary Court Procedure Act)

In the instant case, the appellant admits that this is a bare land, and none of the parties are living on the land or in actual physical occupation of the land.¹

If that is the position, the order of the Magistrate's Court in favour of the respondent on the basis that the respondent was in possession of the land on the date of filing the case, and forcible eviction within two months prior to the filing of the case was not established by the appellant, is correct.

The main item of evidence relied upon by the appellant contains in the police observation notes (P2) whereby removal of old concrete posts and replacement of them with new ones by the respondent had been observed. However there is no evidence that the old concrete posts were fixed by the appellant. The respondent had lived on the land with his family. The wife and the daughter have died due to a landslide, and thereafter the respondent has gone abroad. According to the statement given by the respondent (P3), upon his return to Sri Lanka, he has gone to the land and cleared it. It has been so cleared as it was not in the physical possession of anybody. Then the appellant has told him that he bought the land from the father of his deceased wife. It is in that background, this dispute has arisen.

In the facts and circumstances of this case, the conclusion arrived at by the learned Magistrate and affirmed by the learned High Court Judge is, in my view, correct.

¹ Vide paragraph C(i) at page 7 of the written submission of the appellant dated 20.06.2019.

The order of the Magistrate's Court is a temporary order, made with the sole objective of averting any possible breach of the peace out of this dispute, until the rights of the parties are determined in a properly constituted civil case filed before the District Court.

Nearly 8 years have passed since the delivery of the Magistrate's Court order. Had the appellant filed a civil case in the District Court, soon after the Magistrate's Court order, I am certain, by now, the case would have been concluded. There is no point in further clinging on the Magistrate's Court order, if the appellant is confident about his ownership to the land.

Appeal is dismissed without costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal