

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

Lenadora Sarananda Thero,  
No.2, Buddhist College of  
Education,  
Thennekumbura.

Now at:

Pothgul Raja Maha Viharaya,  
Siyambalagoda,  
Danture,  
Kandy.

Petitioner-Petitioner-Appellant

**CA CASE NO: CA (PHC) 120/2015**

**HC KANDY CASE NO: HC/RA/6/2013**

**MC KANDY CASE NO: 46692/2012**

Vs.

1. Galketiwala Nandarathana Thero,  
Sri Suvisuddharamaya,  
Gurudeniya.
2. Theripeha Ghanarathana Thero,  
Sri Suvisuddharamaya,  
Gurudeniya.

Respondent-respondent-  
Respondents

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

Counsel: Upul Ranjan Hewage for the Appellant.  
 W.D. Weeraratna for the Respondents.

Decided on: 05.11.2019

Mahinda Samayawardhena, J.

The petitioner and the two respondents are Buddhist monks. The dispute relates to a temple.

The petitioner filed this action on 26.01.2012 in the Magistrate's Court of Kandy against the 1<sup>st</sup> and 2<sup>nd</sup> respondents in terms of section 66(1)(b) of the Primary Courts' Procedure Act seeking to prohibit the alleged disturbances which were being made to his exclusive possession of the temple by the two respondents and to confirm his possession.

The 1<sup>st</sup> respondent, at paragraph 8 of his affidavit dated 12.07.2012, filed in response to the above, whilst tendering marked 1V15 the electoral list relevant to the temple stated to Court that, not only the petitioner, but also several other priests are living in this temple under him. That paragraph reads as follows: “ඒ අනුව ප්‍රකාශ කර සිටින්නේ, මාගේ විහාරාධිපතිත්වය යටතේ පැමිණිලිකාර භික්ෂුව පමණක් නොව තවත් භික්ෂුන් වහන්සේලා ගණනාවක්ම මෙහි වාසය කරන අතර, ගුරුදෙණිය ශ්‍රී සුවිසුද්ධාරාමයේ වැඩ වාසය කරන සියලු භික්ෂුන්ද මෙම සියලු කටයුතුවලට හා සංවර්ධන කටයුතුවලද සහභාගී වන බවත්ය.

(2010 වසරේ ඡන්දහිමි නාම ලේඛණය 1 ව 15 ලෙස සලකුණු කර මේ සමඟ ඉදිරිපත් කර සිටිමි.)”<sup>1</sup>

In 1V15, the names of all three parties (i.e. the petitioner and the two respondents) are there<sup>2</sup>.

The 2<sup>nd</sup> respondent in his affidavit dated 26.07.2012 has confirmed what has been stated by the 1<sup>st</sup> respondent.

The title to the temple or the Viharadhipathyship of the temple is irrelevant to these proceedings.

Both parties have tendered a large number of documents to prove possession. I think there is necessity to scrutinise those documents in view of the above admission made by the 1<sup>st</sup> respondent.

After the inquiry concluded by way of written submissions, the learned Magistrate in his order dated 20.12.2012 has “refused the facts stated in the plaint on the ground that they have not been established” and decided “to give possession of the property to the 1<sup>st</sup> and 2<sup>nd</sup> respondents”. It reads as follows:

“ඒ අනුව මෙම නඩුවේ පැමිණිලිකාර තොරතුරු දැනුම් දෙන්නා වන ස්වාමීන් වහන්සේ විසින් සිය පැමිණිල්ලේ සඳහන් කරුණු අධිකරණයට තහවුරු නොකිරීම මත පැමිණිලිකාර තොරතුරු දැනුම් දෙන්නාගේ පැමිණිල්ලේ සඳහන් කරුණු ප්‍රතික්ෂේප කොට නිශ්ප්‍රභා කරමි.

1 සහ 2 වග උත්තරකාර හිමියන් විසින් ගොනු කර ඇති දිවුරුම් ප්‍රකාශයේ උපලේඛණයේ සඳහන් වන දේපළ වන බෞද්ධ අධ්‍යාපන

<sup>1</sup> Vide page 186 of the brief.

<sup>2</sup> Vide page 235 of the brief.

පීඨයේ තැන්පත්කළුර යන දේපලෙහි භුක්තිය 01, 02 වග උත්තරකාර හිමියන්ට ලබා දීමට තීරණය කරමි.”<sup>3</sup>

This conclusion, in my view, is not specific and vague.

It is this order, which has been affirmed by the High Court by order dated 15.08.2015.

The petitioner has filed this revision application against the Judgment of the High Court.

It is not clear under which subsection of section 68 the learned Magistrate made the impugned order in favour of the respondents. In my view, it is crucial as different principles apply when the decision is based on section 68(1) read with subsection 68(2), and when the decision is based on section 68(3).

By reading the above conclusion of the learned Magistrate it appears to me that the learned Magistrate has acted under section 68(3) when granting reliefs to the respondents as he has decided “to give possession of the property to the 1<sup>st</sup> and 2<sup>nd</sup> respondents”. If the said respondents were already in possession, there was no reason for the learned Magistrate to give or place them in possession.

But, it was never the position of the respondents that they were forcibly ejected by the petitioner within two months immediately prior to the filing of the case in Court for them to be restored in possession. It is in such a situation, the learned Magistrate

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<sup>3</sup> Vide the conclusion in last four paragraphs of the Magistrate’s Court order at pages 176-177 of the brief.

could have made the above order in terms of section 68(3) of the Act.

If I may repeat, the position of the respondents was that the petitioner was living or staying in the temple under or with the leave and licence of the 1<sup>st</sup> respondent, and all of them are in possession of the temple and the petitioner does not have exclusive possession to it.

On the other hand, it is clear from the reliefs sought by the petitioner that his reliefs are based on section 68(1) read with 68(2) as he is seeking to prohibit disturbances to his possession and to confirm his possession.

But the learned Magistrate without exactly stating what he does, has “refused the facts stated in the plaint on the ground that they have not been established”. I cannot understand how he says that in the teeth of the admission made by the respondents themselves that the petitioner was living in the temple with other priests under the 1<sup>st</sup> respondent Viharadhipathy.

There is no doubt that the petitioner was in possession of the temple on the date of filing the action. The doubt is whether he had exclusive possession of the temple. By taking into consideration all the facts and circumstances of this case, it is clear that the petitioner did not have exclusive possession, and the respondents also had possession of the temple.

Hence I hold that the petitioner and the two respondents are entitled to possess the temple until the substantive rights of the parties are decided by a civil court.

The respondents never attempted to evict the petitioner from the temple until the case was filed in Court. It is not clear whether the petitioner has now been ejected from the temple after the filing of the case. If he has been so ejected, the learned Magistrate shall direct the Fiscal to restore the petitioner also in possession of the temple together with the two respondents.

It is practically not possible to give directions to the parties on how to maintain common possession.

The Court expects that the 1<sup>st</sup> respondent, who appears to be the senior priest and claims to be the Viharadhipathi of the temple, will act responsibly and in an exemplary manner to the layman.

In that process, I must mention that the counsel for both parties also have a heavy responsibility. They also shall, as far as possible, assist the parties to amicably settle the matter, until the substantive matter is decided by a civil court.

If again there will be a breach of the peace, the learned Magistrate shall take steps to prevent it by taking appropriate action, however harsh it may be, irrespective of the fact that they are reverend Buddhist monks. The counsel for both parties shall explain this to the parties in no uncertain terms.

I set aside the order of the Magistrate's Court and the Judgment of the High Court which affirmed it.

The relief sought by the petitioner in the Magistrate's Court to have exclusive possession of the temple shall stand rejected subject to the above condition that the petitioner and the two respondents can possess the temple in common.

Appeal is allowed. No costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal