



Counsel: Ashan Nanayakkara for the Appellant.  
W. Dayaratne, P.C., with R. Jayawardena for  
the Respondent.

Argued on: 08.11.2019

Decided on: 06.12.2019

Mahinda Samayawardhena, J.

This is an appeal filed by the 1<sup>st</sup> party respondent-appellant (appellant) against the Judgement of the High Court dated 10.06.2015.

The police filed the first information in the Magistrate's Court, under section 66(1)(a) of the Primary Courts' Procedure Act, naming the appellant as the 1<sup>st</sup> party respondent and his deceased wife's brother as the 2<sup>nd</sup> party respondent (respondent), regarding a dispute as to possession of a portion of land described in the police observation notes dated 20.01.2011.<sup>1</sup>

There is no issue with regard to the identification of the disputed portion of the land, although the learned counsel for the appellant at the argument drew the attention of this Court to the schedule of the respondent's affidavit filed before the Magistrate's Court where boundaries of the disputed portion, when compared with the police sketch, are misdescribed.<sup>2</sup>

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<sup>1</sup> Vide page 148 of the brief.

<sup>2</sup> Vide page 155 for the said schedule and the page 148 for the said sketch.

When one reads the statement made by the respondent to the police dated 26.01.2011<sup>3</sup>, it is clear that the respondent does not dispute the identification of the land. The land in dispute is the land shown in the police observation notes referred to above.

The next question is who was in possession of the land on the date of filing the first information in Court? It is undisputed that it was the respondent who was in possession. Hence, in terms of section 68(1), read with section 68(2) of the Act, the Court shall remove any disturbances to his possession and confirm him in possession. That is the basic principle.

However, if the appellant can show that although the respondent is now in possession of the land, the respondent came to such possession by forcibly evicting the appellant from possession within two months before filing the information in Court, in terms of section 68(3) of the Act, the appellant shall be restored in possession. This, the appellant has failed to do.

The main document relied upon by the learned counsel for the appellant is the Acreage Tax payment receipt marked 1V2, which is dated 26.02.2010.<sup>4</sup> As the first information was filed in Court on 11.02.2011, this is not helpful to the appellant. There are no documents to prove recent possession of the land by the appellant.

This is a co-owned land. A partition case filed to end co-ownership is pending in the District Court. It was revealed at the argument that the parties to this appeal are also parties to the

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<sup>3</sup> Vide page 150 of the brief.

<sup>4</sup> Vide page 90 of the brief.

said partition case. The parties can have a lasting solution to this matter in the said partition case.

The appellant had not been in possession of the disputed portion of the land when the respondent, on or around 10.01.2011, as seen from the police complaint of the appellant dated 10.01.2011<sup>5</sup>, cleared the area with the written consent of some of the co-owners of the land, as seen from 2V1 dated 05.10.2010.<sup>6</sup>

Although I accept the submission of the learned counsel for the appellant that the learned Magistrate in the impugned order has not stated the law correctly, the conclusion reached therein by the learned Magistrate is correct. However, the learned High Court Judge, in a remarkably well-written judgment, has clearly explained the law in this regard.

I affirm the Judgment of the High Court and dismiss the appeal with costs.

Judge of the Court of Appeal

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Court of Appeal

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<sup>5</sup> Vide page 145 of the brief.

<sup>6</sup> Vide page 118 of the brief.