

In the Court of Appeal of the Democratic Socialist Republic of Sri Lanka

In the matter of a Revision Application in terms of Articles 154 P (3) and 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 and the Primary Courts' Procedure Act, No. 44 of 1979.

C.A. Application No:

CA/PHC/APN/81/2020

High Court of Batticaloa Case

No: HCB/Rev/806/2019

Magistrate's Court of Batticaloa

Case No: PCA/1417/2019

1. Dharmasena Yogeswararajah
 2. Yogeswararajah Umathevi
- Both of No. 16/15A, Dharmasena Road,
Kallady, Batticaloa

Informants

Vs.

Ramesh Pramila
No. 16/15, Dharmasena Road,
Kallady, Batticaloa

Respondent

And between

Ramesh Pramila
No. 16/15, Dharmasena Road,
Kallady, Batticaloa

Presently,
Friedrichstrasse 23 41751,
Viersen, Germany

Appearing through her Power of
Attorney holder
Kandaiah Kiruparaj,
No. 35/3, New Dutch Bar Road,
Kallady, Batticaloa

Respondent-Petitioner

Vs.

1. Dharmasena Yogeswararajah
2. Yogeswararajah Umathevi
Both of No. 16/15A, Dharmasena Road,
Kallady, Batticaloa

Informant-Respondents

And now between

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Vs.

1. Dharmasena Yogeswararajah
 2. Yogeswararajah Umathevi
- Both of No. 16/15A,
Dharmasena Road,
Kallady, Batticaloa

Informant-Respondent-Respondents

Before: Prasantha De Silva, J.
S.U.B. Karalliyadde, J.

Counsel: Mr. Geoffrey Alagaratnam, P.C. with Ms. Thahira Calder instructed by
for the Respondent-Petitioner-Petitioner
Mr. G. Rajakulendra with Mr. P. Rodrigo instructed by Mr. S. Devapalan
for the Informant-Respondent-Respondents

Written submissions tendered:

On 11.05.2021 by the Informant-Respondent-Respondents

Argued: on 30.03.2021.

Decided: on 15.10.2021.

S.U.B. Karalliyadde, J.

By this Revision Application the Respondent-Petitioner-Petitioner (hereinafter referred to as the Petitioner) seeks reliefs *inter-alia*, to set aside the Order dated 30.06.2020 of the learned High Court Judge of Batticaloa and the Order dated 26.09.2019 of the learned Magistrate of Batticaloa and to decide that the Petitioner is entitled to possess the premises in dispute. The Informant-Respondent-Respondents (hereinafter referred to as the 1st and 2nd Respondents) filed the information affidavit dated 27.05.2019 in the Magistrate's Court under section 66 (1) (b) of the Primary Courts' Procedure Act,

No. 44 of 1979 (hereinafter referred to as the Act) alleging that on 08.05.2019 the Petitioner forcibly entered into the premises in dispute dispossessing them from the premises and thereby a breach of the peace is threatened. The parties do not dispute the facts that the 1st Respondent is the maternal uncle of the Petitioner, the 2nd Respondent is the wife of the 1st Respondent and the Petitioner and her mother are living in Germany and the Netherlands respectively.

The Petitioner has stated in the affidavit filed in the Magistrate's Court in terms of section 66 (5) of the Act *inter-alia*, that the owner of the premises in dispute was her mother, she has transferred the premises to the Petitioner's husband, since they are living abroad the grandmother looked after the premises, in the later part of April 2019 the Petitioner came to Sri Lanka having the intention of renovating the premises, the Petitioner was informed by the grandmother that the keys of the premises were given to the 1st Respondent, the Petitioner has asked for the keys from the 1st Respondents, he promised to handover the keys next date, but refused to hand over the keys and therefore, with the assistance of the grandmother she broke open the door and entered into the premises on 08.05.2019.

The 1st and 2nd Respondents have stated in the information affidavit filed that the owner of the premises in dispute is the 1st Respondent, in the middle part of April 2019 the Petitioner came to Sri Lanka, the Officer-In-Charge of Kattankudy Police Station informed him to be present in the Police Station, on 01.05.2019 when he went to the Police Station the Officer-In-Charge has asked the 1st Respondent to accept Rs. 14 Million from the Petitioner and return the keys of the disputed premises and on 03.05.2019 the Petitioner forcibly entered into the premises in dispute break open the front door of the premises.

After the inquiry was held, by the Order dated 26.09.2019 the learned Magistrate has concluded that on 28.05.2019, the day on which the information affidavit was filed the Petitioner was in possession of the premises in dispute and the 1st and 2nd Respondents have been forcibly dispossessed by Petitioner from the premises within a period of two months immediately before the date on which the information affidavit was filed under section 66 of the Act. Being aggrieved by the said Order of the learned Magistrate, the Petitioner has filed a Revision Application in the Provincial High Court of the Eastern Province holden in Batticaloa seeking reliefs *inter-alia*, to set aside the Order of the

learned Magistrate and to decide that the Petitioner is entitled to possess the premises in dispute. The learned High Court Judge has dismissed the Revision Application by the Order dated 30.06.2020 for the reason of failure to establish the exceptional circumstances. The present Revision Application is against the Orders of the learned Magistrate and the learned High Court Judge, seeking to set aside those Orders and to decide that the Petitioner is entitled to the possession of the premises in dispute.

The argument of the learned President's Counsel for the Petitioner is that the learned Magistrate has failed to evaluate the evidence of the case when concluding that the Respondents are entitled to possess the disputed premises. The position of the Petitioner before the Magistrate's Court was that her grandmother looked after the premises on behalf of her and her mother since they are living overseas. In the affidavit filed, the Petitioner has stated that when she came to Sri Lanka on 26.04.2019, her grandmother has told her that she has given the keys of the premises in dispute to the 1st Respondent and asked the Petitioner to obtain the keys from him. In the affidavit given by the grandmother (marked as P-9) it has been stated that with the assistance of the 1st Respondent, she looked after the premises and also given it on rent to one Balachandran. It has been further stated that Balachandran had vacated the premises in March 2019 and the keys were with the 1st Respondent for her convenience in looking after the premises (paragraphs 18-20). Nevertheless, the exact date on which the keys were given to the 1st Respondent does not state in the affidavit. In the affidavit given by the mother of the Petitioner (marked as P-10) it has been stated that her mother (the grandmother of the Petitioner) had rented out the premises in dispute to Balachandran from 2011 to February 2019 (paragraph 19). When considering all the above stated facts and circumstances it is evident that the keys of the premises in dispute were with the 1st Respondent since 2019 February/March up to the date on which the Petitioner has entered into the premises. The Petitioner has admitted that she has entered into the possession of the property with the assistance of her grandmother on 08.05.2019.

The position of the learned President's Counsel for the Petitioner is that the keys of the premises were given to the 1st Respondent by the grandmother of the Petitioner to assist her looking after the premises and therefore, the 1st Respondent is an agent of the grandmother. The learned President's Counsel argues that since the 1st Respondent is an agent, he is not entitled to the possession of the premises and being the principal, the grandmother is entitled to the possession. To strengthen his argument, the learned

President's Counsel cited the authority of *Hotel Galaxy (Pvt) Ltd, and Others vs. Mercantile Hotels Management Ltd, (1987 (1) SLR 5 at page 21)*. The fact pertaining to that case was that the owner of the Hotel has assaulted and chased away the Manager of the Hotel. The Court has held that if the Manager of the Hotel is deprived of his management rights his action would be for damages or criminal action for causing hurt to him and for the reason that he is an agent, he is not entitled to the possession of the premises in an action instituted under section 66 of the Act.

In the action in hand, the position of the Petitioner is that the owner of the premises in dispute is her husband and not her grandmother or the mother. It has not been established that the husband of the Petitioner has given permission to the grandmother of the Petitioner to act on his behalf as the principal. Under such circumstances, the Court cannot conclude that the 1st Respondent is the agent of the grandmother or the husband of the Petitioner.

At this juncture, it is pertinent to consider the fact that if the grandmother is the principal and the 1st Respondent is the agent as contended by the learned President's Counsel whether the grandmother is entitled to have a determination in her favour from the Court in terms of section 68 of the Act. With regards to this point, the Full Bench decision in the case of *Dhondhai Singh vs. Follet (1904) (ILR 31 Cal 48 (F.B.))* is important. In that case the Court has considered whether an agent is entitled to the possession of a property in an action filed under section 145 of the Indian Criminal Procedure Code of 1973. In that case the Court has held that the Magistrate has jurisdiction under section 145 to make a decision in favour of a person who claim the possession of a disputed property as agent to, or manager for the proprietor when the actual proprietors are not resident in the same State. Therefore, the underlying principle of law in that decision is that an agent is entitled to have a determination in his favour if the principal is not in the same State, on the other wards the principal can claim the possession of the property against the agent if the principal is not in the same State. In that sense, in the instant action, even if the 1st Respondent is the agent of the Petitioner's grandmother, she is not entitled to have a determination in her favour under the Part VII of the Act for the reason that she is residing in Sri Lanka.

It is also relevant to consider as to what constitutes "possession" in terms of section 66 of the Act. After considering the provisions of section 145 of the Indian Criminal

Procedure Code, Sohoni in his book titled "Sohoni's, The Code of Criminal Procedure" states that "*section 145 is concerned solely with the fact of actual physical possession, whether lawful or unlawful, whether in contemplation of law enjoyed by the possessor in his own right or on behalf of others. Therefore, in proceedings under this section any question as to whether possession is on behalf of others or in one's own right is quite irrelevant.*" (16th Edition, vol 1 at page 622)

In the case of *Kanagasabai vs. Mylvaganam* (78 NLR 280) which was decided under the Administration of Justice Law it was held that the duty of the Magistrate under section 62 (corresponding to section 66 of the Act) is to decide as to who was in "actual possession" of the land in dispute on the date of the issue of the notice under section 62 (1) (under section 68 of the Act, on the date which the information under section 66 was filed). The Supreme Court in the case of *Ramalingam vs. Thangarajah* (1982 (2) SLR 694) has held that the Primary Court Judge should in an inquiry under section 66 confine himself to the question of "actual possession" on the date of the filing of the information, except in a case where a person who had been in possession of land has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed. Commenting on the scope of section 68 of the Act, the Court has observed that, "*under section 68, the Primary Court Judge is bound to maintain the possession of such person even if he is a rank trespasser as against any interference even by the rightful owner. This section entitles even a squatter to the protection of law, unless his possession was acquired within two months of the filing of the information. That person is entitled to possession until he is evicted by due process of law*" (at page 698). Therefore, when considering the above stated legal position and the facts of the instant action, the Court can be satisfied that the Respondents were in actual possession of the disputed premises until they were forcibly ejected by the Petitioner.

Considering all the above stated facts and circumstances, I hold that the conclusion of the learned Magistrate that the Petitioner was in possession of the disputed premises on 28.05.2019, the day which the information was filed in Court and the Respondents have been forcibly dispossessed by the Petitioner from the premises within a period of two months immediately before the date on which the information affidavit was filed under section 66 (1) (b) of the Act are according to the law and the facts of the case. Under such circumstances, I hold that the dismissal of the Revision Application by the

learned High Court Judge affirming the Order of the learned Magistrate for the reason that the Petitioner has failed to establish the exceptional circumstances is also according to the law. Therefore, I hold that the Petitioner has failed to establish the exceptional circumstances for this Court to exercise its revisionary jurisdiction. I affirm the impugned Orders of the learned Magistrate and the learned High Court Judge and dismiss the Revision Application. The Petitioner should pay Rs. 25,000/- as costs of his Application to the Respondents.

JUDGE OF THE COURT OF APPEAL

I agree.

Prasantha De Silva J.

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