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

In the matter of an application under Article 154(P) read with Article 138 of the Constitution of Democratic Socialist Republic of Sri Lanka.

Nihal Nilaweera,
Director of the Plantation Management Monitoring Division,
Ministry of Plantation & Industries,
55/75, Vauxhall Street,
Colombo 02.

Applicant

Vs.

Sooriya Gamage Ekanayake,
Kandeketiya, Hituwela,
Pinnawala,
Balangoda.

Respondent

AND BETWEEN

Sooriya Gamage Ekanayake,
Kandeketiya, Hituwela,
Pinnawala,
Balangoda.

Respondent-Petitioner

Vs.

Nihal Nilaweera,
Director of the Plantation Management Monitoring Division,
Ministry of Plantation & Industries,
55/75, Vauxhall Street,
Colombo 02.

Applicant-Respondent

AND NOW BETWEEN

Sooriya Gamage Ekanayake,

Court of Appeal Case No:
CA (PHC) 113/2017

High Court of Ratnapura Case No:
HCR/RA/139/07

Magistrate's Court of Balangoda Case No:
14668

Kandeketiya, Hituwela,
Pinnawala,
Balangoda.

Respondent-Petitioner-Appellant

Vs.

Nihal Nilaweera,
Director of the Plantation Management Monitoring Division,
Ministry of Plantation & Industries,
55/75, Vauxhall Street,
Colombo 02.

Applicant -Respondent -Respondent

Before : **Prasantha De Silva, J.**
K.K.A.V. Swarnadhipathi, J.

Counsel : Lakmini Amarasinghe for the Respondent-Petitioner-Appellant.
Maithree Wickramasinghe PC with Rohitha Jayathunga for the Applicant-Respondent-Respondent.

Parties agreed to dispose the matter by way of written submissions.

Written Submissions tendered on : 12.01.2022 and 06.06.2022 by the Respondent-Petitioner-Appellant.
02.03.2022 by the Applicant-Respondent-Respondent.

Decided on : 15.12.2022

Prasantha De Silva, J.

Judgment

This appeal emanates from the Order of the Provincial High Court of Sabaragamuwa holden at Rathnapura dated 16.03.2017 which refused to set aside the Order of the

learned Magistrate of Balangoda dated 27.07.2007 and allowed the application of the Applicant-Respondent-Respondent [hereinafter referred to as the Respondent] in terms of Section 10(1) of the State Lands (Recovery of Possession) Act No.07 of 1979 to evict the Respondent-Petitioner-Appellant [hereinafter referred to as the Appellant] from the land in question.

It appears that the Respondent had made an application to the Magistrate Court of Balangoda in terms of Section 05 of the State Lands (Recovery of Possession) Act No.07 of 1979 [hereinafter referred to as the Act] against the Appellant, supported by an affidavit with notice of quit, seeking an Order of ejectment of the Appellant from the land in suit. The learned Magistrate having inquired into the matter and after the conclusion of the inquiry had delivered the Order on 27.07.2007 allowing the application to evict the Appellant.

Being aggrieved by the said Order, the Respondent-Petitioner has invoked the revisionary jurisdiction of the Provincial High Court of Sabaragamuwa holden at Rathnapura seeking to revise the said Order of the learned Magistrate dated 27.07.2007. However, the learned High Court Judge had refused the application of the Respondent-Petitioner by his Order dated 16.03.2017. Subsequently, the Respondent-Petitioner-Appellant [hereinafter sometimes referred to as the Appellant] had preferred an appeal to this Court.

It appears the Appellant has taken up the objection that the Applicant-Respondent-Respondent [hereinafter referred to as the Respondent] had not complied with Rule 3(7) of the Court of Appeal (Appellate Procedure) Rules 1990, thus filed a statement of objections without an affidavit to the revision application filed in the Provincial High Court, which is not valid in law.

It was submitted on behalf of the Appellant that the said preliminary objection had been taken up by the Appellant in paragraph 3 of the counter affidavit filed in the Provincial High Court. However, the learned High Court Judge had not mentioned a single word regarding the said preliminary objection of the Appellant.

The position taken by the Respondent was that the learned High Court Judge has correctly evaluated the Order of the learned Magistrate and the Appellant had not shown any exceptional circumstances exist to invoke the revisionary jurisdiction of the Provincial High Court of Ratnapura.

It is seen that the Appellant had not challenged the Order of the learned Magistrate dated 27.07.2007 instead had taken the objection that statement of objections should be rejected since the Respondent had not filed an affidavit with the statement of objections and that accordingly, relief prayed in the prayer to the petition filed in the Provincial High Court should have been granted.

In this respect, it was submitted by the Respondent that since the application to the High Court by the Appellant is an application for revision, even if no objection had been filed and there had been no appearance, the Appellant was not entitled to relief unless the Court granted relief in extraordinary circumstances.

The case ***Gita Fonseka vs. Monetary Board of the Central Bank of Sri Lanka [2004] (1) SLR 149*** was cited on behalf of the Appellant. In this case, affidavit was filed without a statement of objection and the Court held that Rule 3(7) had not been complied with.

However, in the case at hand, statement of objections had been filed without an affidavit. In this instance, it is worthy to note Rule 3(7) of the Court of Appeal (Appellate Procedure) Rules.

> "Upon an application being registered, the Respondent shall be entitled to take notice of it, and file a statement of objections at any time before the date fixed by Court for filing objections. A statement of objections containing any averments of facts shall be supported by an affidavit in support of such averments."

It appears that Rule 3(7) requires a statement of objections to be filed. In the event it contains an averment of facts, it must be supported by an affidavit.

It was the contention of the Respondent that a fortiori, these averments in the statement of objections that are legal and not factual do not require an affidavit and if there are no factual averments, no affidavit is necessary. Since the statement of objections of the Respondent was based entirely on law and there were no factual averments, the Respondent is of the view that there was no requirement for an affidavit and that Rule 3(7) has been complied with. I hold that the Respondent's said contention is plausible thus, no affidavit is required to file with the objection, if such objections are entirely based on questions of Law.

In the case of ***Attorney General Vs. Chandrasena [1991] 1 S.L.R 85 (CA)*** Court considered the question that whether an affidavit should be filed in a revision application. The Court observed that it would depend on the question and manner in which the jurisdiction of Court is invoked. *Gunawardana, J.* held that;

> "The absence of an affidavit by Attorney General did not violate the provisions of Rule 46 of the Supreme Court Rules, as the Court was invited to decide only a question of Law, and the relevant matters for that decision, have been admitted by the Accused-Respondent. However, in a case where Attorney General is inviting the Court to decide on question of fact, he will be required to file affidavits through persons who have personal knowledge of the relevant facts."

Since the Respondent has taken up the position that the statement of objections is entirely based on questions of Law, requirement of an affidavit in terms of Rule 3 (7) is not necessary.

Furthermore, Court draws the attention to the statement by *Abrahams, CJ.* In the case of ***Dulfa Umma Vs. Urban District Council, Matale [1939] 40 NLR*** at p. 478;

> "Civil Procedure should be a vehicle which conveys a litigant safely, expeditiously and cheaply along the road which leads to justice and not a juggernaut car which throws him out and then runs over him leaving him maimed and broken on the road."

Be that as it may, it is settled law that a party can invoke the revisionary jurisdiction only on exceptional circumstances that shock the conscience of court.

It is to be observed that the Appellant has prayed to set aside the Order of the learned High Court Judge dated 16.03.2017 and also to revise the Order of the learned Magistrate dated 27.07.2007.

The Appellant had not shown in the instant revision application filed in the High Court that there is a miscarriage of justice or any injustice caused to the Appellant by the Order of the learned Magistrate. Thus, it is apparent that no exceptional circumstances exist for the Appellant to invoke the revisionary jurisdiction of the High Court.

In this instance, Court draws the attention to the case of ***Muhandiram Vs. Chairman JEDB*** reported in ***[1992] 1 S.L.R 110*** where *Grero, J.* held that;

> "In an inquiry under the State Lands (Recovery of Possession) Act, the onus is on the person summoned to establish his possession or occupation that it is possessed or occupied upon a valid permit or other written authority of the state grant according to any written Law-if this burden is not discharged, the only option open to the Magistrate is to order ejectment."

In the case of ***M.C Margrate Perera Vs. Divisional Secretary Naula [CA/PHC/41/2010] C.A Minutes 31.01.2017*** *Dehideniya, J.* emphasized the scope of an inquiry under Section 9 of the State Lands (Recovery of Possession) Act is limited to;

1. Occupying the land on a permit or a written authority.
2. It must be a valid permit or a written Authority.
3. It must be in force at the time of presenting it to Court.
4. It must have been issued in accordance with any Written Law.

Further it was held that the party noticed is not entitled to challenge the opinion of the competent authority on any matter stated in the application.

As such, it clearly manifests that in an action to recover possession of a State Land, the only available defence for the occupier sought to be evicted from the subject land, is to establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted according to any written law.

It is worthy to note that the Respondent-Petitioner-Appellant has not relied upon any document, valid permit or grant to substantiate the fact that he had written permission or authority to occupy the state land in question.

Thus, in the absence of written authority or a valid permit to occupy the State land at the time of serving the notice of quit, the learned Magistrate had correctly issued the order of eviction against the Respondent-Petitioner-Appellant.

It is seen that in Section 9 (1) another restriction on the Respondent which was dealt by *Wengappuli, J.* in the Case of ***J.M Chandrika Priyadharshani [The competent authority] Vs. Loku Hettiarachchige Seneviratne [CA (PHC) 52/2012] C.A Minutes 13.07.2018*** where is was held that;

> "At such inquiry, the person on whom summons under Section 6 has been served shall not be entitled to contest any of the matters stated in the application under Section 5 except that he is in possession or occupation of the land upon a valid permit or other written authority of the state granted in accordance with any written Law and that such permit or authority is in force and not revoked or otherwise rendered invalid."

Furthermore, Section 5(1) imposes a duty on the competent authority to set out certain facts in his application for ejectment and has included these factors in Section 5 (1) (a) and (b).

Section 5 (1) (a) (i) of the Act reads that he is a competent authority for the purpose of this Act.

In respect of Sections 5 (1) (a) (i) and Section 9 (1), it is observable that the intention of the Legislature is to impose a restriction on the Respondent in an application for ejectment, thus, the Respondent is precluded by contesting before the Magistrate's Court against the claim by the competent authority, in terms of the Application made under Section 5 of the Act.

In view of the foregoing reasons, we are of the view that the grounds of appeal raised on behalf of the Appellant are without merit, thus, the appeal has to be dismissed.

As such, we are not inclined to interfere with the Order dated 27.07.2007 of the learned Magistrate and the Order dated 16.03.2017 by the learned High Court Judge.

Hence, the impugned Orders are affirmed and the appeal is dismissed with costs fixed at Rs.25,000/-.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL