

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

Court of Appeal Case No:
CA/PHC/170/2018

Ratnapura PHC No: RA 33/15

Ratnapura MC No: 88070

In the matter of an Appeal in terms of Article 138 of the Constitution read with Article 154 of the Constitution of the Democratic Socialist Republic of Sri Lanka and the Provisions of the High Court of Provinces (Special Provisions) Act No.19 of 1990.

Chiran Dananjaya Jayasinghe,
Assistant Superintendent of Kosgala
Division,
Palmgarden Estate,
Rathnapura.

Petitioner

Vs.

K. A. Podiralahamy,
Waraniyagoda, Galukagama,
Rathnapura.

Respondent

And between

K. A. Podiralahamy,
Waraniyagoda, Galukagama,
Rathnapura.

Respondent- Petitioner

Vs.

Chiran Dananjaya Jayasinghe,
Assistant Superintendent of Kosgala
Division,
Palmgarden Estate,
Rathnapura.

Petitioner- Respondent

And now between

K. A. Podiralahamy,
Waraniyagoda, Galukagama,
Rathnapura.

Respondent- Petitioner- Appellant

Vs.

Chiran Dananjaya Jayasinghe,
Assistant Superintendent of Kosgala
Division,
Palmgarden Estate,
Rathnapura.

Petitioner- Respondent- Respondent

Piyumal Shanuka Anjana Rathnayake,
Assistant Superintendent of Kosgala
Division,
Palmgarden Estate,
Rathnapura.

**Substituted Petitioner- Respondent-
Respondent**

Before: **Damith Thotawatte, J.**
 K.M.S. Dissanayake, J.

Counsels: R. C. Meepagala for the Respondent- Petitioner- Appellant.

 Maithri Wickremesinghe PC with Rakitha Jayatunge for the
 Substituted Petitioner- Respondent- Respondent instructed by K.
 Upendra Gunasekara.

Argued: 26.03.2026

Written submissions tendered on: 07.02.2024 by Substituted Petitioner-Respondent-Respondent.
04.11.2025 by Respondent-Petitioner-Appellant.

Judgment Delivered: 24.07.2026

Thotawatte, J.

Introduction

The present appeal has been preferred by the Respondent–Petitioner–Appellant (hereinafter sometimes referred to as the "Appellant") against the judgment dated 20.09.2018 of the learned High Court Judge of the High Court of the Sabaragamuwa Province holden at Ratnapura, whereby the learned High Court Judge dismissed the Appellant's application in revision and affirmed the order of the learned Magistrate functioning as the Primary Court Judge under the provisions of Part VII of the Primary Courts' Procedure Act, No. 44 of 1979 (hereinafter referred to as the "PCP Act"), restoring possession of the disputed land to the Petitioner–Respondent–Respondent (hereinafter referred to as the "Respondent").

Factual Matrix

The dispute concerns approximately forty perches of land forming part of the Kosgala Division of the Palmgarden Estate.

According to the Respondent, Balangoda Plantations PLC was in possession and management of the estate and the Respondent, in his capacity as the Assistant Superintendent and authorized representative of the company, exercised possession and control over the disputed portion.

The Respondent alleged that on or about 07.08.2012 the Appellant unlawfully entered upon the disputed land, removed the boundary posts and rubber plants, erected a fence and a temporary structure, and thereby dispossessed the Respondent. Following a complaint to the Police, the Respondent, filed an information by petition and affidavit in the Magistrate's Court of Ratnapura, under the provisions of the PCP Act.

The Appellant, however, denied the Respondent's claim to possession and asserted that he had occupied the land for many years. He relied upon documents including receipts issued by the Land Reform Commission and affidavits of neighbouring occupiers in support of his occupation. It was further contended that the land described by the Respondent differed materially from the land occupied by the Appellant and that the identity of the corpus had never been satisfactorily established.

Accordingly, the principal controversy throughout these proceedings has not concerned title to the land but rather the questions of possession, identification of the disputed land and whether there had been a forcible dispossession within the meaning of the PCP Act.

Progression of the Litigation

Proceedings before the Magistrate's Court

Upon receiving the information under Section 66 of the PCP Act, the learned Magistrate proceeded to inquire into the dispute in terms of Part VII of the Act.

The learned Magistrate, having considered the documentary evidence produced by both parties together with the Police observations, survey plan, photographs and the other material placed before Court, concluded that the Respondent had established possession of the disputed land immediately prior to the alleged dispossession and that the Appellant had forcibly entered and occupied the land within the statutory period prescribed by Section 68(3) of the Act. Accordingly, the learned Magistrate made order dated 19.06.2015, restoring possession of the disputed land to the Respondent.

Proceedings before the Provincial High Court

Being dissatisfied with the aforesaid order, the Appellant invoked the revisionary jurisdiction of the Provincial High Court.

The principal relief sought before the High Court was the setting aside of the Magistrate's order upon the grounds that:

- (a) the corpus had not been properly identified;
- (b) possession had not been established;

(c) the Police reports were unreliable;

(d) the statutory requirements of Sections 66 and 68 had not been satisfied; and

(e) the learned Magistrate had improperly evaluated the evidence.

The learned High Court Judge, however, dismissed the revision application, holding in effect that the learned Magistrate had properly appreciated the evidence and that no illegality, procedural irregularity or other exceptional circumstance warranting revision had been established.

By the instant appeal to this court the Appellant now seeks to have both the judgment of the Provincial High Court and the order of the learned Magistrate set aside.

Grounds of Appeal

The submissions advanced on behalf of the Appellant may be summarized as follows:

- the identity of the disputed land was uncertain;
- the Magistrate failed to determine the corpus before deciding possession;
- the Respondent failed to establish actual possession;
- excessive reliance was placed upon inconsistent Police reports;
- the Appellant had produced superior documentary evidence of occupation;
- the Respondent failed to establish the precise date of dispossession within the statutory period;
- consequently, both the Magistrate and the High Court had misdirected themselves in law.

Analysis

The present dispute falls to be determined entirely within the framework established by Sections 66 to 68 of the PCP Act.

The object of those provisions is not to adjudicate title but to preserve public order by restoring possession where a party has recently been dispossessed in circumstances likely to occasion a breach of the peace. The jurisdiction is therefore preventive and possessory rather than proprietary.

The Appellant's first contention concerns the identification of the disputed land. Reliance is placed upon the decision in *David Appuhamy v. Yassassi Thero*¹, wherein His Lordship Wijetunga J. observed that, before making a declaration under section 68 of the Primary Courts' Procedure Act, the learned Magistrate must determine who was in possession of the land on the date of the filing of the information under section 66. His Lordship further held that where the identity of the corpus is disputed, it is incumbent upon the learned Magistrate to determine the identity of the land after evaluating the evidence relating thereto, since such determination is fundamental to deciding the question of possession.

The aforesaid proposition correctly states the law. It does not, however, follow that the learned Magistrate must in every case conduct a local inspection. As explained in *Ranjith Mervyn Ponaamperuma v. Warahena Liyanage Viraj Pradeep Kumara De Alwis and Others*², a local inspection may be undertaken where the learned Magistrate considers it necessary for the identification of the disputed land. However, the existence of that duty does not, of itself, establish that the learned Magistrate failed to discharge it. In the present case, the record demonstrates that the learned Magistrate considered the survey plan, Police observations, photographs and the documentary material submitted by the parties before identifying the disputed land and determining the question of possession. The Appellant has failed to demonstrate that the learned Magistrate thereby failed to discharge the duty identified in *David Appuhamy v. Yassassi Thero*³.

The learned High Court Judge found no basis for interfering with those findings in the exercise of the revisionary jurisdiction. In these circumstances, this Court, sitting in appeal from the High Court's revisionary order, ought not to interfere with the learned Magistrate's findings of fact, which were affirmed by the High Court, unless they are shown to be unsupported by the evidence or to disclose manifest perversity.

The Appellant next contends that the Respondent failed to establish possession of the disputed land. I am unable to agree. It is well settled that, for the purposes of section 68 of the Primary Courts' Procedure Act, possession is not confined to immediate physical occupation. In *Iqbal v. Majedudeen and Others*⁴, Gunawardana J. recognized the distinction between actual and constructive possession, observing that a person who retains the power and intention to exercise dominion over property may remain in possession

¹ (1987) 1 Sri L.R. 253

² CA (PHC) 71/2008 Decided 12.06.2020

³ *Supra*

⁴ (1999) 3 Sri L.R. 213

notwithstanding the absence of personal physical occupation. Possession may accordingly be exercised through servants, agents or other persons acting under the authority of the person entitled to control the property.

The concept of constructive possession necessarily accommodates possession exercised by a corporate body through its servants and authorized officers. In the context of plantation management, possession is ordinarily exercised through superintendents, assistant superintendents and other officers entrusted with the day-to-day administration and control of the estate. In the present case, the Respondent's position throughout was that Balangoda Plantations PLC remained in possession of the disputed land through its authorized estate representatives. The learned Magistrate accepted that evidence and concluded that the estate continued to exercise effective control over the disputed portion notwithstanding the alleged acts of interference by the Appellant, and the learned High Court Judge found no basis for disturbing that conclusion in the exercise of revisionary jurisdiction. Having examined the material placed before this Court, I am unable to conclude that either Court misdirected itself in applying the principles governing constructive possession or that their findings are unsupported by the evidence. Accordingly, I find no merit in the Appellant's submission that the Respondent lacked the requisite standing to invoke the jurisdiction of the Primary Court.

The Appellant has also criticized the learned Magistrate's reliance upon the Police reports and observation notes. It is true that such reports, standing alone, cannot conclusively determine disputed questions of fact. Under Part VII of the Primary Courts' Procedure Act, however, the learned Magistrate is required to conduct an independent inquiry by evaluating the totality of the evidence placed before Court, rather than treating the Police reports or observations as conclusive or accepting them uncritically. The record demonstrates that the learned Magistrate discharged that duty by considering the Police observations together with the survey plan, photographs and the documentary evidence adduced by both parties. The Police reports accordingly formed only one component of the evidentiary matrix, and it cannot be said that the Magistrate's determination rested exclusively upon inadmissible or unreliable material. In those circumstances, the Appellant's criticism of the Police reports does not disclose any basis warranting appellate interference.

Considerable emphasis was placed upon the scope of the learned High Court Judge's revisionary jurisdiction. It is well settled that revision is an extraordinary and discretionary jurisdiction, exercised sparingly and only in exceptional circumstances. As explained in

*Caderamanpulle v. Ceylon Paper Sacks Ltd.*⁵, the existence of exceptional circumstances is a precondition to the exercise of revisionary powers. That principle was reaffirmed by the Supreme Court in *Dharmaratne v. Palm Paradise Cabanas Ltd.*⁶, where it was observed that the requirement of exceptional circumstances prevents revision from becoming a substitute for an appeal or a means of obtaining a second hearing where the legislature has withheld a right of appeal.

It follows that revision is not intended to afford a rehearing on the facts merely because another view of the evidence is possible. Nor does every error of law, irregularity or erroneous finding justify interference. The jurisdiction is ordinarily invoked only where the impugned proceedings disclose a jurisdictional defect, a material illegality, a fundamental procedural impropriety or an error of such gravity as to occasion a manifest miscarriage of justice or otherwise warrant the exercise of the Court's extraordinary supervisory jurisdiction. In the absence of such circumstances, an appellate Court ought not to interfere with the manner in which the learned High Court Judge exercised his revisionary discretion.

The Appellant further contends that the Respondent failed to establish the precise date upon which the alleged dispossession occurred and, consequently, failed to satisfy the requirement under section 68(3) that the dispossession must have taken place within the two months immediately preceding the filing of the information under section 66 of the Primary Courts' Procedure Act.

I am unable to accept that contention. It is well settled that Part VII of the Primary Courts' Procedure Act contemplates a summary inquiry directed towards the preservation of public order rather than a protracted adjudication of competing proprietary claims. Under section 68(1), the learned Magistrate is required to determine who was in possession of the disputed land on the date the information under section 66 was filed. Section 68(3) becomes applicable only where the Court is satisfied that another party had been forcibly dispossessed within the two months immediately preceding the filing of the information. *Punchi Nona v. Padumasena*⁷ and *W.M.S.D. Wanasundera v. K.A. Karunaratne*⁸ clearly recognize that distinction.

⁵ (2001) 3 Sri L.R. 112

⁶ (2003) 3 Sri L.R. 24

⁷ (1994) 02 Sri. L.R 117

⁸ CA (PHC) 234/2015 Decided on 24.06.2019

Equally, the law does not require proof of the exact or precise date of dispossession. In *Mohamed Shareef Nazar v. Asoka Jayalal Karunanayake*⁹, the Court of Appeal held that it is sufficient if the material before Court establishes, with reasonable precision, that the dispossession occurred within the statutory period of two months. To construe section 68(3) as requiring proof of the exact date of dispossession would, as the Court observed, lead to absurdity and undermine the statutory scheme enacted by Parliament. That reasoning was subsequently cited with approval in *W.M.S.D. Wanasundera v. K.A. Karunaratne*¹⁰.

In the present case, the learned Magistrate considered the police information together with the oral and documentary evidence and was satisfied that the requirements of section 68 had been established. The learned High Court Judge, exercising revisionary jurisdiction, found no illegality, misdirection or perversity in that determination. The Appellant has failed to demonstrate before this Court any material error of law or any misapprehension of the evidence that would justify interference with those findings.

Having carefully considered the material available before this Court, I find no basis upon which it can be said that the learned High Court Judge exercised that jurisdiction upon a wrong principle or failed to appreciate the applicable law.

Accordingly, I am of the view that none of the grounds urged by the Appellant disclose any error either in the judgment of the learned High Court Judge or in the order of the learned Magistrate which would justify interference by this Court.

Conclusion

For all of the foregoing reasons, I am satisfied that the learned Magistrate properly exercised the jurisdiction vested in him under Sections 66 to 68 of the Primary Courts' Procedure Act, correctly evaluated the evidence relating to the identity of the disputed land, possession and the circumstances of the alleged dispossession, and arrived at findings that were fully supported by the material before Court. In those circumstances, the learned High Court Judge was entirely justified in declining to interfere in the exercise of the Court's revisionary jurisdiction.

⁹ CA 74/07 Decided on 18.01.2012

¹⁰ *Supra*

Accordingly, I affirm the judgment dated 20.09.2018 of the learned High Court Judge of the High Court of the Sabaragamuwa Province holden at Ratnapura and the appeal is dismissed subject to a cost fixed at Rs.50,000/- to be paid by the Appellant.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal