

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

In the matter of an appeal from the judgment of the High Court of Batticaloa acting in Revision.

CA Case No: CA/PHC/71/2020

Case No (HC/Rev): 733/2018

Case No: 1408/PCA/2018

Pathmanaban Gandini,
9/3, Thamaraikerni Road, Batticaloa.

Informant- Petitioner- Appellant

Vs.

Muthupillai Karunanithy,
Puliyadimadu,
Pavatkodichenai,
Batticaloa.

Presently at,
Kannaki Nahar,
Pavatkodichenai,
Unnichchai.

Respondent- Respondent- Respondent

Before: **Damith Thotawatte, J.**

K.M.S. Dissanayake, J.

Counsels: S. Kumarasingham with S. Pathmanathal for the Informant-
Petitioner- Appellant.

Argued: 06.05.2026 & 02.07.2026

Written submissions
tendered on: 12.09.2025 by Informant- Petitioner- Appellant.

Thotawatte, J.

Introduction

The present appeal has been preferred by the Informant-Petitioner-Appellant (hereinafter sometimes referred to as the “Appellant”) against the judgment dated 18.05.2020 delivered by the learned Judge of the Provincial High Court of the Eastern Province holden in Batticaloa, exercising revisionary jurisdiction under Article 154P(3)(b) of the Constitution in Case No. EP/HCB/REV/733/2018.

By the impugned judgment, the learned High Court Judge dismissed the revision application filed by the Appellant and affirmed the order dated 02.08.2018 made by the learned Magistrate of Batticaloa, functioning as the Primary Court Judge in Case No. 1408/PCA/2018 under Part VII of the Primary Courts’ Procedure Act, No. 44 of 1979 (hereinafter referred to as the “PCP Act”).

Factual Matrix

The Appellant instituted proceedings in the Magistrate’s Court of Batticaloa on 14.05.2018 by filing information under section 66(1)(b) of the PCP Act against Muthupillai Karunanithy, the Respondent-Respondent-Respondent (hereinafter referred to as the “Respondent”).

The subject matter of the dispute was described as a paddy land comprising Lots 249, 250 and 252 and containing, according to the Appellant, an aggregate extent of 13 acres, 2 roods and 15 perches.

The Appellant claimed that the land had devolved upon her through her grandmother and by purchase, and that she had possessed and cultivated it for several years. She further alleged that, on or about 25.03.2018, while the land was being prepared for cultivation, the Respondent forcibly entered upon it, prevented her employees from continuing the cultivation and thereafter cultivated the land himself.

According to the Appellant, she complained to the Vavunathivu Police. The Respondent was warned not to enter the land or interfere with her possession and, although he initially undertook not to do so, he subsequently re-entered the land and continued to interfere

with her possession. The Appellant maintained that these acts had caused, or were likely to cause, a breach of the peace.

The Respondent's position, as subsequently disclosed in the High Court proceedings, was that the land belonged to the Appellant's brother, S. Kumar, and that he had cultivated it with the consent of the said owner. He further contended that the underlying dispute concerned title between the Appellant and her brother and ought to be resolved in a competent civil court.

Proceedings Before the Magistrate's Court

Upon the Appellant's information, the learned Magistrate issued notice, directed its affixture on the land and made an interim order under section 67(3) restraining entry pending inquiry. Although the Respondent appeared through counsel on 23.05.2018, his failure to file an affidavit and documents within the prescribed period resulted in his default. The Appellant relied on deeds, a survey plan, police complaints, acreage-tax receipts and two supporting affidavits. The learned Magistrate found that those materials did not establish her actual possession or forcible dispossession within the period specified in section 68(3), and dismissed the application by order dated 02.08.2018.

Proceedings Before the High Court

The Appellant invoked the revisionary jurisdiction of the Provincial High Court in Case No. EP/HCB/REV/733/2018, contending principally that the interim order supported her claim, the Respondent's default left her evidence uncontroverted, and the learned Magistrate had erred by dismissing the application without making the determination required by section 68.

The learned High Court Judge identified discrepancies concerning the extent, identity and ownership of the land, including a prior transfer by the Appellant to her son, and relied upon a Divisional Secretary's report dated 24.01.2020 indicating that a substantial portion was State land. That report had not formed part of the Primary Court record.

Holding that no exceptional circumstances or miscarriage of justice had been established, the High Court dismissed the revision application and affirmed the order dated 02.08.2018. The Appellant thereupon preferred the present appeal.

Grounds of Appeal

The principal grounds upon which the Appellant seeks to impugn the judgment of the learned High Court Judge may be summarized as follows:

- 1) Whether the learned High Court Judge failed to appreciate that the interim order demonstrated the existence of a *prima facie* case and rendered the subsequent dismissal erroneous;
- 2) Whether the Respondent's failure to file an affidavit entitled the Appellant to obtain relief upon the material filed by her;
- 3) Whether the learned Magistrate failed to exercise the jurisdiction conferred by section 68 by dismissing the information filed under section 66(1)(b) without determining who was in possession of the disputed land or had been forcibly dispossessed within the two months immediately preceding its filing;
- 4) Whether the learned High Court Judge erred by permitting the Respondent, who had defaulted before the Primary Court, to place objections and written submissions before the High Court.

Statutory Scheme and Nature of the Inquiry

Section 66 of the PCP Act confers jurisdiction upon the Primary Court to inquire summarily into a dispute affecting land where a breach of the peace is threatened or likely. The inquiry is preventive and provisional, does not determine title, and remains subject to any right established before a competent civil court under section 74.

In a possession dispute, section 68 requires the Court to determine who possessed the land when the information was filed or, where forcible dispossession occurred within the preceding two months, who possessed it immediately beforehand. As explained in *Ramalingam v. Thangarajah*¹, title is relevant only where the evidence of possession is otherwise balanced or uncertain.

The summary nature of the proceedings does not dispense with proof. The party seeking an order under section 68(3) must place sufficient material before the Court to establish:

¹ (1982) 2 Sri LR 693

1. that the party was in actual possession;
2. that the party was forcibly dispossessed;
3. that such dispossession occurred within two months immediately preceding the filing of the information; and
4. the identity of the land from which the dispossession is alleged to have occurred.

The default of the opposing party does not relieve the informant of that burden. It merely prevents the defaulting party from further participation, while requiring the Court to consider any material already before it concerning that party's claim.

Analysis of the Grounds of Appeal

1) Effect of the interim order

The first ground assumes that, once an interim order had been made under section 67(3), the learned Magistrate could not subsequently dismiss the substantive application without some intervening circumstance. I am unable to agree. An interim order is based on a preliminary assessment intended to preserve the peace pending inquiry; it is neither a final determination of possession nor a finding that section 68(3) has been satisfied. The learned Magistrate was therefore entitled, upon examining the evidence, to find that actual possession or forcible dispossession within the prescribed period had not been established. As such the first ground of appeal is unattainable.

2) Effect of the Respondent's default on the relief sought by the Appellant

The Appellant relies on *Silinona v. Dayalal Silva and Others*² to contend that the three-week period prescribed by section 66(3) for filing affidavits is mandatory. Accordingly, the Respondent's default properly precluded him from further participating in the inquiry. That default, however, did not relieve the Appellant of proving her own claim or require the Court to accept her evidence without scrutiny.

The Appellant's affidavit, deeds, survey plan, police complaint and acreage-tax receipts did not satisfactorily establish her actual possession of the entire disputed land immediately before the alleged dispossession. The deeds related principally to title, the police complaint merely recorded her allegation, and the tax receipts covered only part of the claimed extent. The learned Magistrate was therefore entitled to find that the Appellant

² (1992) 1 Sri LR 195

had failed to establish possession and forcible dispossession within the period prescribed by section 68(3). The second ground accordingly fails.

3) The power to dismiss without Making a Determination as Required by Section 68

The Appellant contends that, once the Primary Court has assumed jurisdiction and proceeded to inquire into a dispute concerning possession, the statutory scheme does not permit the Court merely to dismiss the information without determining who was entitled to possession under section 68.

Upon an information being filed under section 66(1), section 66(2) vests the Primary Court with jurisdiction to inquire into and make a determination or order upon the dispute in the manner prescribed by Part VII of the Act. Where the dispute concerns possession, section 68(1) imposes a duty upon the Primary Court Judge to determine who was in possession of the land on the date of filing the information and to make an order in the manner contemplated by section 68(2), declaring the person so identified to be entitled to possession and prohibiting any disturbance of that possession otherwise than under the authority of an order or decree of a competent court. Where forcible dispossession within the preceding two months is established, section 68(3) further empowers the Court to restore the dispossessed party to possession.

The remaining provisions of Part VII reinforce that duty. Even where a party is in default, section 66(8)(b) requires the Court to consider such material as is before it respecting that party's claim when making its determination and order. Where all the parties fail to appear or, having appeared and fail to file affidavits, section 71 requires the Court, in a possession dispute, to permit the party in possession to continue in possession. The statutory scheme therefore does not contemplate the termination of a duly constituted inquiry by a bare dismissal leaving the question of possession undetermined.

Accordingly, although the learned Magistrate was entitled to reject the Appellant's claim for restoration under section 68(3) if forcible dispossession within the prescribed period had not been established, that finding did not conclude the inquiry. The learned Magistrate was nevertheless required to determine who was in possession of the disputed land on the date of filing the information and to make the consequential declaration and order required by sections 68(1) and 68(2). The failure to do so constituted a failure to exercise the jurisdiction vested in the Primary Court.

The legality of the learned Magistrate's decision merely to dismiss the proceedings was expressly raised as a ground of revision before the High Court. Although the learned High Court Judge considered whether the Appellant had established possession and forcible dispossession and concluded that the relief sought had properly been refused. The learned High Court Judge did not address the distinct complaint that the learned Magistrate had terminated the proceedings without determining who was in possession on the date of filing the information and without making the consequential order required by section 68. The rejection of the Appellant's claim for restoration under section 68(3) did not dispense with the separate statutory duty imposed by sections 68(1) and 68(2). Consequently, a material ground upon which the revisionary jurisdiction of the High Court had been invoked remained unresolved.

The learned Magistrate erred in terminating the proceedings without making the determination required by section 68(1), and the learned High Court Judge failed to address that distinct error. Ordinarily, those errors would justify setting aside the impugned orders and remitting the matter to the Magistrate's Court for a proper determination under section 68.

However, one further related matter requires consideration. In the order dated 18.05.2020, the learned High Court Judge recorded the following:

*"The Jurisdiction of the Primary Court is primarily to prevent a breach of the peace. In this case the Respondent, who allegedly caused a breach of the peace, did not demonstrate any interest in the proceedings before the Primary Court or in this Revision Application. **The Respondent appeared before this Court in the Revision Application and clearly stated that he has no interest in this case and is not in possession of the land in dispute.** Therefore, the Court cannot conclude that there was a breach of the peace, or that any such breach continues....."*

(Reproduced as per translation provided by the Appellant via motion dated 14.01.2025 appearing at page 82 of the brief and as page 10 of the Judgement - the emphasis is mine)

It appears that the Respondent had appeared before Court and expressly stated that he had no interest in the proceedings and was not in possession of the disputed land, thereby indicating that there was no longer any subsisting dispute likely to occasion a breach of the peace which would require a provisional order preventing such a breach of the peace.

The Appellant neither disputes nor offers any explanation concerning the Respondent's subsequent disclaimer, as recorded by the learned High Court Judge. Notwithstanding that disclaimer, the Appellant continues to seek an order placing her in possession and restraining the Respondent from entering or remaining upon the land. Although the Appellant challenges the Respondent's entitlement to participate in the revision proceedings, the substance and accuracy of the disclaimer have not been specifically challenged in any ground of appeal.

In the absence of a subsisting contest concerning possession or any continuing likelihood of a breach of the peace, a remittal at this stage would serve no preventive purpose under Part VII of the Act. It would instead permit the Appellant to pursue, through summary proceedings, what would substantially amount to a declaration of possessory entitlement. Any such substantive right must be established before the competent civil court. Accordingly, although the procedural error is recognized, I decline to remit the matter to the Magistrate's Court.

4) Participation of the Respondent in the High Court

The Respondent's default precluded his further participation in the Primary Court inquiry but did not prevent him from appearing in the revision proceedings instituted against him. Natural justice entitled him to notice and a hearing before any order adverse to him was made. The High Court could hear his submissions on the legality, propriety and regularity of the impugned order, though not determine its correctness upon fresh evidence. Accordingly, this contention cannot succeed.

Conclusion

Although the learned Magistrate erred by dismissing the proceedings without making the determination required by section 68, and the learned High Court Judge failed to address that error. Nevertheless, the Respondent's unchallenged disclaimer of any interest in or possession of the disputed land, no subsisting dispute remains requiring a preventive order under Part VII of the PCP Act. A remittal to the Magistrate Court under the circumstances would serve no useful purpose, while the affirmative possessory relief sought by the Appellant cannot properly be granted in these summary proceedings.

Accordingly, the appeal is dismissed and the judgment of the High Court is affirmed in its ultimate result, though not in the entirety of its reasoning. This judgment is without prejudice to any right the Appellant may establish before a competent civil court.

I make no order as to costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal