

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

In an application under Article 154(P)(6) of the Constitution read with section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

1. Officer-In-Charge

Police Station, Egodaunya.

COMPLAINANT

Court of Appeal Application No :

CA/PHC/210/2019

High Court of Panadura Application

No. RA/33/2018

Magistrate Court Case No: 69272

Vs.

1. Ven. Badigama Padumahimi

(Viharadhipathi)

Sunanda Upananda Viharaya

Egodaunya.

2. Kandaduruge Padmini Sriyalatha

No.10, Upananda Mawatha,

Katukurunda, Moratuwa.

1st PARTY

1. Bodiyaabaduge Matilda Perera
2. Sellapperumage Ramal Sumanarathna
3. Sellapperumage Isuru Dhananjaya
Fernando
4. Sellapperumage Dhanuka Sheron

No. 10, Upananda Mawatha
Katukurunda, Moratuwa.

Now at:
No.738, Mahavidhana Road,
Koralawella, Moratuwa.

2nd PARTY

AND NOW BETWEEN

1. Ven. Badigama Padumahimi
(Viharadhipathi)
Sunanda Upananda Viharaya
Egodauyana.

1st PARTY-PETITIONER

Vs.

1. Bodiyaabaduge Matilda Perera
2. Sellapperumage Ramal
Sumanarathna
3. Sellapperumage Isuru Dhananjaya
Fernando
4. Sellapperumage Dhanuka Sheron

No. 10, Upananda Mawatha
Katukurunda, Moratuwa.

Now at:
No.738, Mahavidhana Road,
Koralawella, Moratuwa.

2nd PARTY-RESPONDENTS

5. Kandaduruge Padmini Sriyalatha
No.10, Upananda Mawatha,
Katukurunda, Moratuwa.

1st PARTY -5th RESPONDENT

1. Ven. Badigama Padumahimi
(Viharadhipathi)
Sunanda Upananda Viharaya
Egodaunya.

1st PARTY-PETITIONER-APPELLANT

Vs.

1. Bodiabaduge Matilda Perera
2. Sellapperumage Ramal
Sumanarathna
3. Sellapperumage Isuru Dhananjaya
Fernando
4. Sellapperumage Dhanuka Sheron

No. 10, Upananda Mawatha
Katukurunda, Moratuwa.

Now at:
No.738, Mahavidhana Road,
Koralawella, Moratuwa.

2nd PARTY-RESPONDENTS-
RESPONDENTS

5. Kandaduruge Padmini Sriyalatha
No.10, Upananda Mawatha,
Katukurunda, Moratuwa.

1st PARTY 5th RESPONDENT-
RESPONDENT

Before: Hon Justice B. Sasi Mahendran, J.
Hon Justice Adithya Patabendige, J

Counsel: Migara Kodithuwakku for the 1st and 2nd Party Respondent-Appellant.
Nishadi with Sachini Fernando for the 1st and 2nd Party Respondent-
Respondent-Respondent

Written 15.08.2022 (by the 2nd Party 1st Respondent-Respondent)
Submission : 05.10.2022 ((by the 1st Party Partitioner-Appellant)
On

Judgment On: 30.07.2026

JUDGMENT

B. Sasi Mahendran, J.

The Appellant (1st Party-Petitioner-Appellant) has preferred this appeal seeking to set aside the order of the learned Judge of the Provincial High Court of the Western Province, holden in Panadura, dated 07th November 2019 in Case No. RA 33/2018, wherein the learned High Court Judge affirmed the order of the learned Magistrate of Moratuwa dated 09th November 2018 in Case No. 69272.

On 16.07.2018, the Officer-in-Charge of the Police Station of Egodaunya filed information under Section 66 of the Primary Courts' Procedure Act No 44 of 1979 (hereinafter referred to as the Act) regarding a dispute relating to the possession of the land between the Appellant and Respondents-Respondents, in the Magistrate's Court of Moratuwa

According to the said report, the dispute arose on 18.03.2018. The Appellant lodged a complaint on the same date, stating that a plot of land belonging to his temple premises, situated behind the temple, was the subject of a dispute between the parties. Thereafter, the 2nd party-Respondent-Respondents on 18.03.2018 lodged a complaint and claimed that the land had been given to them by a former monk many years ago. In 2013, a dispute arose concerning that land, during which the then incumbent of the temple was hacked to death. Following that incident, the people demolished the house where she had been residing, and thereafter her husband and son continued to live in the remaining portion, which is in the disputed land. Later, on 18.03.2018, the 2nd party lodged a complaint alleging that the Appellant had threatened them.

Furthermore, on 03.07.2018, the Appellant filed a complaint alleging that the 2nd party Respondents -Respondents were forcibly entering the disputed land and preparing to construct a temporary house. The complaint received on 18.03.2018 had been resolved with the intervention of the police. Similarly, on 03.07.2018, the 1st party Respondent-Respondent lodged a complaint stating that on 02.07.2018, while she was asleep at home, the 2nd party Respondents- Respondents damaged the house. On the same date, the 2nd party-Respondents- Respondents also filed a complaint alleging that her son's clothes had gone missing, and she suspected the daughter of the 1st party-Respondent- Respondent. Further, on 14.07.2018, the 2nd party Respondents- Respondents filed another complaint stating that the 1st party Respondent had occupied approximately five feet of her land and constructed a room, which she claimed was an unauthorized construction.

Thereafter, after notices were issued requiring both parties to appear before the Court, and each party filed affidavits. Upon consideration of the documents submitted by both parties, together with the report filed by the police, the learned Magistrate concluded that the 2nd Party -Respondent- Respondent, had established constructive possession of the disputed land through her son, who is currently residing there as her agent. Accordingly, the learned Magistrate declared her entitled to possession in terms of Section 68(1) of the Act.

It is relevant to reproduce the pertinent portion of the impugned order of the learned Magistrate, which explains how he arrived at his conclusion.

Page 121 of the brief,

“එසේ ඉවත් කරනු ලැබූ පසුව සිට එම ස්ථානයෙහි එකී වග උත්තරකරුවන් පදිංචිව නොසිටින බවට පළමු පාර්ශවයේ පළමු වග උත්තරකාර ස්වාමීන් වහන්සේ කරුණු ඉදිරිපත් කර ඇත. එසේ වුවද එගොඩ උයන පොලිස් ස්ථානාධිපතිවරයා ඉදිරිපත් කර ඇති තොරතුරු වාර්තාවෙහි සහ ඉහත කී ඡායාරූප සහ ඒවායේ ලකුණු කර ඇති අංක 02 දරණ අයිතමය අනුව පෙනී යන්නේ දෙවන පාර්ශවයේ වග උත්තරකරුවන්ගේ නිවස තවදුරටත් ආරවුල් ගත දේපලෙහි පවතින බවයි.

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පොලිස් ස්ථානාධිපතිවරයාගේ තොරතුරු වාර්තාව අනුව තවදුරටත් පෙනී යන්නේ බෝධියා බදුගේ මැටිල්ඩා පෙරේරා යන අය 2017.07.03 වන දින පොලිසියට පැමිණිල්ලක් ඉදිරිපත් කර ඇති බවත් එකී පැමිණිල්ලෙන් කියැවෙන්නේ ආරවුල් ගත ඉඩමේ පදිංචි එකී වග උත්තරකාරියගේ පුතාගේ ඇදුම් පැළඳුම් නැති වී ඇති බවත් එකී නැති වීම සම්බන්ධයෙන් පළමු පාර්ශවයේ දෙවන වග උත්තරකාරියගේ දියණිය සැක කරනු ලැබ ඇති බවත්ය. තවද පොලිස් තොරතුරු වාර්තාව අනුව 2017.07.14 වන දින දෙවන පාර්ශවයේ පළමු වග උත්තරකාරිය පොලිස් ස්ථානයට ඉදිරිපත් කර ඇති පැමිණිල්ල මගින් ප්‍රකාශ වී ඇත්තේ පළමු පාර්ශවයේ දෙවන වග උත්තරකාරිය වන පද්මිනි ශ්‍රියාලතා යන අය එකී දෙවන පාර්ශවයේ පළමු වග උත්තරකාරියගේ ඉඩමෙන් අඩි 05 ක පමණ ප්‍රමාණයක් අල්ලාගෙන කාමරයක් සාදා ඇති බවයි. ඉහත තත්ත්වය අනුව තීරණය කළ හැක්කේ 2018.07.14 දිනය වන විට ද දෙවන පාර්ශවයේ වග උත්තරකරුවන් පදිංචිව සිටින නිවස ආරවුල් ගත ඉඩමෙහි පැවති බවයි. එසේම 2018 වර්ෂයේ ජූලි මාසය වන විටද දෙවන පාර්ශවයේ පළමු වග උත්තරකාරියගේ පොඩි පුතා ආරවුල් ගත ඉඩමෙහි පිහිටි නිවසෙහි පදිංචිව සිටි බව පෙනී යයි. තම ඉඩමෙන් අඩි 05 ක පමණ ප්‍රමාණයක් අල්ලාගෙන සකස් කරන ලද නිවස තමන් විසින් කඩා ඉවත් කළ විට ශ්‍රියාලතා යන අය සහ ඇයගේ දියණිය තමන්ට පහර දුන් බවට ද දෙවන පාර්ශවයේ පළමු වග උත්තරකාරිය දිවුරුම් ප්‍රකාශය මගින් කරුණු ඉදිරිපත් කර ඇත. ඉහත කරුණු අනුව පෙනී යන්නේ පොලිස් තොරතුරු වාර්තාව අධිකරණයට ගොණු කරනු ලබන දිනය වන විටත් ආරවුල් ගත ඉඩමෙහි පිහිටි දෙවන පාර්ශවයේ වග උත්තරකරුවන්ගේ නිවසෙහි බුක්තිය ඔවුන්ගේ සන්නකයේ තිබී ඇති බවයි.”

Being dissatisfied with the above-said impugned order, the Appellant invoked the revisionary jurisdiction of the High Court of Panadura, where the learned High Court Judge declined to interfere with the order of the learned Magistrate, holding that no exceptional circumstances existed to justify the exercise of revisionary powers. Further, he held that the said order had not shocked the conscience of the court.

Being dissatisfied with the aforesaid order, the present appeal has been preferred before this Court.

The central contention of the Appellant is that the learned Magistrate misapplied Section 68(1) of the Act by failing to correctly determine possession of the disputed land. At this juncture, I am mindful of Section 68(1) of the said Act which reads as follows,

“(1) Where the dispute relates to the possession of any land or part thereof it shall be the duty of the Judge of the Primary Court holding the inquiry to determine as to who was in possession of the land or the part on the date of the filing of the information under section 66 and make order as to who is entitled to possession of such land or part thereof.”

Section 68(1) imposes a statutory duty on the Judge of the Primary Court to determine who was in possession of the disputed land on the date the information was filed under Section 66. When a police officer files a report under Section 66(1)(a) of the Act, the learned Magistrate is vested with jurisdiction to inquire into the matter. Then he has to consider who was in possession at the time the dispute arose.

At this juncture, I am mindful of the following judgments.

In the case of **Ramalingam v. Thangarajah** [1982] 2 SLR 693 at 698. Sharvananda, J (as he was then) held that,

“In an inquiry into a dispute as to the possession of any land, where a breach of peace is threatened or is likely under Part VII, of the Primary Courts Procedure Act, the main point for decision is the actual possession of the land on the date of the filing of the information under section 66;

Punchinona v. Padumasena and Others [1994] 2 SLR 117 at 122 Ismail J held that,

“The primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land. The Court in exercising this jurisdiction is not involved in an investigation into title or the right to possession which is the function of a civil Court. He is required to take action of a preventive and provisional nature pending final adjudication of rights in a civil Court.”

David Appuhamy v Yassasi Thero 1987 (1) SLR 253 at 258 Wijetunga J.

“This section requires the, Judge of the Primary Court to make a declaration as to who is entitled to possession of the land. The basis of such declaration is the, determination as to who was in possession of the land ;on the date of the filing of the information under section 66.”

According to the above judicial precedent, the object of the inquiry is not to determine ownership or title to land, but to preserve public peace by making a provisional determination of possession until the rights of the parties are finally adjudicated by a competent civil court. Accordingly, proceedings under Section 66 are not intended to resolve competing claims of ownership. The inquiry is strictly confined to the factual question of possession.

At this juncture, I am mindful of the case of *Iqbal v. Majedudeen and Others* [1999] SLR 213 at 216 where Gunawardana, J. held that,

“The law recognizes two kinds of possession:

(i) when a person has direct physical control over a thing at a given time, he is said to have actual possession of it;

(ii) a person has constructive possession when he, though not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing either directly or through another person.”

In the present case, the 2nd party-Respondent-1st Respondent is to be regarded as having had constructive possession of the land as at 16/07/2018, despite the absence of continuous physical occupation. The fact that her son was residing in or otherwise connected with the land supports the inference that possession was being exercised through him on her behalf, which is sufficient in law to constitute possession without physical occupation.

It should be noted that on 02.07.2018, she lodged a complaint with the police alleging that belongings of her son had been taken by the 1st party-Respondent-Respondent. This establishes that the 2nd party was in possession of the land even before the dispute arose.

I am mindful that our courts have consistently held that where an alternative remedy is available, they are reluctant to invoke revisionary jurisdiction. In this context, Section 74 of the Act provides such an alternative remedy, thereby limiting the circumstances in which revision may be entertained, which reads as follows,

“(1) An order under this Part shall not affect or prejudice any right or interest in any land or part of a land which any person may be able to establish in a civil suit; and it shall be the duty of a Judge of a Primary Court who commences to hold an inquiry under this Part to explain the effect of these sections to the persons concerned in the dispute.”

I hold that the learned High Court Judge has rightly determined that there has been no miscarriage of justice, and further, that the Magistrate's order does not shock the conscience of the Court.

Accordingly, I find that the order of the learned Magistrate should be affirmed, as it was correct in granting possession of the land to the 2nd party-Respondents-Respondents.

For the foregoing reasons, there is no necessity to interfere with the order of the learned High Court Judge dated 07th November 2019 and with the order of the learned Magistrate dated 09th November 2018.

For the aforesaid reasons, I dismiss the Appeal.

The Registrar is hereby directed to copy this Judgment to the Magistrate's Court of Ratnapura with the original brief.

JUDGE OF THE COURT OF APPEAL

Adithya Patabendige, J.

I AGREE.

JUDGE OF THE COURT OF APPEAL