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

In the matter of an Application for Revision in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Kalupahana Mesthrige Ariyasena
   No. 23, Hirimbura, Galle.
2. Yaddehi Himani Lakshi Chandima
   No. 226/46 B, Richmond Hill Road, Galle,

Petitioners

Case No. CA (PHC) 215/2015
HC/Galle/Revision No. 70/2014
Magistrate's Court Case No. 19116

Vs.

Eshan Abeywickrama Danapala
"Abeywickrama Food City", Hirimbura Road, Galle.

Respondent

AND

1. Kalupahana Mesthrige Ariyasena
   No. 23, Hirimbura, Galle.
2. Yaddehi Himani Lakshi Chandima
   No. 226/46 B, Richmond Hill Road, Galle,

Petitioners-Petitioners

Vs.

Eshan Abeywickrama Danapala
"Abeywickrama Food City", Hirimbura Road, Galle.

Respondent-Respondent

AND NOW BETWEEN

Eshan Abeywickrama Danapala
"Abeywickrama Food City", Hirimbura Road, Galle.

Respondent-Respondent-Appellant

Vs.

1. Kalupahana Mesthrige Ariyasena
   No. 23, Hirimbura, Galle.

2. Yaddehi Himani Lakshi Chandima
   No. 226/46 B, Richmond Hill Road, Galle.

Petitioners-Petitioners-Respondents

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Mahinda Nanayakkara for Respondent-Respondent-Appellant

Athula Perera with Vindya Divulwewa for Petitioners-Petitioners-Respondents

Written Submissions tendered on:

Respondent-Respondent-Appellant on 31.10.2018

Petitioners-Petitioners-Respondents on 31.10.2018

Decided on: 31.01.2020

Janak De Silva J.

This is an appeal against the order of the learned Civil Appellate High Court Judge of Galle dated 03.12.2015.

The Petitioners-Respondents-Respondents (Respondents) instituted proceedings under section 66(1) (b) of the Primary Courts Procedure Act (Act) on 31.01.2014 and claimed that Respondent-Respondent-Appellant (Appellant) has encroached onto part of their land. This land is said to be P. 6.08 in extent and is depicted in plan marked PE2 [Appeal Brief page 196]. The Respondents further claimed that the said land is 8.5 feet wide and 40 feet in length from the South-Western part from which side the encroachment is said to have occurred.

The Appellant claimed that the land in dispute is not what the Respondents have identified and submitted that the Respondents have failed to properly identify the land in dispute and as such the application must be dismissed.

The learned Magistrate upheld this position and dismissed the application. The Respondents appealed to the Civil Appellate High Court where the learned High Court Judge held that the land in dispute was properly identified and that the Respondents had been dispossessed and granted relief to the Respondents. Hence this appeal.

In an application of this nature it is incumbent on the Magistrate to ascertain the identity of the corpus as section 66(1) of the Act becomes applicable only if there is a dispute between parties affecting land. A Magistrate should evaluate the evidence if there is a dispute regarding identity of the land. [*David Apuhamy v. Yassassi Thero* (1987) 1 Sri.L.R. 253].

The learned Magistrate concluded that parties had submitted different lands as being the corpus of the dispute and that the Respondents had failed to properly establish which of them was the corpus forming the subject matter of the dispute.

The learned High Court Judge considered the two site inspection reports dated 21.11.2013 and 04.12.2013 prepared by the Police and concluded that the land in dispute is part of the land called "Digapotha" which abuts the Galle-Baddegama road. In my view this is the correct approach. Although the Appellant claims that the Police was biased this claim is difficult to accept given that the Police did not institute proceedings even though it was the Respondents who first made a complaint.

The Appellant further submits that the learned High Court Judge erred in granting relief not prayed for by the Respondents. In particular the complaint is that he ordered the Respondents to be restored to possession of the land from which they were dispossessed although there was no specific prayer to that effect.

In Weragama v Bandara (77 N.L.R. 28) and *Buddhadasa Kaluarachchi v Nilamanie Wijewickrema and another* [(1990) 1 Sri.L.R. 262] it was held that a court is not entitled to grant relief that has not been prayed for by a party. This principle has undoubtedly received widespread judicial recognition in the context of proceedings conducted under the Civil Procedure Code. The apex courts have consistently held that a District Court is not entitled to grant reliefs to a party if the relief is not prayed for in the prayer to the plaint. [*Sirinivasa Thero* v *Sudassi Thero* (63 N.L.R. 31), *Wijesuriya v Senaratna* (1997) 2 Sri. L.R. 323, *Surangi v Rodrigo* (2003) 3 Sri. L.R. 35].

This principle has also recently been adopted in the context of Primary Court proceedings. In *Dias and another v. Dias and another* [CA (Rev) Application No: 63/2016; C.A.M. 12.08.2016] a divisional bench of this court observed as follows:

> *"We find that the Learned Magistrate has erred in ordering that the respondents be restored to possession when there is no such prayer in the petition by the respondents. The respondents had not prayed for restoration of possession this is a private information under Section 66(1)(b) of the Primary Courts Procedure Act in terms of Section 66(1)(b) the petitioner has to set out the relief sought."*

I will now consider whether this decision sets out the correct position of law on the question now before Court.

Sections 68(1) and (2) of the Primary Courts Procedure Act (Act) reads:

> "(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**.
>
> (2) **An order under subsection (1) shall declare** any **one or more persons therein specified to be entitled to the possession of the land or the part** in the manner specified in such order until such person or persons are evicted therefrom under an order or decree of a competent court, and prohibit all disturbance of such possession otherwise than under the authority of such an order or decree." (emphasis added)

These provisions clearly impose a statutory duty on the Primary Court Judge to determine and declare the persons entitled to possession of the land. They apply to applications made under section 66(1)(a) as well as under section 66(1)(b) of the Act. There is of course no specific prayer for relief in an application made under section 66(1)(a) of the Act but yet the Primary Court Judge has a statutory duty to determine and declare the persons entitled to possession of the land. In this context one cannot argue that the general principle is that a court is not entitled to grant relief that has not been prayed for by a party.

Similarly, I am of the view that even in applications made under section 66(1)(b) of the Act there is a statutory duty on the Primary Court Judge to determine and declare the persons entitled to possession of the land. In this instant case this has been done by the learned Civil Appellate High Court Judge which power he has when acting in revision against the Primary Court order. The fact that the Respondent has failed to pray for this relief in the affidavit does not relieve the learned Civil Appellate High Court Judge of the statutory duty imposed upon him.

For the foregoing reasons, with the greatest respect to their lordships in *Dias and another v. Dias and another* (supra), I hold that in a private information filed under Section 66(1)(b) of the Act it is not incumbent on the petitioner to specifically pray for restoration to possession. That is a relief that the learned Primary Court Judge is under a statutory duty to consider and grant after due inquiry.

In any event, the proviso to Article 138(1) of the Constitution states that no judgment, decree or der of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

In the matter before Court, the alleged defect in the prayer of the Respondent's affidavit does not at any point prejudice the substantial rights of the Appellant or occasion a failure of justice.

For all the foregoing reasons, the appeal is dismissed with costs.

Parties in CA(PHC) APN 149/2015 agreed to abide by the judgment given in CA (PHC) 215/2015.

Hence the said revision application is also dismissed with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal