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

In the matter of an Application under and in terms of Article 138 and Article 154(G) of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal Case No:
CA/PHC/174/2015
HC Matara Case No:
45/2012 (Rev.)
MC Morawaka Case No:
14635

Sunil Liyanage,
Etambagahawatta,
Thalahagama,
Makandura.

Petitioner-Respondent-Appellant

-Vs-

Divisional Secretary,
Athuruliya,
Thibbotuwawa,
Akuressa.

Plaintiff-Respondent-Respondent

Before : **A.L. Shiran Gooneratne J.**

&

Dr. Ruwan Fernando J.

Counsel : Harith De Mel with L. Wijesundara for the Respondent-Petitioner-Appellant.

Madubashini Sri Meththa, SC for the Plaintiff-Respondent-Respondent.

Written Submissions: By the Respondent-Petitioner-Appellant on 02/09/2020.

By the Plaintiff-Respondent-Respondent on 02/09/2020.

Argued on: 03/09/2020 and 04/09/2020

Judgment on : **18/11/2020**

A.L. Shiran Gooneratne J.

This is an Appeal from an order made by the Provincial High Court of Matara, arising from an application for revision filed by the Respondent-Petitioner-Appellant against the Plaintiff-Respondent-Respondent from an application filed in terms of Section 5 of the State Land (Recovery of Possession) Act No. 7 of 1979 (as amended). The learned High Court Judge by order dated 29/10/2015, affirmed the order made by the learned Magistrate dated 18/05/2012, to evict the Appellant from the land more fully described in the schedule to the said application.

The position of the Respondent is that the Appellant was in unauthorized possession or occupation of State Land depicted in Final Village Plan No. 67, identified as 'Lot A' and 'D'. The notice dated 05/07/2010, to vacate and deliver vacant possession of the land and the affidavit of the competent authority dated 04/10/2010, setting forth the grounds that the Appellant in his opinion is in unauthorized possession or occupation of the said land was filed in the Magistrates Court. (Vide page 64 and 65 of the brief)

The position of the Appellant at the show cause inquiry before the learned Magistrate was that the land identified by the said application forms part of the corpus in Partition Case No. P.23337 and therefore is not State Land. At the conclusion of the inquiry, the learned Magistrate held, that the land in issue in the said Partition Case has no bearing to the land which the Appellant is in unauthorized possession and accordingly made an order of ejectment.

When this matter was taken up for argument, the learned Counsel for the Appellant confined his argument to the following grounds in appeal.

1) The delivery of the notice to quit as demonstrated by the record, cannot be satisfied being communicated to the Appellant by the Respondent and therefore the Court must act on the basis that no notice to quit has been issued or duly complied with.
2) The identification of the land in the Magistrates Court was erroneous and demonstrably wrong and should not be allowed to stand.

3) In the event no proper quit notice or no sufficient proof of same is ex-facia available, is there a latent lack of jurisdiction with regard to the application before the Magistrates Court requiring dismissal of the application in limine.

The argument advanced in support of the 1st ground in appeal is that the quit notice issued in terms of Section 3 of the Act nor the affidavit of the Competent Authority filed in terms of Section 5(2), has reference that the quit notice was communicated to the Appellant by registered post and/ or conspicuously exhibited and therefore in the absence of an affidavit or a registered postal article to that effect *"the issue of due communication of the Notice to quit is in doubt"*. (paragraph 2.35 (b) of the written submissions filed of record). Therefore, by this application, it is not the validity of the quit notice but the process of service of the quit notice that is challenged.

The position of the Respondent, is that having received the Quit Notice, the Appellant was before the Magistrate to show cause and therefore the Appellant is estopped from denying receiving the said notice. The Competent Authority by application dated 04/10/2010, invoked the jurisdiction of the Magistrates Court and in response to the summons to show cause, the Appellant was present before Court on the very next date.

Upon receipt of an application for ejectment, the Magistrate issues notice on the person named in the application to show cause as to why such person should not be ejected from the land as prayed for. Such direction is made when a

person named in the application has not complied with Section 4 of the Act. The Appellant at no stage of the proceedings before the Magistrates Court contended that he was not issued a quit notice nor questioned the process of service of such notice. Therefore, when the Appellant comes before Court on notice and moves to show cause, it can be reasonably concluded that the Appellant was aware of the contents of the quit notice.

The Appellants grievance entirely rests in the process service of the quit notice which the Appellant contends to be doubtful and thereby questions the validity of the application made in terms of Section 5 of the Act. The Appellant submits that the learned Magistrate must satisfy himself that the application is in conformity with the law prior to any exercise of jurisdiction in terms of the Act.

In ***Farook vs. Gunewardena, Government Agent Ampara (1980) 2 SLR 243, Sri Pavan, J.*** (as he then was) held that,

"*The Magistrate can only satisfy him whether a valid permit or any other written authority of the State has been granted to the person on whom summons has been served. If the language of the enactment is clear and unambiguous, it would not be legitimate for the Courts to add words by implication into the language. It is a settled law of interpretation that the words are to be 6 interpreted as they appear in the provision, simple and grammatical meaning is to be given to them, and nothing can be added or subtracted. The Courts must construe the words as they find it and cannot go outside the ambit of the section and speculate as to what the*

legislature intended. An interpretation of section 9 which defeats the intent and purpose for which it was enacted should be avoided.

The Appellant's cause before the learned Magistrate was that the land described in the schedule to the application is not State Land and therefore, he was not an unauthorized occupier or a trespasser of the land described in the schedule. Section 5(1)(a)(iii) of the Act states, thus;

"that a quit notice was issued on the person in possession or occupation of such land or was exhibited in a conspicuous place in or upon such land;"

When summoned before the Magistrate, the Appellant complied with the application made in terms of Section 5 of the Act and did not challenge the validity of the process service in terms of Section 5(1)(a)(iii) of the Act. In the circumstances, to permit such objection to be raised whenever or whichever forum the Appellant thinks fit, would no doubt render the scope of the Act to extend beyond the ambit of the section.

"In any event Sections 9(1) and 9(2) takes away from the Magistrate the power to inquire into matters stated in the application under Section 5 except to inquire into the existence of a valid permit." ***(CA (PHC) 116/95 decided on 11/01/2001, Hon. Raja Fernando J.)***

The Appellant has raised the 2nd ground in appeal on the basis that the identification of the land was erroneous and demonstrably wrong and should not

be allowed to stand. In the application filed in the Magistrates Court, the Competent Authority has identified the land as,

"මාතර දිස්ත්‍රික්කයේ අතුරුලිය ප්‍රාදේශීය ලේකම් කොට්ඨාශයේ වේනගම ග්‍රාමනිලධාරී වසමේ පිහිටි අවසාන ගම් පිඹුරු අංක 67හි කැබලි අංක A හා D දරණ වැලිහේනකැලේ නැමැති දරණ රජයේ ඉඩම"

While examining the issues raised in a similar matter, S.N. Silva, J. (as he then was) in the case of ***Ihalapathirana vs. Bulankulame, Director General, U.D.A. (1 S.L.R 1988 page 416)*** made the following observations;

The phrase "unauthorized possession or occupation" is defined in section 18 of the Act as amended by Act No. 29 of 1983 to mean the following: "every form of possession or occupation except possession or occupation upon a valid permit or other written authority of the State granted in accordance with any written law, and includes possession or occupation by encroachment upon State Land." This definition is couched in wide terms so that, in every situation where a person is in possession or occupation of State Land, the possession or occupation is considered as unauthorized unless such possession or occupation is warranted by a permit or other written authority granted in accordance with any written law.

The position of the Appellant is that there is no Lot 'A' and 'D' in the Final Village Plan (FVP) 67 marked "V10", relied upon by the Appellant. (Vide page 51 of the brief). However, it is clearly observed that the reference to the plan relied upon by the Competent Authority as described in the application submitted to the

Magistrates Court is not FVP 67, relied upon by the Appellant. The eviction application refers to a land in extent of 8 perches depicted in the FVP 67 marked Lot No. 'A' and a land in extent of 2 perches depicted as 'Lot D', in the Grama Niladari Division of Wenagama. (Vide page 66 of the brief).

Therefore, it is clear that the land identified as FVP 67, 'Lot A' and 'D' in the quit notice is a totally different land to that of the land described as the corpus in the Partition action. The survey report filed in the Partition action, further supports the position of the Respondent. (Vide page 76 of the brief). According to the said report the land claimed by the Appellant is known as 'Lot 50' in FVP 67 identified as "Appallagodawila" (Vide page 10 of the brief) which is completely a different land from the land described in the schedule to the quit notice pertaining to the application made to the Magistrates Court.

For the reasons stated above, we do not see any merit in this Appeal. Accordingly, the orders made by the Magistrates Court and the Provincial High Court are affirmed and the Appeal is dismissed.

Appeal dismissed with costs fixed at Rs. 15,000/-

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL