

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

In the matter of an application for an Injunction
under and in terms of Article 143 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

Court of Appeal

Case No: CA/INJ/06/2024

Vellupillai Subramaniam Muruhathas,
Malaivempadi Vethi,
Sakthi Vasam,
Suthumalai East,
Manipay
(also of 8, Shakespeare Crescent, London
E12 6LN, United Kingdom)

Petitioner

Vs.

1. Iyathurai Sivapathasuntharam,
2. Sivapathasuntharam Mayurathan

Both of

Muthukrishnar Lane,
Chunnakam Centre,
Chunnakam

Respondents

Before : R. Gurusinghe J
&
M.C.B.S. Morais J

Counsel : Dr K.Gurupalan with Anjali Rathnayake
Instructed by R.M.S.P. Rathnayake
for the Respondent-Petitioner

Theekshana Pathirana with Laksahani Himashi
Instructed by Dilhara Arachchige
For the Petitioner-Respondent

Supported on : 21/11/2024

Decided on: 28/01/2025

ORDER

R. Gurusinghe

The petitioner bought the property (hereinafter referred to as the “Property”) described in the schedule in the petition by deed no. 2951 dated 23-04-2016. Since the petitioner resides in the UK, the petitioner appointed the first respondent as his attorney by the power of attorney dated 04-05-2016. The petitioner constructed a wedding reception hall on the property, and the first respondent started a business operation of the wedding reception hall and rented out shops, entering into rent agreements on behalf of the petitioner. The petitioner alleged that the first respondent failed to properly remit the monthly earnings from the business operation to the petitioner. The petitioner came back to Sri Lanka on 04-04-2024 to settle the issues. It was only then that the petitioner came to know there was a deed no. 3434 dated 25-10-2017, transferring half of the property to the first respondent’s son, the second respondent. The petitioner’s position is that he never signed such a deed or received any consideration.

The petitioner cancelled the power of attorney given to the first respondent on 07-05-2024. The petitioner filed this injunction application before this court, and the court issued an injunction against the first and second respondents as prayed for in prayer (b) of the amended petition.

The first respondent made an application before this court to have that injunction order be vacated. By now, the period of validity of that injunction has been lapsed. The first respondent’s argument is that he had been

evicted from the possession of the property by that injunction order. The first respondent seeks to have possession of the property be restored to him.

On behalf of the first respondent, it was argued that no one can be dispossessed by way of an injunction order. The first respondent heavily relied on the case of Pounds v Ganegama 40 NLR 73. In that case the dispute arose out of a partnership agreement of a business. One party owned 49 per cent of the business, and the other partner owned 51 per cent of the business. One of the partners appointed the appellant as the manager of the business. By an interim injunction, the appellant manager was removed. The Supreme Court restored the appellant. The appellant claimed rights independent of the plaintiff. However, in the present case, the first respondent was only a power-of-attorney holder for the petitioner. As per the documents, the petitioner is the sole owner of the property, and the first respondent acted as the attorney of the petitioner. The first respondent cannot claim to be in possession. The petitioner was in possession through his attorney. To possess, one must have the intention to possess and the physical control.

In the case of Wijeyesekere v. Meegama 40 NLR 340.Keuneman J, discussed what possession is as follows;

Maasdorp also in his Institutes of South African Law (5th ed., vol. 11, p. 15) discussed "possession" as follows: —"It is a compound of a physical situation and of a mental state The intention must also absolutely be to hold the thing for one's self and not for another, for a lessee, a person who has a thing on loan, or a depository cannot in strict law be said to possess or, if he possesses at all, he possesses not for himself but in the name of the owner". He dealt at page 17 with the classification of civil and natural possession. "Voet uses the term civil possession as possession which is held by a person as owner or by a bona fide possessor with the intention of being or becoming owner ". Further, at page 61, he stated definitely that " a lessee has in no case the right of retaining or remaining in possession of the land leased after the expiration of the lease. His right to compensation will depend upon whether the improvements were made with or without the consent of the owner ".

Likewise, a power of attorney holder has no possession of his own, in law.

The first respondent also relied on the case of Sivapathalingam v Sivasubramaniam, 1990 1 SLR 378. The facts of that case are quite different from the present case, and as such, it is not applicable to this case.

The property tax for the entire property for the period of 2017 up to the date of the application was paid in the name of the petitioner. The certificate of ownership was issued in the name of the petitioner by the Pradeshiya Sabha. The business licence regarding the reception hall was also in the name of the petitioner. In law, the petitioner has been in possession since he became the owner of the property.

In the case of *Seelawathie Mallawavs Keerthiratne 1982 1 Sri.L.R. 384* Victor Perera J said, “*An injunction is the normal way of stopping a wrongdoer from obtaining the benefit of such wrongdoing to the detriment of the aggrieved party.*”

If the argument of the first respondent petitioner is accepted, the owner of a property will not be able to remove even a watcher or a caretaker without a final judgment. In the same way, if an owner hands over the keys to someone to take care of his house for two or three days and upon returning, if the caretaker refuses to return the keys, saying he is in possession of the house, the owner of the house will not be able to have access to his own house until the final judgment, if we are to rely on the first respondent petitioner’s argument. Such a proposition would lead to complete absurdity. The first respondent petitioner was never in possession of the property other than being the attorney of the petitioner. Therefore, the question of the removal of the first respondent petitioner from the possession does not arise. Furthermore, once the power of attorney was cancelled, the first respondent petitioner had no whatsoever right to use the petitioner's property to gain any profit from that property. In these circumstances, the application of the first respondent should be dismissed.

Application of the first respondent-petitioner is dismissed.

Judge of the Court of Appeal.

M.C.B.S. Morais J.

I agree.

Judge of the Court of Appeal.