

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

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

Weerasekaraarachchige Champika
Niranjaili Weerasekara
Lelakada,
Ginimallagaha.

CA (CPA) 129 - 2022

**HC Balapitiya Case No.
Rev. 1007-20**

**MC – Balapitiya
Case No. 21631**

Petitioner

Vs.

1. Dadallage Thushara Roshan
Thalhenawatte
Kahawa.
2. Munideniya Ederage Jayantha
Thalhenawatte,
Kahawa.

Respondents

AND

Weerasekaraarachchige Champika
Niranjaili Weerasekara
Lelakada.
Ginimallagaha.

Petitioner – Petitioner

Vs.

1. Dadallage Thushara Roshan
Thalhenawatte,
Kahawa.

2. Munideniya Ederage Jayatha
Thalhenawatte,
Kahawa.

Respondents – Respondents

AND NOW BETWEEN

Weerasekaraarachchige Champika
Niranjali Weerasekara,
Lelakada,
Ginimallagaha.

**Petitioner – Petitioner -
Petitioner**

1. Dadallage Thushara Roshan
Thalhenawatte,
Kahawa.
2. Munideniya Ederage Jayantha
Thalhenawatte,
Kahawa.

**Respondents – Respondents –
Respondents**

Before : **Hon. M Sampath K. B Wijeratne,J.(CA)**
: **Hon. M. Ahsan R. Marikar, J.(CA)**

Counsel : Sanjeewa Dasanayake for the Petitioner –
Petitioners – Petitioner instructed by
Athula De Silva

Argued on : 03.09.2024

Decided on : 11.10.2024

M. Ahsan R. Marikar, J. (CA)

Introduction

- 1) The Plaintiff-Petitioner-Petitioner (hereinafter referred to as “Petitioner”) preferred this revision application against the Respondents-Respondents-Respondents (hereinafter referred to as “Respondents”) against the Order delivered by the Learned High Court Judge of *Balapitiya* on 26th August 2022 in a section 66 application under the Primary Courts’ Procedure Act (No.44 of 1979), as well as the Orders made by the Magistrate Court of *Balapitiya* and the High Court of *Balapitiya*.
- 2) The said reliefs sought by the Petitioner in her petition dated 24th October 2022 are as follows;
 - a) Issue notice to the Respondent-Respondent-Respondent,
 - b) Grant reliefs as prayed for in the Petition dated 30.04.2020,
 - c) Set aside the reliefs as prayed for in the statement of objection dated 30.04.2021,
 - d) Set aside and/or revise and/ or vary the Order pronounced by the High Court of *Balapitiya* dated 26.08.2022 in case bearing No. Rev. 1007/20 and the judgement pronounced by the Magistrates Court of *Balapitiya* dated 22/01/2020 in case bearing No. 21631,
 - e) Issue an interim Order staying operation of the Order dated 22.01.2020 of the Learned Magistrate of *Balapitiya* in case bearing No 21631 and/or and Order to maintain Status quo until of the final determination of this application,
 - f) Grant cost and
 - g) Such other and further reliefs,

Facts of this case

- 3) The Petitioner had contended that she instituted action in terms of Section 66(1) Primary Courts' Procedure Act in the Magistrate Court of *Balapitiya* by a private plaint. The dispute had arisen for her to institute the said proceedings, based on the corpus referred to in the schedule to the facts reported by the Petitioner, which described an amalgamated land, comprised of lands called "*Palewatte*" and "*Mapagurugewatte*" for which the Petitioner had submitted deeds of gift, marked and produced as P1 and P3.
- 4) Two plans had been produced as P2 and P4 at the Magistrate's Court to identify the lands.
- 5) These two lands had been depicted in the sketch marked and produced as P5. The Petitioner had brought to the notice of Court that the Respondents had been residing adjacent to the land in dispute until 6th March 2019, on which date the Respondents had removed the boundary wire fence. Consequently, the Petitioner had lodged the complaint to the Police.
- 6) After instituting the Primary Court proceedings the Respondents had filed objections, claiming co-owned rights to the disputed land, and had submitted that there was no demarcation of boundary and further asserting that the Respondents had been in possession of part of the land referred to as "*Mapagurugewatte*".
- 7) The Learned Magistrate had dismissed the application made by the Petitioner on the grounds that the land cannot be identified.
- 8) Following that, the Petitioner had filed revision papers at the High Court of *Balapitiya*, where the Learned High Court Judge had also dismissed the revision application on the ground that the disputed land cannot be identified and the Petitioner had not claimed any right to the land named "*Palewatte*".

- 9) Aggrieved by the said Order the Petitioner had filed this revision application to obtain the reliefs prayed for, as the Learned High Court Judge had reached an erroneous conclusion and had failed to consider the documents and the legal fact produced by the Petitioner.

Disputed facts

- 10) When this revision application was mentioned after notices were issued to the Respondents, the Respondents had failed to appear before this court despite several notices being issued by the Registrar. As the Respondents were absent when the matter was called on 6th June 2024, the case was fixed for argument on 3rd September 2024.
- 11) On 3rd September 2024, the Respondents were absent and unrepresented, and the matter was concluded based on the argument raised by the counsel for the Petitioner.
- 12) In considering the facts, documents and the Orders made by the Learned Magistrate and the High Court Judge to come to a conclusion the following disputed points should be considered.
- i) Had this dispute arisen to be considered under Section 66(1) of the Primary Courts' Procedure Act?
 - ii) Had the Learned Magistrate and Learned High Court Judge considered the facts related to this dispute acting under Section 66(1) of the Primary Courts' Procedure Act?
 - iii) If not, can the Petitioner get reliefs prayed for in the petition dated 24th October 2022?

I. Had this dispute arisen to be considered under Section 66(1) of the Primary Courts' Procedure Act?

- 13) Section 66(1) of the Primary Courts' Procedure Act outlines, the circumstances on which an action can be instituted under Primary Courts' Procedure.
- 14) Such action can be instituted by a Peace Officer following a complaint made by a party when there is a breach of peace and a dispute for the possession of a land.
- 15) The second method of instituting action is when there is a breach of peace, in which case a party can file information by an affidavit to the Primary Court under Section 66(1) (b) of the Primary Courts' Procedure Act.
- 16) In the instant action, the Petitioner had instituted the action under the Primary Courts' Procedure Act by filing private information.
- 17) Therefore, this inquiry had been taken up by the Magistrate and concluded by way of written submissions.
- 18) On the said context, this action had been instituted pursuant to the Primary Courts' Procedure Act.

II. Had the Learned Magistrate and Learned High Court Judge considered the facts related to this dispute acting under Section 66(1) of the Primary Courts' Procedure Act?

- 19) Upon perusal of the Learned Magistrate's Order dated 22nd January 2020, it is evident that the Learned Magistrate had specified that the Petitioner had submitted a Police complaint and had informed the Court of a breach of peace when instituting the Primary Courts' Procedure application.

- 20) However, the Magistrate had reiterated that a breach of peace must be established for the facts pertinent to the said action to be considered and dismissed the case on the grounds that the Petitioner had failed to produce evidence identifying the disputed land or to establish possession of the land.
- 21) When the Petitioner filed the revision application the Learned High Court Judge also concluded that the land in dispute could not be identified due to the lack of defined boundaries. Therefore, the issue of the Respondents' entry onto the said land could not be adjudicated in the instant action.
- 22) On the said ground, the High Court had dismissed the revision application.
- 23) In light of the Learned Magistrate's Order and the Learned High Court Judge's Order, it remains unclear whether both judges had considered whether a breach of peace had occurred, thereby justifying the Petitioner's initiation of the initial Section 66 application at the Magistrate's court of *Balapitiya*.
- 24) Under the provisions of Section 66 applications, the establishment of a breach of peace is mandatory to proceed with considering the actual possession of a party.
- 25) In the instant action and in the petition filed in this revision application, the Petitioner reiterates that both the Learned Magistrate and the High Court Judge had failed to consider the documents filed by them to identify the land in dispute. Further, the documents filed to support the possession of the Respondents are dated subsequent to the institution of the Section 66 application at the Magistrate's Court of *Balapitiya*.
- 26) Drawing my attention to the documents submitted by the Petitioner, the Police complaint made on 16th March 2019 does not refer to any breach of peace.

- 27) This is an application made under Section 66 by the Petitioner by way of private information. Therefore, the burden lies on the Petitioner to prove that there was a breach of peace in the event this dispute is not resolved. Otherwise, on its face this appears to be a matter to be resolved at the District Court as it seems to be a land dispute between the parties.
- 28) Although, neither the High Court Judge nor the Magistrate had specifically stated that there was a breach of peace to proceed with this matter, this Court cannot overlook the mandatory provision provided under Primary Courts' Procedure that a breach of peace must be established to consider a Section 66 application.
- 29) Although the Respondents had not participated in the instant application, this Court is of the view that the rights of the parties should be resolved at the District Court as it seems to be a civil dispute.

III. If not, can the Petitioner get reliefs prayed for in the petition dated 24th October 2022?

- 30) As analyzed above, to institute a Section 66(1) application under Primary Courts' Procedure Act, it is mandatory that there should be a breach of peace between the parties.
- 31) In the Petitioner's application made to the Magistrate's Court by way of private information, no investigation reports had been conducted by the relevant Police station. Therefore, by P11 Police complaint no breach of peace is disclosed.
- 32) It is decided in the case of ***Ramalingam v Thangarah***¹;

“In an inquiry into a dispute as to the possession of any land, where a breach of peace is threatened or is likely

¹ [1982] 2 SLR 694

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; but, where forcible dispossession took place within two months before the date on which the said information was filed .”

And in the case of **Punchi nona v. Padumasena and others** ² Ismail J articulated as follows;

“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. It was therefore incumbent upon the Primary Court Judge to have initially satisfied himself as to whether there was a threat or likelihood of a breach of peace and whether he was justified in assuming such a special jurisdiction under the circumstances. The failure of the judge to satisfy himself initially in regard to the threat or likelihood of the breach of peace deprived him of the jurisdiction to proceed with the inquiry and this vitiates the subsequent proceedings. For these reasons, acting in revision, I set aside the Order of the Primary Court Judge dated 30.1.90.”

- 33) In terms of the aforesaid decisions it has been specifically stated that the magistrate should satisfy him or herself initially regarding the threat or likelihood of a breach of peace. In the absence of such a finding, action under Section 66 cannot be maintained.
- 34) Thus, my candid view is we cannot overlook a mandatory provision under Section 66(1) and allow a bad precedent to follow after making a decision.

² [1994] 2 SLR 122

- 35) In the said circumstances, I do not see any merit of the Petitioner's application that this case can be maintained under Primary Courts' Procedure Act.
- 36) Beside these facts, this being a revision application there should be exceptional circumstances to warrant the revisionary jurisdiction to grant reliefs to a party.
- 37) In the case of **Caderamanpulle vs. Ceylon Paper Sacks Ltd** ³ ;

"The existence of exceptional circumstances is a precondition for the exercise of the powers of revision".

As Per Nanayakkara, J;

"when the decided cases cited before us are carefully examined, it becomes evident in almost all the cases cited, that powers of revision had been exercised only in a limited category of situations. The existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision and absence of exceptional circumstances in any given situation results in refusal of remedies"

And it is decided in **Hotel Galaxy Ltd v Mercantile Hotel Management Ltd** ⁴; as per Sharvananda CJ;

"It is settled law that the exercise of revisionary powers of the Appellate Court is confined to cases in which exceptional circumstances exist warranting its intervention."

- 38) Hence, it is clear, as settled law, that exceptional circumstances must exist to justify the consideration of a revision application. In

³ [2001] 3 SLR 116

⁴ [1987] 1 SLR 006

the instant action, I do not see any exceptional grounds warranting the intervention of this Court.

CONCLUSION

- 39) For the reasons spelt out, I dismiss the petition dated 24th October 2022 and no cost ordered as there was no participation of the Respondents.

Judge of the Court of Appeal

M Sampath K. B. Wijeratne, J. (CA)

I agree.

Judge of the Court of Appeal