

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

In the matter of an appeal made in
terms of Article 138 read with
Article 154 P (6) of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

Competent Authority
Plantation Management
Monitoring Division,
Ministry of Plantation Industries
11th Floor,
Sethsiripaya,
Battaramulla.

Plaintiff

Vs.

CA (PHC) 47-2019

HC Ratnapura No. RA19-18

MC – Balangoda Case No. 65300

Dasanayakalage Karunaratne alias
David Singno
No. 03 Part,
Hunuwala,
Opanayake.

Defendant

AND

Dasanayakalage Karunaratne alias
David Singno
No. 03 Part,
Hunuwala,
Opanayake.

Defendant – Petitioner

-Vs-

Competent Authority
Plantation Management
Monitoring Division
Ministry of Plantation Industries
11th Floor,
Sethsiripaya,
Battaramulla.

Plaintiff- Respondent

AND

Dasanayakalage Karunaratne alias
David Singno
No. 03 Part,
Hunuwala,
Opanayake.

Defendant – Petitioner-Appellant

Vs.

Competent Authority
Plantation Management
Monitoring Division
Ministry of Plantation Industries
11th Floor,
Sethsiripaya,
Battarmulla.

Plaintiff – Respondent-Respondent

AND NOW

Dasanayakalage Karunaratne alias
David Singno
No. 03 Part,
Hunuwala,
Opanayake.

Defendant-Petitioner-Appellant

Vs.

Wickrama Arachchilage Leelanath
Wickrama Arachchi
Competent Authority
Plantation Management
Monitoring Division
Ministry of Plantation Industries
11th Floor,
Sethsiripaya
Battarmulla.

**Substituted – Plaintiff-
Respondent-Respondent**

(Current Competent Authority)

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

: **Hon. M. Ahsan R. Marikar, J.(CA)**

Counsel : H. Kulasuriya appears for the
Defendant-Petitioner – Appellant.

Thilan Liyanage appears on the
instructions of C. Wijeratne for the
Applicant – Respondent- Respondent.

Written Submissions : Defendant-Petitioner-Appellant filed on
23.11.2022.

Substituted-Plaintiff-Respondent-
Respondent filed on 29.07.2024.

Argued on : 28.06.2024

Decided on : 13.09.2024

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

Introduction

- 1) The Appellant had made this appeal against the Respondent to seek the reliefs prayed for in the petition of appeal dated 9th April 2019.
- 2) The said reliefs sought in the Appellant's petition of appeal are reproduced as follows;

එසේ හෙයින් විත්තිකාර-පෙත්සම්කාර-අභියාචක උතුමානන්ලාගේ ගෞරවනීය

අධිකරණයෙන් ගෞරවයෙන් අයැද සිටින්නේ:-

අ) උගත් මහාධිකරණ විනිසුරු තුමා විසින් වර්ෂ 2019-03-28 දිනැතිව ප්‍රකාශයට

පත් කරන ලද නියෝගය ඉවත් කරන ලෙසත්,

ආ) මෙම අභියාචක 2018-07 - ශ්‍රීදිනැති ප්‍රතිශෝධන පෙත්සමෙන් අයැද ඇති සහන

ලබා දෙන ලෙසත්,

ඇ) නඩු ගාස්තු හා

ඈ) උතුමානන්ලාගේ ගෞරවනීය අධිකරණයට යෝග්‍ය යැයි හැඟෙන වෙනත් හා

වැඩිමහත් සහනයන් ලබා දෙන ලෙසත්ය,

Facts of this case

- 3) The Appellant had sought in the prayer of the petition of appeal to seek the reliefs prayed for in the revision application submitted to the High Court.
- 4) This is an action based on a recovery of possession of a state land filed by the Competent Authority at the Magistrate's Court.
- 5) The Magistrate had considered the facts and the documents and allowed the Respondent Competent Authority of the Plantation Management Monitoring Division to eject the Appellant from the land described in the plaint filed by the Respondent Competent Authority.
- 6) Aggrieved by the said order, the Appellant had filed a revision application in the Provincial High Court of Ratnapura. The Learned High Court Judge after considering the facts pertinent to this action had dismissed the Appellant's revision application. On that, the Appellant had filed this appeal against the said order made by the Learned High Court Judge.
- 7) The contention of the Appellant is that he did not receive the quit notice as the registered postal articles were not annexed to the application submitted to the Magistrate's Court.
- 8) Further, the Learned High Court Judge had not considered the deeds executed in favour of the Appellant which were produced and had failed to adhere to the provisions outlined in the State Lands (Recovery of Possession) Act No.7 of 1979.
- 9) Furthermore, the Appellant had contended the schedule produced by the Competent Authority to eject the Appellant is vague.
- 10) The said grounds had not been considered by the Learned High Court Judge at the revision application made by the Appellant in the High Court of Ratnapura.

- 11) On that, the Appellant had sought the reliefs prayed for in the petition of appeal.
- 12) However, the Learned High Court Judge had dismissed the petition and refused the Writ of Certiorari application made by the Appellant.

Disputed facts

- 13) When this appeal was taken up for argument on 28th June 2024, the parties agreed to conclude the case by way of filing written submissions.
- 14) Considering the written submissions, documents and the orders made by the Learned High Court Judge and Magistrate, to arrive at the conclusion I am of the view the following disputed points should be looked into.
 - i) Has the learned High Court Judge considered the facts related by the Learned Magistrate in his order dated 26th January 2018?
 - ii) If so, can the application made by the Plaintiff-Respondent-Respondent be maintained?
 - iii) If not, can the Appellant seek the relief prayed for in his petition of appeal dated 9th April 2019?

Has the learned High Court Judge considered the facts related by the Learned Magistrate in his order dated 26th January 2018?

- 15) On perusal of the Learned High Court Judge's order dated 28th March 2019, it is evident that the Learned High Court Judge had considered the facts pertinent to the Magistrate's order in detail.

- 16) The Appellant had filed the revision application against the order of the Magistrate by way of a petition dated 15th February 2018. In the said petition, paragraph 07 contains the relief sought by the Appellant.
- 17) I reproduce the said paragraph as follows;

එසේ හෙයින් පෙන්නුම්කරු ගරු අධිකරණයෙන් ගෞරවයෙන් අයැද සිටින්නේ :-

- අ. උගත් මහේස්ත්‍රාත්තුමාගේ 2018.01.19 වන දිනැති නියෝගය ප්‍රතිශෝධනය කර ඉවත් කරන ලෙසත්,
- ආ. වර්ෂ 2018.01.19 වන දිනැති නියෝගය මෙම ඉල්ලීම විමසා අවසන් වනතෙක් ක්‍රියාත්මක කිරීම අත්හිටුවමින් අතුරු නියෝගයක් ලබාදෙන ලෙසත්,
- ඇ. වගඋත්තරකරුවෙකු දැන්වීම් නිකුත් කරන ලෙසත්,
- ඈ. නඩු ගාස්තු සහ ගරු අධිකරණයට මැනවැයි හැඟෙන වෙනත් හා වැඩිමහත් සහනද ලබාදෙන ලෙසත් වේ.

- 18) The reasons to sought the aforesaid reliefs in the revision application were that the original copy of the notice to quit was not filed on record and it was not received by the Appellant, the Learned Magistrate had not considered the deeds submitted by the Appellant for the disputed land, the Plaintiff Respondent had not stated his title when instituting this action and not followed the decided cases by the Apex Court. Further, action had been instituted on a vague schedule.
- 19) The aforesaid grounds had been very carefully considered by the Learned High Court Judge in his Order. He had specifically stated on page No.07 that the Learned Magistrate had detailed the reasons on which he had accepted that the notice to quit was served.

- 20) Further, on page No.08 paragraph 03, the Magistrate had stated that a copy of the notice to quit was filed in the Magistrate Court record and had considered the Provision related to Section 3(3) of the State Land Recovery Act, which specifically states as follows;

“A quit notice in respect of any State land shall be deemed to have been served on the person in possession or occupation thereof if such notice is sent by registered post.”

- 21) As per the aforesaid section there is no requirement for any authority to produce a receipt to show the notice to quit receipt of the registered postal article on which the said notice to quit was served.
- 22) The next issue raised before the High Court Judge was that the Learned Magistrate had not considered the deeds pertinent to the disputed land. The Learned High Court Judge had considered the said fact and decided that the Appellant had not proven his rights for the land to be acquired before the Magistrate. And the Learned Magistrate had correctly assessed the rights of the parties and decided the land referred to in the schedule of the plaint is not the same land, referred to in the Appellant’s deeds marked before the Magistrate’s Court.
- 23) In view of the aforesaid facts, I do not have to consider further proof of the Appellant’s rights for the land in question. It is a matter for which the Appellant should take the necessary steps in a different forum to prove that the specific area referred to in his deeds is included in the schedule of the plaint filed by the Respondent in the Magistrate’s Court application.
- 24) On the said grounds, my considered view is that the Learned High Court Judge had thoroughly considered the facts pertinent to the Order made by the Magistrate’s Court and decided that there are

no exceptional circumstances warranting the exercise of revisionary jurisdiction to entertain the revision application filed by the Appellant before the High Court.

If so, can the Plaintiff-Respondent-Respondent maintain the application made?

- 25) In considering the application made by the Plaintiff-Respondent-Respondent I draw my attention to the following cases;

***Muhandiram v Chairman, Janatha Estate Development Board*¹;**

"In an inquiry under the state lands (Recovery of Possession) Act, the onus is on the person summoned to establish his possession or occupation that it is possessed or occupied upon a valid permit or other written authority of the state granted according to any written law, if this burden is not discharged, the only option open to the Magistrate is to order ejectment."

***Namunukula Plantations PLC V Nimal Punchihewa Chairman, land Reform Commission*²;**

"One of the matters required to be stated in the application is that the land described in the schedule to the application is in the opinion of the competent authority State land. This fact cannot be contested by the person summoned and the submission of the learned President's Counsel for the Petitioner that whether the two lots of land which forms the subject matter of the Magistrates Court action are situated within Akuresso Estate or outside is a matter to be decided by a District Court in a land action must

¹ [1992] 1 SLR 110

² CA(PHC) 29/16 Page 7-8

fail. Hence, a dispute on the identity of the land cannot arise for the consideration of the learned Magistrate. The identity of the land can arise for consideration only to the extent of examining whether the valid permit or other written authority produced by the party summoned is in relation to the state land described in the application. Where it is not, the Magistrate must issue an Order of eviction in terms of the Act."

- 26) In the aforesaid decisions, it is emphasized that there should be a valid permit or any other written document on which the disputed land is possessed by a party.
- 27) In the instant action, there is no duty cast upon the Magistrate as per the State Lands Act to execute a plan to verify the boundaries of the area occupied by the parties.
- 28) Based on prima facie evidence, the Magistrate could decide to allow the application made by a Competent Authority. As I have mentioned before, it is the duty of a party occupying a private land to institute action in a different forum to certify that their land is included.
- 29) Thus, I do not see any hindrance to the Plaintiff-Respondent-Respondent to maintain the application made at the Magistrate Court.

If not, can the Appellant seek the relief prayed for in his petition of appeal dated 9th April 2019?

- 30) Considering the aforesaid facts and documents, I do not see any pertinent fact raised by the Appellant to set aside the Order made by the Learned High Court Judge as a revision application is a discretionary remedy. And the Learned High Court Judge has

thoroughly considered the disputes raised by the Appellant before the High Court.

- 31) Further I draw my attention to the decision of ***Divisional Secretary Kalutara v Kalupahana Mestrige Jayatissa***³;

“It must be noted that the Respondents had invoked revisionary jurisdiction of this court, which is discretionary remedy. Thus, if relief to be granted, the party seeking the relief has to establish that, not only the impugned Order is illegal, but also the nature of the illegality is such, that it shocks the conscience of the court”

- 32) In the said decision, it had been decided that an impugned Order made in a revision application must not only be illegal but should also shock the conscience of the court.
- 33) In the instant appeal, I do not see whether the Appellant has argued any point to the effect of the aforesaid grounds referred to in the case of ***Divisional Secretary Kalutara v Kalupahana Mestrige Jayatissa***.
- 34) In the said circumstances, it is abundantly clear that the Appellant had failed to produce any document or any fact indicating that the disputed portion of the land is included in the Magistrate’s Court Proceedings.
- 35) It is apparent, in a revisionary action this nature of facts cannot be considered as the learned High Court Judge has not violated any legal provision.
- 36) Therefore, I do not consider that the Appellant can seek any reliefs prayed for in the petition of appeal dated 9th April 2019.

³ SC Appeals 246,247,249,250/14

CONCLUSION

- 37) For the reasons set out above, I dismiss the petition of appeal dated 9th April 2019 subject to payment of tax cost to the Plaintiff-Respondent-Respondent.

Judge of the Court of Appeal

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

I agree.

Judge of the Court of Appeal