

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

In the matter of an appeal against the order of a revision application by the High Court of Colombo under and in terms of Section 09 of the Provincial High Court (Special Provisions) Act No. 19 of 1990 read with Section 138 and 154(P) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (PHC) Appeal No. 140/2020

High Court of Colombo (Rev)
Application No. HCRA 67/2019

Chief Magistrate's Court of Colombo
Case No. 97974/18

Vs.

Liyana Arachchige Asanka Maduranga,
No. 770/1, High Level Road, Panagoda,
Homagama.

1st Party-Petitioner-Appellant

Jayaratna Muhandiramge Lasantha
Sanjula,
No. 39/1, Maheshwarie Road,
Wellawatta, Colombo 06.

2nd Party-Respondent-Respondent

And Before

Liyana Arachchige Asanka Maduranga,
No. 770/1, High Level Road, Panagoda,
Homagama.

1st Party-Petitioner

Vs.

1. Jayaratna Muhandiramge Lasantha
Sanjula,
No. 39/1, Maheshwarie Road,
Wellawatta, Colombo 06.

2nd Party-Respondent

2. Officer-in Charge
Police Station,
Fore Shore,

Complainant-Respondent

3. Attorney General,
Attorney General's Department,
Colombo 12.

3rd Respondent

And Earlier

Officer-in Charge
Police Station,
Fore Shore.

Complainant

-Vs-

Liyana Arachchige Asanka Maduranga,
No. 770/1, High Level Road, Panagoda,
Homagama.

1st Party

Jayaratna Muhandiramge Lasantha
Sanjula,
No. 39/1, Maheshwarie Road,
Wellawatta, Colombo 06.

2nd Party

Before: Damith Thotawatte, J.
K.M.S. Dissanayake, J.

Counsels: Kasun Liyanage with Thilakkana Judunil instructed by Ranjan
De Silva for the 1st Party-Petitioner-Appellant.
Keerthi Gunawardena with R. Perera instructed by I.W.
Gunawardhana for the 2nd Party-Respondent-Respondent.

Argued: 29-05-2025

Written submissions
tendered on: 05-11-2024 By the 1st Party-Petitioner-Appellant.
06-12-2024 By the 2nd Party-Respondent-Respondent.

Judgement Delivered
on: 15-09-2025

D. Thotawatte, J.

This is an appeal from a judgment of the Provincial High Court holden at Colombo in the exercise of its revisionary jurisdiction under Article 154 P (3) (b) of the Constitution. By the impugned judgment, the Learned High Court Judge has dismissed the revision application filed against an order of the learned Additional Magistrate of Colombo made in terms of section 68 of the Primary Court Procedure Act.

The Officer-in-Charge of Police Station Foreshore had filed information on 13th August 2018 in terms of Section 66 (1) (a) of the Primary Courts' Procedure Act No. 44 of 1979 (hereinafter sometimes referred to as the "PCPA") in the Magistrate's Court of Colombo, reporting a dispute between the 1st Party-Petitioner-Appellant (hereinafter sometimes referred to as the "Appellant") and the 2nd Party-Respondent-Respondent (hereinafter sometimes referred to as the "Respondent") regarding the possession of premises No.145 Jampettah, street Colombo 13 (a commercial building which appear to have consisted of two parts and for reasons not quite clear has sometimes been described as "A Pradeshikaya" and "B Pradeshikaya". However, for reasons of clarity, I will refer to them respectively as **part A** and **part B** under case bearing No. 97974/2018.

At the conclusion of the inquiry conducted under the PCPA, the learned Magistrate delivered her order on the 3rd April 2019, concluding that the Respondent had been dispossessed by the Appellant from the relevant part (**part A**) of the disputed premises and therefore ordered that the Respondent be restored to possession under section 68(3) of the Primary Courts Act.

Being aggrieved by the learned Magistrate's order, the Appellant preferred a revision application to the provincial High Court of the Western Province holden in Colombo under HCRA 67/2019. The learned High Court Judge delivering his Judgement on 30th September 2020 had dismissed the application, deciding that it was not a fit and proper case in which the court should exercise its revisionary powers.

Being dissatisfied with the judgment of the learned High Court Judge, the Appellant has appealed to the Court of Appeal, challenging the said judgments of the High Court and the Magistrate's Court.

Factual Matrix

The Appellant and the Respondent have advanced markedly divergent accounts concerning the manner in which they came into possession of premises bearing No. 145, Jampettah Street, Colombo 13, as well as the sequence of events culminating in the institution of proceedings under the PCPA.

According to the affidavits submitted by the Respondent the premises bearing No. 145, Jampettah Street, Colombo 13 (hereinafter sometimes referred to as the “premises”) consisting of a store and a retail shop described respectively as **part A** and **part B** belonged to Colombo South Co-operative Society Ltd and the Society (Hereinafter sometimes known as the “Society”) been carrying out business from this premises for a very long time. The Respondent on 01-09-2010 had been employed by the Society as a Manager however, as the Respondent had utilized his personal funds to repair fire damage to **Part A** of the premises, the Society had signed an agreement with the Respondent in April 2011 in order to reimburse the Respondent as regard the money owed to him (annexed to the affidavit as A4). Subsequently, as a result of the previous agreement or with regards to some other reason, on 16-08-2017, the Society had signed another agreement (annexed to the affidavit as A7) with the Respondent, which had entrusted the administration and property of the premises to the Respondent for three years from that date, making him much more than a mere employee. This agreement was in force at the time of the dispute.

On 22-07-2018 an employee of the Respondent had made a complaint to the Fore Shore police station stating that, at about 5.00 in the morning about 15 persons forced themselves into the building and ordered them to vacate the premises, and on 24-07-2018 Gunawardana Bandara the General Manager of the Society making a complaint has stated the manager of the Societies outlet at No. 145 Jampettah street, Colombo 13 had informed him that the Appellant, a person named Jayantha Rodrigo and others are harassing the employees.

On 25-07-2018, the General Manager of the Society and the Appellant had been called to the police station, and the Appellant had promised to keep the peace by not harassing the employees of the Society and to settle their dispute by litigation. However, on 10-08-2018, a group of persons affiliated to the Appellant entered the section designated **Part A** of the premises by breaking the padlocks and thereby forcibly dispossessed the Respondent from that part of the premises. This act, captured on film by CCTV, had been submitted to the Court subsequently.

The version of events according to the Appellant is that by deed No 4212 dated 19-07-2018, he purchased the disputed premises, which comprised two sections, designated **part A** and **part B**, from a person named Jayantha Rodrigo. The appellant has further stated that although he has **received vacant possession** from Jayantha Rodrigo, it was known that previously the Respondent had been operating a retail shop called Co-op Shop in part “B” of the premises, while Jayantha Rodrigo was in possession of the rest of the building, which is mentioned as part “A”.

Appellant claims that on 22-07-2018, the Respondent entered part “B” with some others and attempted to carry out some construction activities. Although he (Appellant) prevented this, the Respondent and three others continued to illegally occupy this section. Further, the complaint made by the Respondent dated 10-08-2018 that the Respondent was dispossessed by him is completely false.

Analysis of the relative positions

On perusal of the nature of evidence presented at the Magistrate Court, it appears that the Respondent has produced overwhelming evidence to establish that he was in possession of not only part A of the premises but the entirety of the premises.

- The agreement between the Society and the Respondent goes back to 2011.
- Letters from Colombo South Co-operative Society Confirming the Respondent's position.
- Photographs taken from CCTV footage of intruders entering the premises.
- Affidavits by residents of the area.
- Receipts of payment of rates to the Municipality
- Electricity bill payments

As against the above, the Appellant had relied upon a disputed deed of transfer and affidavits by his employees. Further, the Police observations as submitted by Inspector H.S. De Silva and the police statements made prior to dispossession have also been considered by the learned Magistrate in making the order in favour of the Respondent.

In his judgment of the revision application, the learned High Court Judge has not found any error by the learned Magistrate that would vitiate the order of the learned Magistrate. While confirming the said order, the learned High Court Judge citing *Wijesinghe Vs. Tharmaratnam*¹ , *Vanik Incorporation Ltd. Vs. Jayasekara*² and

¹ Srikantha Law Reports Vol. IV page 47

² (1997) 2 Sri L.R 365

*Caderamanpulle vs. Ceylon Paper Sacks Ltd*³ has quite rightly concluded that the Petitioner (Appellant in the instant appeal) has not been able to satisfy the threshold requirement for a revision application to be considered, not demonstrating the existence of exceptional grounds.

The Appellant has based this instant application inter alia on the following grounds;

The failure to consider the initial information filed by the officer in charge of the Fore Shore police station, and improper reliance on a different investigating officer's report

It was held in *Krishnamoorthi Sivakumar vs. Pathima Johara Packer*⁴ that "...in Proceedings under Section 66 of the Primary Courts' Procedure Act; the Law requires Parties to file only Affidavits and documents in support of their claims and Oral Evidence is an exception in a fit Case to be permitted at the discretion of Court."

In the instant case, the learned Magistrate had not only obtained oral evidence but also directed the police for further investigations. However, there is no illegality in these actions as the learned Magistrate is not prevented by law.

In *Ranjith Mervyn Ponaamperuma Vs. Warahena Lyanage Viraj Pradeep Kumara De Alwis and others*,⁵ Dr. Ruwan Fernando J has stated;

"A wide discretion has been given to the Primary Court judge under section 72 to decide on the type of evidence and material on which he should act in making his determination under section 68 (1) or 68 (3) of the Act. The only limitation is that he must act judicially and as far as practicable, depending on the circumstances of each case."

Further, it would appear that the learned Magistrate has disregarded information filed by the officer in charge of the Fore Shore police station, as the learned Magistrate had come to a conclusion with good reason that the then officer in charge of the Fore Shore police station appeared to be biased towards the Appellant. I tend to agree with the view of the learned magistrate, as the information filed by him dated 13-08-2018 appears to unduly favour the Appellant.

Although the learned Magistrate considering subsequent reports (not available to the Appellant) prepared by Inspector H.S De Silva and ASP Senaka Ratwatte cannot be

³ [2001] 3 Sri L.R. 112

⁴ CA PHC 122-2018 C.A.M 21.10.2021

⁵ CA NO PHC 71-2008 C.A.M. 12.06.2020

justified, however, I agree with the learned High Court Judge that it has not occasioned a miscarriage of justice because even if those reports are disregarded, the remaining evidence is sufficient to prove that the Respondent was in possession of the property in dispute.

The fact that the Appellant possessed a valid deed was ignored

The jurisdiction given to a Primary Court under Section 66 is special and quasi-criminal. Its main purpose is to prevent a breach of the peace in disputes over land.⁶ In an inquiry under Section 66 of the PCPA, the duty of the Magistrate is to preserve the status quo and prevent a breach of the peace; hence, the Appellant's reliance on a disputed title deed is of little relevance in these proceedings. The law recognises that even a lawful owner is not entitled to oust a possessor by force. The possession, whether lawful or otherwise, enjoys protection, and even a trespasser cannot be displaced save by due process. The proper course for the Appellant, if he seeks to vindicate his title, lies in instituting appropriate proceedings before the Civil Court. As the Supreme Court has affirmed⁷, the Primary Court is bound to uphold the possession of a 'mere user' or person in de facto occupation, without reference to title, provided such possession is established for the time being.

Improper use of CCTV evidence

The Appellant contends that, although photographs were produced depicting persons entering certain premises, no proof was furnished to establish that the location was the "A Pradeshiyaya" ("Part A") of the disputed property. However, in these proceedings, the burden of proof is not one of proof beyond a reasonable doubt, and the photographs were assessed in conjunction with the averments in the affidavits rather than in isolation. If the Appellant sought to challenge this fact, he was at liberty to adduce evidence to that effect. While the Appellant has denied forcibly entering the premises, he has failed to provide any explanation for the photographs.

In *Shanmugasundara Kurrukkal Sriskandarajah Kurukkal vs Ramalingham Nadarajah*⁸ His Lordship Justice A.H.M.D. Nawaz has stated:

"In light of the failure on the part of the Respondents to respond to the specific allegation of the Appellant, I take the view that such failure in the

⁶ *Punchi Nona Vs. Padumasena and Others* [1994] 2 Sri L.R. 117

⁷ *Kanagasabai v. Mylvaganam* 78 NLR 280

⁸ CA PHC CASE NO.41/2004 C.A.M 08.08.2018

affidavit evidence would amount to an admission. Silence in court may be used to strengthen inferences from opposing evidence.”

Although the Appellant has entered a denial, I find that, in light of the weight of evidence establishing forcible entry, the bare denial contained in the Appellant’s affidavit dated 19.01.2019 is insufficient.

High Court’s misinterpretation of the Appellant’s position

In delivering his judgment on the revision application, and with reference to the settlement entered into on 25.07.2018 at the Fore Shore Police Station between Gunawardana Bandara, the General Manager of the Cooperative Society, and the Appellant, the learned High Court Judge, upon analysing the facts, observed:

“It could be observed that the said settlement does not refer to a particular part of the building, but covers the entire premises. Had the petitioner been in possession of part A of the building as alleged in the affidavit, he could not have consented for the said settlement. The above fact alone is sufficient to infer that the Petitioner although stated that he had purchased the building in dispute by deed No 4212 on 19.07.2018, he was never in possession of the same. Hence, it is evident that the Petitioner was not handed over the possession of the property by the vendor of deed No 4212.”

It appears that the Appellant is challenging conclusions drawn by the learned High Court Judge in analysing the Appellant's participation in the settlement process. The wording of paragraph 14 of the Appellant’s written submissions dated 05.11.2024 is, like much of his assertions, ambiguous. However, it appears that the Appellant seeks to convey that his participation in the settlement discussions was based on a mistaken belief that the Cooperative Society was in a position to honour the terms of the agreement.

Where there is no indication that the opposing party failed to observe the terms of the settlement subsequent to its conclusion, the contention advanced by the Appellant appears untenable. It further carries the implication that the Respondent and not the Society, was, in fact, the party exercising authority.

The Appellant has disputed the Respondent’s right to possession of the premises. However, as already addressed in this judgment, by virtue of the agreement between the Co-operative Society and the Respondent (marked A7), the Respondent ceased to be a mere employee. Having regard to the cumulative effect of the terms of that agreement, it is evident that for all intended purposes the Respondent was in control of the premises

and as such the Respondent could, and indeed should, be regarded as the person in possession.

On behalf of the Appellant, it was contended that due consideration had not been given to the Respondent's statement to the police dated 08.07.2018, wherein he described himself as merely an employee of the Co-operative Society. However, the agreement by which the property at No. 145, Jampettah Street, Colombo 13 was entrusted to the Respondent expressly stipulates that he would not acquire ownership of the movable and immovable property entrusted to him and would continue to remain as an employee of the Co-operative Society. Accordingly, there is no ambiguity as to the status of the Respondent.

Upon examination of the revision application filed by the Appellant in the High Court, the Appellant has not demonstrated that the learned Magistrate has acted without jurisdiction, failed to exercise jurisdiction, or committed any material irregularity in the exercise thereof. The grievances advanced are confined to matters of factual assessment rather than jurisdictional error or illegality. I am therefore in agreement with the learned High Court Judge that no exceptional circumstances have been established to justify interference with the order of the Magistrate.

For the aforesaid reasons, I am not inclined to interfere with the decisions of the learned Judge of the High Court or the learned Magistrate. Accordingly, this appeal is dismissed subject to costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal