

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

In the matter of an appeal in terms of Article 154P (6) and 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the relevant rules of the Court of Appeal [procedure for appeal from High court] Rules 1988.

CA PHC No. 263/2019

Provincial High Court, Eastern
Province, Holden at Kalmunai.

Revision Application No:
EP/HCK/Revi/191/2016

Magistrate Court, Pottuvil.
Case No: 22118/Pvt/2016

Camco Enterprises (Private) Limited,
Sooriya Hotel,
Arugambe, Pottuvil.

Presently at,
No, 37/1/E3, Kasun Uyana,
Ambasevana Street, Kalhettiya.

Complainant

Vs.

01. Anandaram Thevasanathipathy,
No.37, Lady Manning Drive,
Batticaloa.
02. Sooriya Kumary Senathipathy,
No.37, LadyManning Drive,
Batticaloa.
03. Thevendrarasa Pulendran,
No.67/47, Sidartha Road,
Colombo 05.

Respondents

AND BETWEEN

01. Anandaram Thevasanathipathy,
No.37, Lady Manning Drive,
Batticaloa.
02. Sooriya Kumary Senathipathy,
No.37, Lady Manning Drive,
Batticaloa.
03. Thevendrarasa Pulendran,
No.67/47, Sidartha Road,
Colombo 05.

Respondents - Petitioners

Vs.

Camco Enterprises (Private) Limited,
Sooriya Hotel,
Arugambe, Pottuvil.

Presently at,
No.37/1/E3, Kasun Uyana,
Ambasevana Street, Kalhettiana.

Complainant - Respondent

AND NOW BETWEEN

Camco Enterprises (Private) Limited,
Sooriya Hotel,
Arugambe, Pottuvil.

Presently at,
No.37/1/E3, Kasun Uyana,
Ambasevana Street, Kalhettiana.

Complainant – Respondent - Appellant

Vs.

01. Anandaram Thevasanathipathy,
No.37, Lady Manning Drive,
Batticaloa.

- 02 Sooriya Kumary Senathipathy,
No.37, Lady Manning Drive,
Batticaloa.
03. Thevendrarasa Pulendran,
No.67/47, Sidartha Road,
Colombo 05.

Respondents – Petitioners - Respondents

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

Counsels: U. Abdul Najeema for the Complainant–Respondent–Appellant.
Milindu Sarathchandra with Danushka Thilini and Sakuntha
Welagedara for the 3rd Respondent-Petitioner-Respondent.

Argued: 09-07-2025 and 06-08-2025

Written submissions 01-08-2024 By 3rd Respondent-Petitioner-Respondent.
tendered on: 25-03-2024 By Complainant-Respondent-Appellant.

Judgement
Delivered: 16-10-2025

D. Thotawatte, J.

This appeal is against the order dated 05th December 2019 made by the learned High Court Judge of the Provincial High Court of the Eastern Province holden in Kalmunai, exercising revisionary jurisdiction under Article 154P(3)(b) of the Constitution, whereby the said Court vacated the order of the learned Magistrate of the Magistrate’s Court of Pothuvil made in favour of the Complainant–Respondent–Appellant (hereinafter sometimes referred to as the “Appellant”) under the provisions of the Primary Court’s Procedure Act, No. 44 of 1979 (hereinafter sometimes referred to as the “PCP Act”).

The Appellant initiated proceedings in the Magistrate's Court of Pothuvil, filing information by affidavit under Section 66(1)(b) of the PCP Act, on 13-06-2016, against the Respondents-Petitioners-Respondents (hereinafter sometimes referred to as the 'Respondents'). France Lloyd Caminda, a foreign national and a director of the Appellant company, asserts that the land in dispute was purchased on behalf of the company in 2010 and was in its possession until 15-04-2016, when the 3rd respondent, Thevendrarasa Pulendran, accompanied by several persons, unlawfully entered the premises and intimidated Varatha RajaThambiraja (According to the translation of his affidavit dated 08-06-2016), who was employed as the watcher, into leaving the land, thus dispossessing the Appellant. Further, the Respondents have installed "other persons" on the land, preventing repossession by the Appellant.

The 3rd Respondent has not clearly stated the origin of his claim over the land in dispute, but has stated that he had been in occupation of the disputed land since 25-03-2016.

The learned Magistrate, acting as the Primary Court Judge, having inquired into the matter, delivered the Order on 07-10-2016 holding that the Appellant is entitled to the possession of the subject land.

Being aggrieved by the said Order, the Respondents had invoked the revisionary jurisdiction of the Provincial High Court of the Eastern Province holden in Kalmunai against the order of the learned Magistrate. The learned High Court judge, having inquired into the matter, had set aside the Order of the learned Primary Court Judge and allowed the application for revision filed by the Respondents and had restored their possession to the land in dispute. Being aggrieved by the said Order of the learned High Court Judge dated 05-12-2019, Appellant has appealed against the said order of the learned High Court of Kalmunai to set aside the said order and to affirm the order of the learned Magistrate dated 07-10-2016.

The nature of an inquiry and purpose under Section 66 was clearly defined by Sharvananda J. (as he then was) in *Ramalingam v. Thangarajah*¹, which continues to be regarded as the leading authority on the subject.

In an inquiry under Part VII of the Primary Court's Procedure Act No. 44 of 1979, relating to a dispute over possession of land where a breach of the peace is threatened or likely,

¹(1982) 2 Sri L.R. 693

the principal issue is who was in actual possession of the land on the date of filing the information under Section 66.

Under Section 68 (1), the Judge is required to determine the party who was in possession of the land on the date of filing of information and, under Section 68 (2), to declare that person as entitled to continue in such possession. Section 68(3) applies only where it is clearly established that a party was forcibly removed within two months immediately preceding the filing of information, in which case that dispossessed person would be deemed to have been in possession on the date of filing, notwithstanding the fact that he was dispossessed.

The Judge's duty is therefore to ascertain which party was, or is deemed to have been, in possession on the relevant date and to protect that possession, even against the rightful owner, until eviction is effected by due process of law. Accordingly, even a trespasser or squatter who has been in possession for more than two months prior to the filing of information is entitled to legal protection. The inquiry should thus be confined to actual possession on the date of filing, save in cases of forcible dispossession within two months preceding that date. In such an event for restoration under the PCP Act, to be possible, the dispossession should have happened within the two-month period and not before. Even if a person with no demonstrable lawful connection to the property had forcibly entered and dispossessed a long-term possessor merely one day prior to the commencement of the two-month period, such dispossessed party would not be entitled to restoration under the PCP Act.

In the instant case, there is no dispute as to the fact that on the date of filing of information, it was the Respondents who were in possession of the subject land. Under such circumstances, the duty of the learned Magistrate would have been to ascertain whether the Appellant had been forcibly dispossessed from the relevant land within two months immediately preceding the filing of information. Appellant's claim is that the company was in possession of the land since purchasing the same in 2010 till the company was dispossessed on 15-04-2016 by the Respondents. The Respondents' position is that although the land belonged to them, the Appellant had installed a watcher on the land on 23-03-2016. However, as this watcher employed by the Appellant left the land on 25-03-2016, the Respondents regained possession and have been in uninterrupted possession from 25-03-2016 onwards.

If the Respondents' claim to have been in uninterrupted possession from 25-03-2016 is accepted, it would mean that they had been in possession prior to the commencement of the two-month period and, as such, would be entitled to remain in possession till a final determination is made by a competent court.

After affidavits, supporting documents, and written submissions were filed by the parties, the learned Magistrate delivered the order on 07-10-2016 in favour of the Appellant, accepting the position submitted by affidavits that the Appellant was dispossessed from the land on 15-04-2016, demonstrating that the dispossession happened within the statutory two-month period.

Although I agree with the learned Magistrate that the affidavits are sufficient to make a determination without an investigation into the matter, I am unable to understand on what basis the learned Magistrate decided to accept the affidavits submitted on behalf of the Appellant, as they are totally contrary to the contents of the police statements made by the relevant deponents.

With regard to the incident which resulted in his removal from the disputed land, the watcher Thambiraja has made two Police statements and filed an affidavit in the Court.

a) Watcher Thambiraja, in his affidavit dated 08-06-2016, submitted to the Magistrate Court of Pothuvil, had stated:

- I. that a person named Banduprema recruited him to watch (guard) the subject land on 23-03-2016.
- II. when he was serving in that capacity, several persons entered the land and evicted him from the land after forcibly detaining him inside a cabana and threatening him.
- III. that before he was evicted on 15-04-2016, it was the Appellant who possessed and maintained the subject land.

b) However, in a statement made to the police on 25-03-2016, the watcher Thambiraja had stated:

- I. that on that day (25-03-2016) whilst he engaged in his duties, some people came in a vehicle and told him to leave and removed the items in the room.
- II. that he left the land, and the intruders did not say anything else to him.

c) In the second statement made to the police on 25-04-2016, the watcher Thambiraja had stated:

- I. that he was engaged to watch (guard) the subject land from 23-03-2016.
- II. that two persons came in a car on 28-03-2016 (it is unclear whether the date given is 25 or 28; however, it is clearly in the month of March) and told him to remove the “stuff”.
- III. that the intruders did not admonish him. Further, he left willingly, and the intruders gave him a lift to his nephew’s house.

It is pertinent to observe that the watcher, Thambiraja, has never asserted that he re-entered the land after leaving on 25-03-2016, nor has he alleged that his statements to the police were inaccurately recorded. Accordingly, his affidavit dated 08-06-2016, in which he claims to have been evicted on 15-04-2016, is false and appears calculated to mislead the Court into believing that the alleged dispossession occurred at a later date, thereby bringing the matter within the scope of the provisions of the PCP Act.

R. K. Banduprema, a local director of the Appellant who appears to have employed the watcher, Thambiraja, in his affidavit dated 08-06-2016, stated that some individuals came to the subject land, threatened the watcher, Thambiraja, broke the locks of the entrance gate and the cabana, and “stayed there”.

It is significant that R. K. Banduprema, in his affidavit, avoids mentioning the date when this incident occurred, and also the language of his averments (averment 06 of the affidavit) appears to give the impression that he was present at the time of the incident.

R. K. Banduprema’s statement to the police dated 25-04-2016 states that he was called to the residence of the watcher, Thambiraja’s nephew, and found Thambiraja was frightened, and Thambiraja told him that some persons came in a red car and told him to leave. Further, those persons had brought him to his nephew’s residence with the items that they had removed from the premises. It is clear from this statement that R. K. Banduprema was not a witness to the incident.

Although I agree that the Appellants could exercise possession through their agent or agents, there is no evidence that the watcher, Thambiraja, R. K. Banduprema, or anyone else from the Appellant Company attempted to enter or reassert their control over the subject land after 25-03-2016, and as such, for all intents and purposes, the Appellant has been dispossessed on 25-03-2016.

Appellant's claim that they were dispossessed on the 25-04-2016 appears to be based on the fact that the Respondents had installed their own watcher on the subject land on that day. There is no doubt that this irrational claim is also motivated by the sole purpose of bringing the date of dispossession within the two months immediately preceding the filing of information.

It appears that the contradictions between the affidavits and the statements of the crucial witnesses had escaped the attention of the learned Magistrate when arriving at his determination. I agree with the learned High Court Judge's view that *"..... there is no iota of evidence to satisfy the court that there was a, "Forcibly Dispossession" during the above said, "Relevant Period".*

In these circumstances, and for the foregoing reasons, I see no reason to interfere with the Order dated 05-12-2019 made by the learned High Court Judge.

Hence, the Appeal is dismissed with costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal