

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

Kandiah Velauthapillai  
Vel Hospital  
Neerveli Central, Neerveli.

Party of the First Part

-Vs-

Kathiresu Balasingam  
No. 56, Chetti Street,  
Nallur, Jaffna.

Respondent

Ponniah Baskarasingham  
No. 56, Chetti Street,  
Nallur, Jaffna.

Intervenient- Petitioner

CA. No. CA(PHC) 07/2012

Provincial HC Jaffna Case No. Revision 1467/11

Primary Court Jaffna Case No. PC/52/2010

AND

In the matter of an Application for  
Revision in terms of Article 154P of  
the Constitution read with Sec. 4 of  
Act No. 19 of 1990 in the  
Provincial High Court of Northern  
Province (Holden at Jaffna).

Kandiah Velauthapillai  
Vel Hospital

Neerveli Central. Neerveli.

Party of the First Part - Petitioner

-Vs-

Ponniah Baskarasingham  
No. 56, Chetti Street,  
Nallur, Jaffna.

Intervenient Petitioner -  
Respondent

**AND NOW BETWEEN**

1. Ponniah Baskarasingham  
No. 56, Chetty Street,  
Nallur, Jaffna.

Intervenient Petitioner -  
Respondent - Appellant

-Vs-

1. Kandiah Velauthapillai  
Vel Hospital  
Neerveli Central, Neerveli.

Party of the Fist Part - Petitioner  
Respondent

**BEFORE** : Shiran Gunaratne J. &  
Dr. Ruwan Fernando J.

**COUNSEL** : Manohara de Silva, P.C. with Imalka  
Abeysinghe for the Intervenient-  
Petitioner-Appellant

N. R. Sivendran with Anushiya Raman  
and Pavithra Ragavan for the Party of  
the First Part-Petitioner-Respondent

**ARGUED ON** : 16.07.2020

**WRITTEN SUBMISSIONS**

: 23.07.2019 & 28.09.2020 (by  
Intervenient-Petitioner-Appellant)

09.10.2018, 16.01.2010 and  
25.08.2010 (by the Party of the First  
Part-Petitioner-Respondent)

**DECIDED ON** : 09.10.2020

**Dr. Ruwan Fernando, J.**

**Introduction**

[1] This is an appeal from the judgment of the learned High Court Judge of Jaffna dated 13.02.2012. By that judgment, the learned High Court Judge of Jaffna set aside the order dated 08.06.2011 of the learned Magistrate of Jaffna and declared that the Party of the First-Part-Petitioner-Respondent is entitled to the possession of the land in dispute until an order or decree is made by a court of competent jurisdiction.

**Affidavits of the Parties**

[2] On 20.05.2010, the Party of the First-Part-Petitioner-Respondent (hereinafter referred to as the Respondent) filed an information by affidavit dated 20.05.2010 together with documents marked "M1" to "M25" in the Primary Court of Jaffna under the section 66 (1) (b) of the Primary Courts'

Procedure Act No. 44 of 1979 praying for an order declaring that the Respondent and his son were entitled to the possession of the land in dispute and for restoration of their possession to the said land.

[3] The Respondent stated in his affidavit dated 20.05.2010 *inter alia, that* (i) by Deed Nos. 6995 and 6996 dated 16.03.2010 attested by Linga Thurairajah, Notary Publi, he and his son and his wife purchased the land called “Kaddupulam and Saliakundalawatta” containing in extent of Nila parappu 05 Kulli 11.6 morefully described in the schedules to the said Deeds from Rasaiah Thavakumaran and Malathy Thavakumaran; (ii) upon purchasing the said land, he visited the said land with the sellers of the said property and took possession of the same, got the property cleared by his workmen and got boundary fence made to his property; (iii) on 03.04.2010, he saw an advertisement appearing in the UTHAYAN Newspaper stating a land containing an extent of Nila parappu 05 Kulli 11.6 situated on Palaly Road and closer by Seva Lanka Organisation was for sale; (iv) after obtaining details of the land, he visited the land on 06.04.2010 and observed that some people were clearing the land and in the process of stacking some sticks very close to each other in the place where he had made the boundaries and secured the land; (v) on 06.04.2010, he made a complaint to the Police and at the inquiry held by the Police on 07.04.2010, the Police asked both parties to refrain from entering the said land. He claimed that he had been dispossessed on 06.04.2010 through the workers of the Appellant and sought restoration to possession. The Respondent’s son Velauthapillai Rameskumar who also purchased the said property by Deed No. 6995 dated 16.03.2010 has filed an affidavit confirming the version of the Respondent.

[4] On 03.08.2010, the original Respondent in the Primary Court, Kathiresu Balasingam who is the brother of the Intervenient-Petitioner-

Appellant appeared in the Primary Court and informed the Court that he has no interest in the property in dispute and that it is his brother, the Appellant who is the owner of the said property.

[5] On the same day, the Intervenient-Petitioner-Appellant (hereinafter referred to as the Appellant) intervened and filed an affidavit together with documents marked “2W1-2W8-2”. The Appellant stated in his affidavit *inter alia* that (i) he agreed to purchase the land in dispute from the lawful owner Sambandan Pathmanathan who was living in Malaysia and paid the advance to the said Sambandan Pathmanathan; (ii) on 06.01.2010, he went to the said land with his brother Kathiresu Balasingam who was the original Respondent in the Primary Court, took over the possession of the property, cleared the property and put up a boundary fence with the assistance of his brother and workers; (iii) on 14.01.2020, he held a Boomi Pooja with the assistance of his brother; (iv) by Deed No. 692 dated 24.03.2010, he purchased the said property from the said owner Sambandan Pathmanabha who had come to Sri Lanka for the purpose of the said transaction; (iv) by Deed No. 5575 dated 12.10.2005, the Attorney of the legal owner, Sririsivaya, Attorney-at-law had deceptively sold the said property to Rasiah Thavakumar and his wife, Malathy in contravention of the terms in the Power of Attorney (v) the true owner complained to the Bar Association of Sri Lanka against the said Attorney-at-law and it was revealed that the said Deed had not been registered in the Land Registry; (vi), the Respondent cannot maintain theis action under the provisions of the Primary Courts’ Procedure Act as the Respondent has not satisfied that a breach of the peace is threatened or is likely to due to the dispute between the parties.

#### **Order of the Primary Court Judge**

[6] After the filing of affidavits and marked documents and written submissions, the learned Primary Court Judge by order dated 08.06.2011 held that the Appellant is entitled to the possession of the land in question until a competent court decides the matter. The order of the learned Primary Court Judge is based on the following findings:

1. The Respondent has not explained by way of an affidavit as to why the documents marked M7 to M14 and M23 to M25 were filed and on what basis the said documents are proving the possession of the Respondent in the said property in the absence of any other documents in support of his case;
2. The Respondent's affidavit and the documents are inconsistent with each other with regard to the possession of the property and the Respondent has failed to adduce any evidence to establish his possession to the subject matter of the dispute as his documents do not relate to the possession of the land;
3. The Inquiry conducted by the Bar Association of Sri Lanka has established that the Attorney of the lawful owner Sri Sivaya had not sold the property and the ownership of the property continued to remain in the name of Sambandan Pathmanabha;
4. No one had been forcibly dispossessed of the property in dispute before a period of 2 months immediately before the date on which the information was filed on 20.05.2010;
5. The Appellant's documents marked 2EM1-2E2 establish that the Appellant took possession of the property in January 2010 and thus, he continued to hold the same under his control from January 2010 up to the date on which the dispute arose.

## **Application in Revision to the Provincial High Court**

[7] Being aggrieved of the said order of the learned Primary Court Judge of Jaffna, the Respondent made an application in revision to the Provincial High Court holden in Jaffna seeking to have the said order dated 08.06.2011 revised and restoration of possession of the said property. After the inquiry, the learned High Court Judge by his judgment dated 13.02.2012 allowed the revision application, set aside the order of the learned Primary Court Judge and held that the Petitioner is entitled to the possession of the property until an order is made by a competent Court.

## **Appeal to the Court of Appeal**

[8] Being aggrieved by the said judgment of the learned High Court Judge of Jaffna dated 13.02.2012; the Appellant has preferred this Appeal to this Court.

## **Main grounds of Appeal and Submissions of the Parties**

[9] At the hearing, the learned President's Counsel for the Appellant Mr. Manohara de Silva, P.C. confined his submissions to the following grounds of appeal and urged us to set aside the judgment of the learned High Court Judge dated 13.02.2012 and affirm the order of the learned Primary Court Judge dated 08.06.2011:

1. The learned High Court Judge has failed to consider that the Appellant has established that he had been in possession of the land in dispute from 06.01.2010 to the date of the dispute as clearly supported by the affidavits of his brother Kanagasabai Balasingham, his neighbour Kandiah Rasaratnam (2-1R1) and worker Ramiah Thevaraja (2-1R2);

2. The learned High Court Judge has only considered the omissions contained in the affidavit of the Appellant and his brother, which are omissions of a trivial nature, but disregarded the inconsistencies of the affidavits of the Respondent and his documents;
3. The learned High Court Judge has totally failed to consider that the Respondent has failed to establish that he was in possession of the land in dispute from 16.03.2010 to 04.07.2010 and that he had been dispossessed by the Appellant as his documents do not support his claimed possession and dispossession; and
4. The learned High Court Judge has totally failed to consider that the Respondent has admitted in his affidavit that the claimed dispossession had taken place due to the action of the Police and thus, the learned Primary Court Judge was correct in holding that the Appellant is entitled to possession of the land in dispute in terms of the provisions of the Primary Courts' Procedure Act;

[10] Mr. Silva submitted that accordingly, the learned High Court Judge was wrong in setting aside the findings of the learned Primary Court Judge and granting possession of the land in dispute to the Respondent without evaluating the Respondent's documents with regard to the claimed possession of the Respondent.

[11] On the other hand, the learned Counsel for the Respondent Mr. Sivendran, submitted that by Deed No.s 6995 and 6996 (M1 and M2) dated 16.03.2010, the property in dispute was purchased by the Respondent and his son and his son's wife from Rasaiah Thavakumaran and Malathy Thavakumaran who handed over the possession of the said property on 16.03.2010 to the Respondent as corroborated by the affidavit

of their previous owners, Rasaiah Thavakumaran and Malathy Thavakumaran (M6).

[12] He further submitted that the Respondent was dispossessed on 06.04.2010 as corroborated by the affidavit of the previous owners of the Respondent (M6) and thus, section 68 (3) applies. He submitted that the Respondent has established that he had been in possession of the property in dispute from 16.03.2010 to 06.04.2010 and that he had been dispossessed on 06.04.2010 and thus, the Respondent had been dispossessed within a period of 2 months before the date on which the information was filed on 20.05.2010

[13] Mr. Sivendran further submitted that the position of the Appellant that he entered into the possession of the land in dispute on 06.01.2010 long before he purchased the property on 24.03.2010 by making an advance payment of Rs. 100,000/- is untenable and which is not supported at all by his own documentary evidence. His contention was that the Appellant's case that he took possession of the property on 06.01.2010 is not reliable or trustworthy in view of the inconsistent positions taken by the Appellant and his brother and absence of any affidavit or letter from his previous owner confirming that he authorized the Appellant or his brother to take possession of the property before the transaction took place on 24.03.2010.

[14] Under such circumstances, Mr. Sivendran submitted that the learned High Court Judge was justified in rejecting the version of the Appellant that he took over the possession of the property on 06.01.2010 and thereafter he continued to hold the same when the dispute arose on 06.04.2010.

#### **Scope of the Inquiry under Section 68 of the Primary Courts Procedure Act**

[15] A perusal of the information filed by the Respondent dated 20.05.2010 and the affidavits filed by the Respondents and the Appellant reveals that the dispute between the Respondent and the Appellant relates to the possession of the land under Part VII of the Primary Courts' Procedure Act (hereinafter referred to as the 'Act').

[16] Sections 68 (1) of the Primary Courts Procedure Act read as follows:

*68 (1) Where the dispute relates to the possession of any land or part thereof, it shall be the duty of the Judge of the Primary Court holding the inquiry to determine as to who was in possession of the land or the part on the date of the filing of the information under section 66 and make order as to who is entitled to possession of such land or part thereof.*

[17] In an inquiry into a dispute as to the possession of any land under section 68 (1), the main point of decision is as to who was in possession of the land on the date of the filing of the information to the Court under section 66 (1) of the Act.

[18] Sections 68 (3) of the Primary Courts Procedure Act reads as follows:

*"68(2) Where at an inquiry into a dispute relating to the right to the possession of any land or any part of a land the Judge of the Primary Court is satisfied that any person who had been in possession of the land or part has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under section 66, he may make a determination to that effect and make an order directing that the party dispossessed be restored to possession and prohibiting all disturbance of such possession otherwise than under the authority of an order or decree of a competent court."*

[19] Section 68 (3) becomes applicable when only if the Judge can come to a definite finding that some other party had been forcibly dispossessed within a period of 2 months immediately before the date on which the information was filed under section 66 of the Act (*Ramalingam v.*

*Thangarajah* (supra). Thus, it is the duty of the Primary Court Judge to determine whether the Appellant had been forcibly dispossessed within a period of 2 months immediately before the date on which the information was filed under section 66 of the Act, viz. 20.05.2010.

[20] The procedure of an inquiry under Part VII of the Act is *sui generis* and the procedure to be adopted and the manner in which the proceedings are to be conducted are clearly set out in sections 66, 71 and 72 of the Act (*Ramalingam v. Thangarajah* 1982 (2) Sri LR 693, at p. 699). In *Ramalingam v. Thangarajah*, Sharvananda, J. (as he then was) at pages 698-699 held:

*"That person is entitled to possession until he is evicted by due process of law. A Judge should therefore in an inquiry under Part VII of the aforesaid Act, confine himself to the question of actual possession on the date of filing of the information except in a case where a person who had been in possession of the land had been dispossessed within a period of two months immediately before the date of the information. He is not to decide any question of title or right to possession of the parties to the land".*

### **Matters on Appeal**

[21] In view of the extensive submissions made by both Counsel on the correctness of the judgment of the learned High Court Judge and the order of the learned Primary Court Judge, this Court is obliged to consider the following main questions:

1. Whether the learned High Court Judge was correct in setting aside the findings of the learned Primary Court Judge on the ground that the Appellant's version that he entered into the possession of the land in dispute on 06.01.2010 before he purchased the property on 24.03.2010 is not credible and inconsistent with the affidavits filed in support of his case;

2. Whether the learned High Court Judge was correct in setting aside the findings of the learned Primary Court Judge and granting possession to the Respondent if the Respondent's documents do not support his claimed claimed possession from 16.03.2010 to 06.04.2010 or dispossession on 06.04.2010;
3. Whether the learned High Court Judge has failed to consider that the learned Primary Court Judge has correctly decided that the Respondent has failed to establish his claimed dispossession within a period of 2 months immediately before the date on which the information was filed under section 66 (1) of the Primary Courts' Procedure Act;

#### **Identity of the subject matter of the action**

[22] It is common ground that Sambandan Padmananba and his wife owned the property in dispute and the said Sambandan Padmananba had appointed Sri Sivaya, Attorney-at-Law as his Attorney as set out in the Special Power of Attorney No. 1005 dated 20.08.2005 (page 113 of the brief).

[23] In terms of the said Special Power of Attorney, the said Sambanda Padmanaba had appointed Sri Shivaya, Attorney-at-Law to manage, control and sell the land and premises marked 6B together with the land marked Lot 5 (Road Reservation) depicted as Lot 1 in Plan No. 2720 dated 08.06.2005 at a consideration not less than Rs. 850,000/- per lacheham and to receive the consideration thereof and to do all acts in relation thereof.

[24] It is not in dispute that the subject matter of the dispute relates to a bare land called "Kattupulam and Saliyakandawatha" containing in extent of 5 Lachcham Varagu Culture and 11.6 Kullies depicted as lot 1 in Plan

No. 2720 dated 08.06.2005, which is further depicted as Lot 6b in Plan No. 358 dated 26.10.1964.

### **The background to the Respective claims of possession**

[25] According to Deed No. 5575 dated **12.10.2005** (M15) and attested by Linga Thuraraja, Notary Public, Rasaiah Thavakumaran and Malathy Thavakumaran through the Attorney of Sampanthan Padmanabha, the said Sri Sivaya, had purchased the said property. According to the two Rubber Stamps placed by the Land Registry on the said Deed, the said Deed had been registered in the Land Registry on 13.12.2005.

[26] The Respondent has claimed that by Deed No. 6995 dated **16.03.2010** (M22) and 6996 dated **16.03.2010** (M21), the Respondent and his son Velauthapillai Rameshkumar with his wife purchased the said property from the said Rasaiah Thavakumaran and Malathy Thavakumaran for a total sum of Rs. 22,00,000/-. According to the two Rubber Stamps placed by the Land Registry of the said Deeds, they had been registered in the Land Registry on 15.04.2010.

[27] The Appellant has also claimed that he purchased the property in dispute from its owner Sambandan Padmanabha by Deed of Transfer No. 692 dated **24.03.2010** attested by A. Gnanasekaram, N.P. at a consideration sum of Rs. 3.5 Million and according to the Rubber Stamps placed by the Land Registry on the said Deed, it had been registered in the Land Registry on 30.03.2010.

### **Claims of possession of the Parties**

[28] The Respondent has claimed that upon the purchase of property in dispute on Deeds No. 6995 dated **16.03.2010** (M22) and 6996 dated **16.03.2010** (M21), by the Respondent, his son Velauthapillai

Rameshkumar and his wife, the possession was handed over to them by the said Rasaiah Thavakumaran and Malathy Thavakumaran on **16.03.2010** and they continued to possess the said land until he was dispossessed by the Appellant through his workers on **06.04.2010** (M6).

[29] The Appellant's claim of possession on 06.01.2010 is, however, not based on his Deed No. 692 dated 24.03.2010. His version is that he entered into an agreement with the lawful owner of the property Sambandan Padmanabha to purchase the said property and made an advance on 06.01.2010 and at the request of the lawful owner, he took possession of the said property on **06.01.2010**.

[30] It is common ground that the dispute between the parties arose on **06.04.2010** and both parties had been called by the Police for inquiry on **07.04.2010**. It was the position of the Respondent that at the inquiry held at the Police Staation on **07.04.2010**, the Police warned both parties not to enter the land without a court order. It is to be noted that no party had stated in their respective affidavits that they continued to possess the land in dispute after the date of the inquiry held by the Police on **07.04.2010**.

#### **Findings of the learned High Court Judge on the question of possession of the Appellant**

[31] A perusal of the judgment of the learned High Court Judge reveals that he had identified the following major contradictions and inconsistencies in the affidavits of the Appellant and his brother Kathiresu Balasingam with regard to the Appellnat's claim of possession of the property on **06.01.2010** long before he purchased the property from Sambandan Padmanabha on **24.03.2010**:

1. the person who made the advance payment to the owner of the property and as to when the money was paid;

2. the nature of entry into the property;
3. the person who took possession of the property;
4. the date on which they took over the possession;

[32] In setting aside the order of the learned Primary Court Judge, the learned High Court Judge has analysed the affidavits of the Appellant and his brother and held that the Appellant's version that he made an advance payment and took over possession of the property in dispute at the request of its lawful owner on 06.01.2010 is not a genuine and trustworthy as there are glaring contradictions and inconsistencies on material points of advance payment and possession that go to the root of the Appellant's claim of possession on 06.01.2010.

[33] The learned High Court Judge has observed that the learned Primary Court Judge has failed to consider the glaring contradictions and inconsistencies in the correct perspective with regard to the claimed possession of the Appellant and his brother and thus, the affidavits filed by the Appellant and his brother cannot be relied upon in establishing the possession of the Appellant on 06.01.2010.

### **Analysis**

[34] The Appellant in paragraphs 2 and 3 of his affidavit has stated that he had an agreement with Sampanthan Padmanaba who was living in Malaysia to purchase the land in dispute and as per the said agreement, **he made an advance payment on 06.01.2010** to Sampanthan Padmanabha. Paragraphs 2 and 3 of the Appellant's affidavit are as follows:

*"2. I do state that there was an agreement arrived at between Sampanthan Padmanaba who was the legal owner of the land that is described in this affidavit and I, to purchase the said land;*

*3. As per the said agreement, an advance payment was made by me and I went to the said land on 06th January 2010 with my brother, the 01st respondent and took over the land".*

[35] The Appellant, however, does not mention in his affidavit any amount of the advance payment made by him to Sampanthan Padmanaba. On the contrary, the Appellant's brother Kathiresu Ponniah Balasingham has stated in his affidavit that at the request of his brother, he made the advance payment through one of his relatives called Darmalingam Nagulan and the advance payment made by him was Rs. 100,000. The relevant part of paragraph 3 of his affidavit reads as follows:

*"3. But he has informed to make advance payment and make certain that the land will be purchased. I made the arrangements to make advance payment through my relative, one Darmalingam Nagulau, who is an administrative officer at Colgate in Malaysia. He on my request paid an amount of one lack (an equal amount in Sri Lankan value), the payment was made on 06 of January 2010...."*

[36] It seems to me first, that there is a material omission in the affidavit of the Appellant with regard to the amount that is said to have been paid by the appellant's brother to Sampanthan Padmanaba and a major inconsistency between the two affidavits with regard to the person who made the advance payment to Sampanthan Padmanaba.

[37] As noted, it was the position of the Appellant in paragraph 3 of his affidavit that after making an advance payment by him to Sambanthan Padmanabha, he went to the said land on 06th January 2010 with his brother and took over the possession of the land. The position of his brother in paragraph 3 and 4 of his affidavit is as follows:

*3- "In the meantime, he had informed Balasinghama to take over the land on 06th January 2010 itself. When Mr. Balasingham informed me that the above said particulars, I took over the land on 06th January 2010. Then I was inspired to enter into the land and I went*

*into the land. I saw the trees, shrubs, bushes and vines and climbing plants were naturally bred on the land and I glanced at the well too. Then I informed of this to Balasrishnam and asked him to inform about this to Padmanabha.*

**“4- On 10th of January, 2010, Balaksrishnan came from Colombo and on 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup>, I with the said Balakrishna got the land cleared through the helper and put up a hut for the watcher.”**

[38] The Appellant's brother's version is that he alone took over possession on 06.01.2010 and the Appellant came to Jaffna from Colombo only **on 10.01.2010** and visited the land on 10.01.2010 whereas the Appellant's version is that he took over possession on 06.10.2010 and thus, both had contradicted with each other on the person who took over possession of the land on 06.01.2010 and as to when the possession was taken by the Appellant.

[39] Other than the statements of the Appellant and his brother contained in their affidavits, no material whatsoever, is available to substantiate the claim of the Appellant or his brother that an advance payment was made to Sampanthan Padmanabha on 06.01.2010. According to the Appellant, he purchased the property from its lawful owner of the property Sampanthan Padmanabha. If Sampanthan Padmanabha had received an advance payment and requested the Appellant or his brother to take over possession of his property, the only person who could have said so was Sampanthan Padmanabha and none other.

[40] If the Appellant's version is correct, the Appellant could have easily produced an affidavit or a letter from Sampanthan Padmanabha to the effect that he received an advance payment and authorized the Appellant or his brother to take possession of his property. No affidavit or letter was produced in the Primary Court by the Appellant from Sampanthan Padmanabha to substantiate his position that he received an advance

payment and authorized the appellant or his brother to take possession of the property on 06.01.2010.

[41] The inconsistency and improbability of the version of the Appellant and his brother that they made an advance payment of Rs. 100,000/- and took possession on 06.01.2010 is further confirmed by the absence of any advance payment in the Appellant's Deed of Transfer No. 692 dated 24.03.2010. It is to be noted that the Appellant's Deed No. 692 does not state anywhere that a sum of Rs. 100,000/- was paid by the purchaser previously as claimed by the Appellant.

[42] According to the attestation clause in Deed No. 692 dated 24.03.2010, the Notary Public had certified and attested that the total consideration of the sum of Rs. 3.5 Million had been paid in the following manner:

- (1) Rupees Two Million (Rs. 2,000,000/-) **by cheque** bearing No. 006295 dated **22<sup>nd</sup> March 2010** drawn to Commercial Bank, Ward Place Branch;
- (2) Rupees One Million and Three Hundred (Rs. 1,300,000/-) **by cheque** bearing No. 006298 dated **24<sup>th</sup> of March 2010** drawn to Commercial Bank, Ward Place Branch;
- (3) **Rupees Two Hundred Thousand (Rs. 200,000-) by cash.**

[43] According to the attestation clause, the sum of Rs. 200,000/- mentioned in the attestation clause had been paid on 24.03.2010 as there is no reference to any previous advance payment in the Deed. If the Appellant or his brother had paid a sum of Rs. 100,000/- to Sampanthan Padmanabha on 06.01.2010, it should have been mentioned in Deed No. 692 or at least, the Notary should have mentioned the advance payment received by the seller on 06.01.2010 in the attestation clause.

[44] No explanation is given by the Appellant as to why the parties did not mention in the Deed about the purported advance payment of Rs. 100,000/- made on 06.01.2010. In the absence of any such explanation, the only conclusion that can be arrived at is that no such advance payment of Rs. 100,000/- was made to Sampanthan Padmanabha by the Appellant or his brother on 06.01.2010. The credibility of the version of the Appellant and his brother that a sum of Rs. 100,000/- was paid to Sampanthan Padmanabha on 06.01.2010 is not supported by their own Deed No. 692 dated 24.03.2010.

[45] On the other hand, there is no indication whatsoever, in Deed No. 692 that the possession of the property was handed over to the buyer on 06.01.2010 in terms of any previous agreement between the Appellant and Sampanthan Padmanabha pending the completion of the transaction. If Sampanthan Padmanabha had previously authorized the Appellant to take possession on 06.01.2010 or the Appellant had, in fact, taken possession of the property on 06.01.2010, the same should have been mentioned in Deed No. 692 executed on 24.03.2010.

[46] On the contrary, the Deed only states that the purchaser shall be entitled to peaceful possession and enjoyment of the said land with effect from the date of the Deed and not on the basis of any previous agreement as claimed by the Appellant. Page 3 of Deed No. 692 at page 103 of the brief reads as follows:

*“AND we the said Vendor for himself and his heirs, executors and administrators hereby covenant and with the said Purchaser his heirs executors administrators and assigns that the said Purchaser shall and may at times hereafter peacefully quietly possess and enjoy the said land and premises together with the right of way hereby sold and conveyed are free from any charge lien seizure sequestration acquisition or other encumbrances or proceedings whatsoever and*

*that the said Purchaser and his aforesaid shall and may at all times hereafter peacefully and quietly possess and enjoy the said land and premises together with the right of way and receive the rents, income and profits thereof without any interruption or disturbance by the said Vendor".*

[47] Section 72 of the Primary Courts' Procedure Act prescribes the material on which the determination under section 68 and 69 of the Act is to be based. The determination under Part VII of the Act shall be made after examination and consideration of-

- (a) The information filed and the affidavits and documents furnished;
- (b) Such other evidence on any matter arising on the affidavits or documents furnished as the court may permit to be led on that matter; and
- (c) Such oral or written submissions as may be permitted by the Judge of the Primary Court in his discretion.

[48] The determination in both situations set out in section 68 (1) and 68 (3) on the question of possession and dispossession shall be made after the examination and consideration of matters set out in section 72 of the Act. When the information is filed in the Primary Court under section 66(1)(b) without the assistance of a Police Report and observations, the Primary Court Judge should consider the affidavits and documents and such other evidence arising thereon, cautiously and ascertain for himself whether there is consistency of the facts stated in affidavits and documents furnished with what is agreed and shown by the other evidence to have occurred.

[49] The discrepancies or omissions which do not go to the root of the question of possession or dispossession and assail the basic version of the affirmant cannot be given too much of importance. However, all material inconsistencies, including contradictions or discrepancies that go to the

root of the basic question of possession and dispossession and shake the basic version of the affirmand affect the trustworthiness of his statement in the affidavit.

[50] There are major inconsistencies in the affidavits of the Appellant and his brother with regard to the advance payment and possession of the Appellanat on 06.01.2010. There is a total absence of any independent confirmation from Sambanthan Padmanabha that he authorized the Appellant to take possession on 06.01.2010. Those material inconsistencies and discrepancies cannot be described as mere omissions of a trivial nature due to defective memory or normal errors of observation or mental disposition of the affirmand or information shortage etc.

[51] The absence of any affidavit or a letter from Sampanthan Padmanabha whatsoever, confirming the advance payment and taking possession on 06.01.2010 further creates a serious doubt about the truthfulness or credithwortheness of the version of the Appellant and his brother in their affidavits as correctly submitted by Mr. Sivendran in his submissions.

[52] In my view, the material inconsistencies referred to above on the vital question of the Appellnat's possession go to the root of the Appellnat's claim of taking possession of the land in dispute on 06.01.2010 and shake the basic version of his case that he paid an advance on 06.01.2010 and took over possession of the land in dispute on 06.01.2010.

[53] The learned Primary Court Judge merely relied on two affidavits filed by the Appellant's own claimed neighbour Kandiah Rasaratnam (2-1R1) and his own worker Ramiah Thevaraja (2-1R2) in support of the Appellant's possession on 06.01.2010. The learned Primary Court Judge has totally failed to consider that the intrinsic value of the affidavits of the

Appellant and his brother and decide how far, they can be relied upon in the context of the Appellants' own documents that do not support his own basic version as to the payment of advance money and taking possession in the absence of any authority granted by the lawful owner to take possession on 06.01.2010.

[54] The learned Primary Court Judge has not considered as to why he preferred to believe the affidavits of the Appellant's so called neighbour and his own worker when the intrinsic value of the Appellant's basic version is not supported by his own immediate previous owner to the effect that the Appellant took over possession of the land in dispute on 06.01.2010 with his sole authority. When the basic version of the Appellant and his brother is shaken so as to create a doubt about its credibility, the intrinsic value of the two affidavits filed by Kandiah Rasaratnam and Ramiah Thevaraja, which only supported the appellant's basic version is also vitiated.

[55] For those reasons, I hold that the learned Magistrate was wrong in holding that the Appellant has established that he took possession of the land in dispute and continued to possess the said land until the date on which the dispute arose on 06.04.2010.

### **The Respondent's claim of possession**

[56] At the hearing Mr. Silva submitted that the failure of the learned High Court Judge to evaluate the Respondent's documents which do not support the Respondent's possession before granting possession to the Respondent is fatal to his judgment, whereas the learned Primary Court Judge has properly evaluated the documents and rejected them for valid reasons. He referred to the following documents filed by the Respondent and submitted that the said documents are either irrelevant or do not support

the Respondent's possession and hence, the learned Primary Court Judge having considered those documents, rejected them for valid reasons.

[57] I have perused the documents marked M4, M7, M8, M11, M10, M11, M12-M14, M12, M13, and M14l and M15 -M22 and find that a majority of documents relate to receipts for the payment of rates and taxes made to the Nallur Pradeshiya Sabha by the Respondent's predecessor in title, Rasiah Thavakumar (Malithy) during the period of 2005-2008. As noted, in an inquiry under section 66 of the Primary Courts Procedure Act, the question of title or right to possession of the parties to the land are irrelevant subject however, to the exception.

[58] Even if the aforesaid documents are rejected on the ground that they do not support the possession of the Respondent or that may only relate to the Respondents's predecessor in title, the real issues in the present case relate to the question of actual possession of the parties and where dispossession is alleged, whether the party who had been in possession had been dispossessed within a period of 2 months immediately before the date of the information.

[59] Mr. Sivendran however, submitted that the learned Primary Court Judge has rejected the Respondent's claimed possession and subsequent dispossession without due regard to the intrinsic value of the most vital affidavit filed by the Respondent's previous owners (M6) who confirmed that the Respondent's possession from 16.03.2010 to the date of the dispute and subsequent dispossession.

[60] According to the Appellnat's Deed No. 692, the appellants had purchased the same property only on 24.03.2010 and the appellant's possession as at 06.01.2010 was demonstrably unreliable and untrustworthy in view of the material inconsistencies in the affidavits and

the absence of any independent and supportive documents from his own immediate previous owner.

[61] The Respondent's immediate predecessors in title Rasaiah Thavakumaran and Malathy Thavakumaran had given an affidavit marked M6 (pages 57-58 of the original brief and the correct sworn translation of the said affidavit had been filed by the Respondent with the permission of the Court by motion dated 04.08.2020 which is filed of the brief).

[62] According to the affidavit of Rasaiah Thavakumaran and Malathy Thavakumaran (M6), they purchased the property on Deed No. 5575 on **12.10.2005**, possessed the said property for the **last 5 years** from 12.10.2005 until they sold the property to the Respondent and his son on **16.03.2010**. They have further stated that while the Respondent and his son were in possession, the original Respondent Balasingham dispossessed the Respondent and his Son. The relevant parts of their affidavit read as follows:

*"We purchased the property in Pallay Road as "Kattupulam and Saliyakandawatha" situated in Kokkuvil Erai, Nallur Kovitpattu in Jaffna Division, in the District of Jaffna, Northen Province in extent of 5 Lachams and 11.6 Kulli together with a well searched and surveyed by Thangarajah, Licensed Surveyor by virtue of a Deed of Transfer No. 5575 dated ...10.2005.*

*Since that day we clean the said property and we made arrangements to do plantation and build a.....*

*We directly and through workers sprayed herbicides, picked stones and did cleaning work.*

*As I, Rasaiah Thavakumaran met with an accident on 24.01.2009 and became sick, I was not in a position to maintain this property, therefore we employed labourers once in three four months and cleaned the property.*

*As financial difficulties occurred to live, we sold the property on 16.03.2010 to my relatives Kandaiah Velauthapillai and Ramesshkumar, a doctor family of Nervely,*

*and while they were in possession, Balasingam of No. 56, Chetty Street, Nallur acted in a manner for them to lose possession.”*

[63] The learned Primary Court Judge in his order (page 58 of the brief) refers to the said affidavit of Rasaiah Thavakumaran and Malathy Thavakumaran (M6) and observes as follows:

*“The document marked M6 is an affidavit of Rasaiah Thavakumaran and his wife Malathy. Where they have declared that they had purchased the said land that is presently in dispute on 12.10.2005 by a transfer deed and till it was sold to their relatives, that is the party of the first and his son, that was on 16.03.2010, the possession of that property was in his possession.”*

[64] Having reproduced part of the contents of the affidavit of Rasaiah Thavakumaran and Malathy Thavakumaran (M6), the learned Primary Court Judge has disregarded the said affidavit for the mere reason that no other documents were filed by the Respondent to substantiate his version that Rasaiah Thavakumaran and Malathy Thavakumaran possessed the said land from 12.10.2005 to 16.03.2005. The findings of the learned Primary Court Judge at pages 65-66 of the brief are as follows:

*“The party of the first just over all in general has stated in their affidavit that they cleared the land and the possession of that land came under their control of Rasaiah Thavakumaran and his wife Malathy since the period of 12.10.2005. The party of the first did not file any other documents other than the documents which were filed at the commencement of this case.”*

[65] The Respondent has further filed an affidavit marked M3 from Krishanapillai Sinnarasu and his wife, Mathillini who had stated that from 11th month of 2005, they worked once in three months or 6 months in

“Sir’s land in Palaly Road, Kondavil and they together with “Sir” erected fence around the land in 2005, cut branches of trees inside the land, weeded Nayuruvi and burned them, removed the heap of stones using tractor and put them in Sir’s Murugan Temple Road situated nearby. The learned Primary Court Judge has rejected the affidavit of Krishanapillai Sinnarasu and his wife, Mathillini (M3) on the ground that their affidavit does not state to whom they worked as it refers to one “Sir of Palaly Street, Kondavil”.

[66] Even if the said affidavit does not refer to whom they work as they had only stated “Sir of Palaly Street, Kondavil” without referring to any person, no cogent reason had been given as to why the affidavit of the Respondent’s immediate previous owners Rasaiah Thavakumaran and Malathy Thavakumaran. In my view, no fixed number of affidavits or documents are required for the determination of a credibility of a statement contained in an affidavit filed in the Primary Court. It is based on the maxim that “evidence is to be weighed and not counted” (numbered)-“*Testes ponderantur, non numerantur*”. The factors that ought to be taken into account when evaluating the credibility of a statement contained in an affidavit are the quality, weight, and value rather than the number of affidavits.

[67] The said Rasaiah Thavakumaran and Malathy Thavakumaran had purchased and held the property for almost 5 years from 12.10.2005 to 16.03.2010 without any interference from Sambanthan Padmanabha. The previous owners of the Respondent had clearly confirmed that they sold the property to the Respondent and his son on 16.03.2010, a doctor, family of Neervely and while they were in possession they were dispossessed by Balasingam, the original Respondent who is the brother of the Appellant. The basic version of the Respondent and his son, in my

view, is more consistent with the version of their previous owners on the question of their possession and dispossession contained in their affidavits in the absence of any affidavit or letter whatsoever, given by Sambandan Padmanabha confirming that the Appellant took over possession of the premises on 06.01.2010 as discussed.

[68] The learned Primary Court Judge has not given any valid reason as to why the intrinsic value of the Respondent's predecesors in title are vitiated in favour of the two affidavits of K Rasaratnam(2-1R1) and Ramiah Thevaraja (2-R2) who only supported the Appellnat's basic verson which is not supported by the Appellnat's own documents and at least, his own previous owner Sambandan Padmanabha.

[69] A perusal of the order of the learned Primary Court Judge further reveals that having said that the determination of title is immaterial, he had in fact taken into account the title to the Deed No. 5575 and decided that the title to the Respondent's possession on the basis of his predecessor's title through Attorney Sri Sivaya is weak as revealed at the disciplinary inquiry held by the Bar Association of Sri Lanka into the conduct of Attorney Sri Sivaya. He has determined that as Sri Sivaya had admitted that he did not alienate the said property in his fax sent to Sambanthan, the Respondent's claim that he entered into the property in question on the strength of Deeds Nos. 6696 and 6995 is also weak due to the findings of the disciplinary inquiry. His findings at page 67 of the brief are as follows:

*"Though the party of the first states that they became entitled to the land through the Power of Attorney of Siri Sivaya, it could be noted from the inquiry held by the Sri Lanka Lawyer's Association (The notes with regard to the inquiry are seen in the document "2-1.R-8") where the said Siri Sivaya, the Attorney-at-Law had stated that he did not alienate the said property through his Power of Attorney, and for*

*the proof he had submitted the abstract obtained from the Kachcheri.*

*Wherefore the facts which were put forward by way of affidavit by the party of the 01st, ..are contradictory. Though there is no jurisdiction for the Primary Court to go into the facts whether the said property was alienated in a proper way, it is my opinion that the fact put forward by the party of the 01st, in proof of their position, has been rejected by the decision taken by the disciplinary committee of the Lawyers' Association, which is a governing body that governs all the Attorneys-at-Law, that is delivered after investigation made on the document submitted by the party of the second. It is my opinion that the said fact weakens the trend of the case of the party of the 01st."*

[70] A perusal of the copy of the extract of encumbrance of the property of Sambandan Padmanabha at pages 162-109 of the brief with the attached fax of Sambandan Padmanabha dated 10.02.2010 reveals that what Sri Sivaya had sent to Sambandan Padmanabha was an extract obtained by him on 20.06.2005. The fax of Sambandan Padmanabha to one Bala on 10.02.2010 reads as follows:

*"Forwarding an extract of No encumbrances of my land issued by the Deputy Registrar General of Lands Registry Jaffna obtained by Lawyer Sri Shivaya on his application on 20.06.06. ...."*

[71] The Respondent's predecessors in title, Rasaiah Thavakumaran and Malathy Thavakumaran had purchased the property on 12.10.2005 and thus, it is factually incorrect to take into account the extracts issued by the Land Registry on 20.06.2005 to discard the affidavit of Rasaiah Thavakumaran and Malathy Thavakumaran and hold that the intrinsic value of their affidavit is vitiated by the extracts of the Land Registry submitted by Sri Sivaya to Sambandan Padmanabha.

[72] The learned Primary Court Judge has further relied on the telexes sent by the Attorney Sri Sivaya to Sambandan Padmanabha on 13.06.2006 (1-2-1R-7-2) to discard the intrinsic value of affidavit filed by Rasaiah Thavakumaran and Malathy Thavakumaran stating that Attorney Sri Sivaya had told Sambandan Padmanaba in the said fax that he did not sell the land. He has only relied on the last paragraph of the said fax in which Sri Sivaya has stated "I wish to tell you that the land is still in your name" (page 119 of the brief). In the same telex, at page 116 of the brief Siva Sivaya has clearly stated:

*Coming to the core issue, about the sale of the land, I am negotiating with another person to purchase it at the value so that I could send you the money what is due to you and also pay Kumar's family what he was given as they are not interested in it because of the happenings. I assure you that within one month of today the entire transaction will be over.*

[73] It is clear that the said Sambandan Padmanabha had only made a complaint to the Bar Association of Sri Lanka against his Attorney long before the transactions in Deeds No. 6995 and 6695 dated 16.03.2010 took place (Vide- page 120 of the brief (2-R-4R1). It seems that the complaint of Sambandan Padmanabha was that his Attorney had transferred the property by Deed No. 5575 to a third party **below the minimum consideration and misappropriated the consideration**. There is no material whatsoever, that had been placed by the Appellant that the said Sambandan Padmanabha had made any complaint against the Respondent's Predecessors in tile for a period of 5 years from 12.10.2005 to 24.03.2010 or filed any action against them or question their possession on the basis of the transaction referred to in Deed No. 5575 is a forgery.

[74] In fact, Sambandan Padmanabha had never challenged the contents of the affidavits filed by Rasaiah Thavakumaran and Malathy Thavakumaran

with regard to their claimed possession from 12.10.2005 up to 16.03.2010 or the possession of the Respondent or his son from 16.03.2010 to 24.03.2010. He has only made a complaint to the Bar Association against his Attorney for selling the property below the minimum consideration and misappropriated the consideration referred to in the Deed.

[75] The ownership of the property of the parties, including the validity of the Deed of Transfer No. 5575 or the execution of the said Deed without prior registration or registration of the said Deed in wrong folios or selling the property below the minimum consideration or adequacy of consideration are not the matters that shall be considered by a Judge of the Primary Court in an inquiry under section 66 of the Primary Courts' Procedure Act.

[76] It is settled law that a Judge of a Primary Court is not expected to decide any question of title or right to possession of the parties to the land and evidence bearing title can only be considered where the evidence as to possession is clearly balanced and the presumption of possession which flows from title may tilt the balance in favour of the owner and help in deciding the question of possession (*Ramalingam v Thangarajah* (supra). p. 698).

[77] Accordingly, it is wrong for the learned Primary Court Judge to take into account the matters that transpired at the disciplinary inquiry of the Bar Association of Sri Lanka that had taken place long before the present dispute arose between the parties for the determination of possession or dispossession in an application filed under section 66 of the Primary Courts Procedure Act. Those matters exclusively fall within the domain of a competent civil court.

[78] As noted, the consistency and reliability of the version of the Respondent and his son are supported by the internal consistency of the statement contained in their affidavits and consistency of their version with what their predecessors-in-title had said in their affidavit. In my view, the intrinsic value of the affidavit filed by the Respondent and his son could not have been discarded and vitiated in the absence of any strong independent material to the contrary at least emanating from Sambandan Padmanabha to the effect that Rasaiah Thavakumaran and Malathy Thavakumaran had never possessed the property for the last 5 years and thus, the Respondent and his son could not have claimed possession to the land in dispute.

[79] For those reasons, I hold that the Respondent has established that he had possession of the property in dispute from 16.03.2010 until 06.04.2010 as confirmed by the uncontradicted affidavit of their predecessors in title, who had handed over possession to them on 16.03.2010 on the strength of their Title Deeds No. 6995 and 6996 dated 16.03.2010. Thus, I am of the view that the learned Magistrate was wrong in holding that the Respondent has not established his possession of the land in dispute from 16.03.2010 until the date of the dispute.

#### **Claim of dispossession made by the Respondent on 06.04.2010**

[80] At the hearing, Mr. Silva further submitted that the Respondent had admitted in his affidavit that he was dispossessed by the Police action on 07.04.2010 and thus, the Respondent's claim of dispossession fails.

[81] The Respondent's version was that (i) when an advertisement was published in Udayan Nespaper about the sale of the land in extent of 5 Parappu and Kulli 11 with contact details (M24), he visited the land on

06.04.2010 and observed that some peoples who were working there had constructed a fence on his land on all 4 directions and putting a padlock.

[82] The Respondent has further described in paragraphs 7, 8 and 10 of his affidavit how he was dispossessed by the Appellant through his employees:

7. *Then when I contracted the person over the telephone, on one of the numbers, given there, the said person, the Respondent, gave his name and the address. He informed that he is going to sell his land and the deed is kept in Colombo;*
8. *On that day, I contacted my predecessors and my Attorney-at-law and informed them and went on with the activities to take steps on the said matter;*
9. *On 06.04.2010, in the morning as usual when I went to my land, I saw some five persons, the collies were clearing the land. They were driving the sticks into the soil on the boundary narrowly between the stakes that I had planted for identification of the land. In a day they put up the fence round the land on all four directions, for demarcation and had constructed the shutters and had put the padlock.”*

[83] It is crystal clear that the Respondent had made a specific claim of dispossession that had taken place on 06.04.2010 and thus, there is no merit in the argument that the Respondent was dispossessed by the Police action on 07.01.2010. A perusal of the affidavits filed by the Appellant and his brother reveals that they had not denied whatsoever, the specific claim of the Respondent that he was dispossessed by the Appellant on 06.04.2010 through his workers by constructing a fence around the land on all 4 directions and putting the padlock.

[84] According to paragraph 10 of the Respondent's affidavit, he had made a complaint to the Police on 06.04.2010 in respect of his dispossession and the Police held an inquiry on 07.04.2010, warned the parties not to enter

the land till the order is obtained from Court and if they failed to maintain peace, they will be taken into custody and remanded. Paragraph 10 of his affidavit reads as follows:

*"10-My son and I, who is engaged in respectable job made a complaint at the Police Station. And in the inquiry on 07.04.2010, the Police warned both parties not to enter the land till the order is obtained from a court having filed the case and to maintain peace. If any one breaches, the peace, without considering the status, they will be taken into custody and remanded."*

[85] The Appellant's brother has stated in paragraph 7 of the affidavit that he was called by the Police for an inquiry as the Petitioner had lodged a complaint against him and he went to the Police and made a statement and later his brother also went to the Police. Paragraph 7 of the affidavit states as follows:

*"Then in the end of March, the Kopay Police asked me to come to the Police Station for inquiry as the person, Velauthapillai had lodged a complaint that he too holds a share in that land. I informed the Police that I am not the owner of the land and Baskarasingham is the owner of the land and on the 18th of April, Baskarasingham went to the Police and met them and showed the deed that it was in his name. But, Velauthapillai who was the complainant did not show his deed."*

[86] The Appellant or his brother had not denied paragraph 10 of the Petitioner's affidavit or disputed the Petitioner's position that the Police warned both parties not to enter the property and if one of the parties breaches the peace, they will be taken into custody and remanded.

[87] The Appellnat in paragraph 10 of his affidavit had merely reproduced a part of the Respondent's claim of dispossession, but the Respondent's specific claim of dispossession on 06.04.2010 had not been disputed in his

affidavit. The Respondent's affidavit is dated **20.05.2010** and the Appellant filed his affidavit on **03.08.2010** while his brother filed his affidavit on **19.07.2010** and thus, the Appellant and his brother had sufficient time to deny the claim of dispossession made by the Respondent

[88]. The information has been filed by the Respondent on **20.05.2010** and the Respondent has satisfied that he had been dispossessed on **06.04.2010** and thus, section 68 (3) applies. When section 68 (1) applies, the Primary Court Judge must determine whether any person who had been in possession of the land had been forcibly dispossessed within a period of **2 months** immediately before the date on which the information was filed. The Appellant has purchased the property only on **24.03.2010** and as noted, the Appellant has failed to establish that he had been in possession of the property either on **20.03.2010** or before that date. On the other hand, the Respondent has established that he had been in possession from **16.03.2010** to **06.04.2010** and on **06.04.2010**, he had been dispossessed.

[89] For those reasons, I hold that the Respondent who had been in possession of the land in dispute from **16.03.2010** to **06.04.2010** had been dispossessed within a period of 2 months immediately before the date on which the information was filed (viz. **20.05.2010**) under section 66 of the Primary Courts' Procedure Act. The learned Primary Court Judge, in my view has erred in holding that the Respondent has failed to establish his possession of the land in dispute from **06.03.2010** to **06.04.2010** and that he had not been dispossessed within a period of 2 months from the date on which the information was filed on **20.05.2010**.

## **Conclusion**

[90] For the reasons enumerated in this judgment, I hold that the conclusion reached by the learned High Court Judge in his judgment dated 13.02.2012 that the Appellant has failed to establish his possession to the land in dispute and that the Respondent is entitled to the possession of the land in dispute until an order is made by a competent court is correct.

[91] For the reasons enumerated in this judgment, I hold that the learned High Court Judge is correct in allowing the revision application filed by the Respondent in the High Court of Jaffna and setting aside the order of the learned Primary Court Judge of Jaffna dated 08.06.2011.

[92] For those reasons, the appeal filed by the Appellant is dismissed. The parties shall bear their own costs.

**JUDGE OF THE COURT OF APPEAL**

**Shiran Gooneratne J.**

I agree,

**JUDGE OF THE COURT OF APPEAL**