

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

In the matter of an Appeal made under Article 156 P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka, read with the Provisions of High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Court of Appeal Case No:
CA (PHC) 43/2021

Gampaha High Court Revision
Application No. REV 83/2019
Gampaha Magistrate Court Case
No: 79186/19

OIC, Police Station, Gampaha.

Complainant

Vs.

01. S.A. Waheed,
No.1, C, 28 Lane, Flower Road, Colombo 7.

02. W.L. Suranjane,
No. 109, Miniruwangama, Kotugoda.

03. D.A.W. Karunasena,
No. 109, Miniruwangama, Kotugoda.

1st Party

Vs.

01. R.A.I. Chamara,
No.110, Miniruwangama, Kotugoda.

02. R.A.I. Dananjaya,
No.110, Miniruwangama, Kotugoda.

03. R.A.S. Narthana,
No.6, Yagoda Mulla, Kotugoda.

2nd Party

AND BETWEEN

01. S.A. Waheed,
No.1, C, 28 Lane, Flower Road, Colombo 7.

02. W.L. Suranjane,
No. 109, Miniruwangama, Kotugoda.

03. D.A.W. Karunasena,
No. 109, Miniruwangama, Kotugoda.

1st Party- Petitioners

Vs.

01. R.A.I. Chamara,
No.110, Miniruwangama, Kotugoda.

02. R.A.I. Dananjaya,
No.110, Miniruwangama, Kotugoda.

03. R.A.S. Narthana,
No.6, Yagoda Mulla, Kotugoda.

2nd Party- Respondents

AND NOW BETWEEN

01. S.A. Waheed,
No.1, C, 28 Lane, Flower Road, Colombo 7.

02. W.L. Suranjane,
No. 109, Miniruwangama, Kotugoda.

03. D.A.W. Karunasena
No. 109, Miniruwangama, Kotugoda.

1st Party- Petitioners- Appellants

Vs.

01. R.A.I. Chamara,
No.110, Miniruwangama, Kotugoda.

02. R.A.I. Dananjaya
No.110, Miniruwangama, Kotugoda.

03. R.A.S. Narthana
No.6, Yagoda Mulla, Kotugoda.

2nd Party- Respondents- Respondents

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

Counsels: Kamal Suneth Perera for the 1st Party-Petitioners-Appellants
Isuru Somadasa for the 1st and 2nd, 2nd Party Respondents-
Respondents.

Argued: 01.08.2025

Written submissions tendered on: 04.04.2025 by 1st and 2nd, 2nd Party-Respondents-Respondents.
02.04.2025 by 1st Party-Petitioners-Appellants.

Judgement
Delivered: 09.10.2025

D. Thotawatte, J.

The Officer-in-Charge of Gampaha Police Station filed an information in the Magistrate's Court of Gampaha on 13th May 2019 under the Provisions of Section 66 of the Primary Court's Procedure Act No. 44 of 1979 (hereinafter sometimes referred to as "the Act") to the effect that there was a dispute regarding the possession of a residential property situated in Gampaha (hereinafter sometimes referred to as the "subject premises") between 1st Party-Petitioners-Appellants (hereinafter sometimes referred to as "Appellants") and 2nd Party-Respondents-Respondents (hereinafter sometimes referred to as "Respondents").

On 05th March 2019, 1st Party 3rd Petitioner-Appellant (hereinafter sometimes referred to as "3rd Appellant") had made a complaint to the police, stating that he was entrusted with the care of the adjoining property by the owner of that property who was residing in Colombo, and on the 22nd of the previous month (22 February 2019) the 2nd Party 1st and 2nd Respondents-Respondents (hereinafter sometimes referred to as "1st and 2nd Respondents") forcibly occupied the house situated in the said property.

On 06th April 2019, statements of the 1st and 2nd Respondents had been recorded regarding what appears to be an unconnected incident, and in that statement, the 1st Respondent has stated that he and his brother came to reside in the house bearing assessment No.110, at Miniruwangama, Kotugoda about two months previously (which would be within the month of February 2019). Further that, this property previously belonged to their mother.

The identification of the property as No. 110, Miniruwangama, Kotugoda, and the fact that the Respondents were in possession of the property at the time of filing of the information had not been disputed by the parties.

Upon the conclusion of inquiry, the learned Magistrate of Gampaha, sitting as the Primary Court, having considered the affidavits, counter-affidavits and submissions of the parties, by order dated 31st July 2019, granted possession to the Respondents and dismissed the Appellants' application for restoration of possession, on the grounds that the Appellants had not been able to establish that they had been dispossessed during the two months immediately preceding the filing of information.

Being dissatisfied with the order of the learned Magistrate of Gampaha, the Appellants sought revision in the High Court of Gampaha, challenging the Primary Court's order as being legally flawed and overly technical. On 26th October 2021, the High Court dismissed the revision application, confirming the Primary Court's order.

Being aggrieved by the order of the learned High Court Judge, the Appellants have filed this instant appeal in this court inter alia, seeking the following reliefs;

- I. Set aside the order of the learned High Court Judge of Gampaha in Rev. 83/2019, dated 2021/10/26.
- II. Set aside the order of the learned Magistrate of Gampaha in 79186/19, dated 2019/07/31.
- III. Order to restore the possession of the subject matter to the Appellants.

The instant appeal seeks to set aside the impugned orders of the subordinate courts on the following grounds;

- a) That the learned High Court Judge has failed to properly interpret and apply section 66 (1) (a)(i) of the Primary Court Procedure.
- b) That both the learned Magistrate and the Learned High Court Judge gave a narrow interpretation to the term "With least possible delay" in section 66 (1) (a)(i) of the Primary Court Procedure thereby defeated the intention of the legislature.
- c) That the evidence as admissions by the 2nd party that they disposed the 1st party was disregarded by the Court.
- d) That the police statement given by the 2nd party saying that the disposed the first party on the 22nd March was regarded as typographical error by the Court.

Subsections (1) and (3) of Section 68 of the Primary Court's Procedure Act No. 44 of 1979 reads thus;

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- (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.

(2)

(3) 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.

In proceedings under the Primary Court's Procedure Act, the learned Magistrate's duty under Section 68 is, in the first instance, to ascertain and determine who was in actual possession of the land on the date on which the information was filed, as contemplated by Section 68(1).¹ The inquiry is not into ownership or title, but into the factual state of possession, broadly understood as control or occupation regardless of proprietary rights.

However, the Act also provides for situations where possession has been disturbed unlawfully. Under Section 68(3), when forcible dispossession is alleged, the Court may look beyond possession on the filing date to determine whether such dispossession occurred within two months prior.² This safeguard ensures that a party wrongfully ousted shortly before proceedings is not denied the statute's protection.

In the instant case, Appellants accept the fact that the Respondents were in possession of the property as at the time the information was filed, and their claim rests upon being forcibly dispossessed from the property. Such a position inevitably shifts the inquiry from Section 68(1) to Section 68(3). The learned Magistrate, appreciating this distinction, proceeded to examine whether the statutory requisites of Section 68(3) had been met, namely, whether the alleged dispossession had taken

¹*Punchi Nona v. Padumasena and Others* [1994] 02 Sri L.R 117, CA No. 104-90

²*Ponniiah Baskarasingham v. Kandiah Velauthapillai, Vel Hospital CA (PHC) 07-2012 C.A.M. 09.10.2020. at page 34/ Kayas v. Nazeer and Others* [2004] 3 Sri L.R 202

place within the two-month period contemplated by the Act. In doing so, the learned Magistrate has heavily relied upon what appears to be a complaint of forcible dispossession made by the 3rd Appellant.

However, it appears that the 1st Party 2nd Petitioner-Appellant (hereinafter sometimes referred to as “2nd Appellant”) has on 22-02-2019 made a complaint to Gampaha Police Station stating that the 1st and 2nd Respondents are attempting to forcibly occupy the house in adjoining land which they are looking after on behalf of the 1st Appellant, and as such to legally evict them. The 1st Appellant, making a statement on 23-02-2019, has stated that he, being the owner of the subject premises, was informed on the previous day that some people had broken into and entered the premises. When he visited the premises in the morning, he observed three persons leaving the house, and he found that some items belonging to him that were inside the house had been stolen.

The 3rd Appellant, making a complaint to the Gampaha Police Station on 05-03-2019, has stated that the 1st and the 2nd Respondent had since the 22nd of the previous month (which would mean 22-02-2019) forcibly occupying the subject premises, and as such, to assist him in retrieving some property of his that is inside the subject premises.

When examining the above-mentioned statements of the Appellant party, it is significant that it is the 3rd Appellant’s statement dated 05-03-2019, which clearly states that the 1st and the 2nd Respondents are forcibly residing in the subject premises since 22-02-2019. This position is further supported by the statements of the 1st and the 2nd Respondents to the police dated 06th April 2019.

The above evidence counters the 1st Appellant’s claim that the 1st and the 2nd Respondents have accepted the fact that they came into occupation of the said property on 22nd March 2019. This assertion is based on the statements made to the police by the 1st and the 2nd Respondents on the 19th April 2019. However, in their affidavits submitted to the Magistrate’s Court, the 1st and the 2nd Respondents have clearly stated that by 22nd February 2019, they were in possession of the property.

The party alleging unlawful dispossession bears the initial burden of proof to establish, on a balance of probability, that they were in possession within the two-month period contemplated by the Act, and that their possession was disturbed within that time. In light of the greater weight of evidence to the contrary, it is reasonable for the learned Magistrate to consider the date 22nd March 2019, which appears as the date of dispossession in the statements of the 1st and 2nd Respondents dated 19th April 2019, as an inadvertent error that can be disregarded.

On the above grounds, I am unable to agree with the contention of the Appellants that the Respondents have admitted to the dispossession within the requisite time period. The learned Magistrate, on the material available, has come to the correct conclusion that the Appellants had not been able to establish that they had been dispossessed during the two months immediately preceding the filing of information, and as such cannot be restored to possession.

I am unable to agree with the Appellants' contention that Section 68(3) of the Act should be more broadly interpreted. Proceedings under Part VII of the Primary Court's Procedure Act are of a temporary and preventive character, solely to determine factual possession in order to prevent a potential breach of the peace which may result in danger to life and property. The intrinsic urgency demands that these matters be concluded as expeditiously as possible. It is imperative that the learned Magistrate act strictly within the parameters of the relevant sections, as any deviation could result in the defeat of the limited purpose for which this legislation has been drafted. As such, it is imperative that the learned Magistrate strictly adhere to Section 68 (1) and 68 (3).

In paragraphs 7 and 8 of the Appellants' written submissions, the Appellants have averred that the learned Magistrate has failed to properly apply Section 66 (1) (a)(i) by treating the delay which was due to the police inaction as fatal to their case. However, if the Appellants assert that the dispossession occurred on 22nd March 2019, they cannot simultaneously contend that there was undue delay on the part of the police. If the dispossession was on 22nd March 2019, it would fall well within the two-month statutory period. Therefore, it is not open to the Appellants to both affirm and deny with regard to the date of dispossession.

According to the available evidence, the 1st information received by the police regarding a forcible occupation of the premises was when the 3rd Appellant made a complaint on 05th March 2019. The previous complaint dated 23-02-2019 made by the 1st Appellant, the owner of the premises, does not state that the subject premises is being occupied by the Respondents or any other party. He had only wanted the recovery of stolen items. Even the 05th March 2019 statement of the 3rd Appellant does not contain a request for restoration. It is only in the statement dated 12th May 2019 made by the 1st Appellant that he has informed the police that he has been dispossessed from his premises, and as such, has requested restoration. Considering that the police proceeded to file the information on 13th May 2019, the police cannot be said to have been remiss in attending to the matter.

In my view, the learned Magistrate and the learned High Court Judge are justified in their conclusions, and thus, I do not see merit in any of the grounds urged by the learned Counsel for the Appellants, which would necessitate interference with the orders of the learned Magistrate of Gampaha dated 31st July 2019 and the learned High Court Judge of Gampaha dated 26th October 2021. 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