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

In the matter of an Appeal under Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC Appeal No:
27/12

SC Special Leave Application No:
63/2011

CA(PHC) No:
11/99

HC Kurunegala No:
64/97

Primary Court Pilessa No:
57063/L

Mohamed Saheed Mahomed Abdulla
No. 20, Kandy Road,
Mawathagama.
APPLICANT

Vs.

Dassanayake Mudiyanselage Antony
of "Supervision",
Super Market Complex,
Mawathagama.
RESPONDENT

AND

Mohamed Saheed Mahomed Abdulla
No. 20, Kandy Road,
Mawathagama.
APPLICANT-PETITONER

Vs.

Dassanayake Mudiyanselage
Antony
of “Supervision”,
Super Market Complex,
Mawathagama.
RESPONDENT-RESPONDENT

AND BETWEEN
Mohamed Saheed Mahomed
Abdulla
No. 20, Kandy Road,
Mawathagama.
APPLICANT-PETITIONER-APPELLANT

Vs.
Dassanayake Mudiyanselage
Antony
of “Supervision”,
Super Market Complex,
Mawathagama.
RESPONDENT-RESPONDENT-RESPONDENT

AND NOW BETWEEN
Dassanayake Mudiyanselage
Antony
of “Supervision”,
Super Market Complex,
Mawathagama.
RESPONDENT-RESPONDENT-RESPONDENT-APPELLANT

Vs.

Mohamed Saheed Mahomed Abdulla
No. 20, Kandy Road,
Mawathagama **(Now Deceased)**
APPLICANT-PETITIONER-APPELLANT-RESPONDENT

1A. Abdul Wahab Sithy Suraiha
1B. Mohammed Abdullah Fathima Mufriha
1C. Mohammed Abdullah Fathima Munfiha
1D. Mohamed Abdullah Mohamed Murasil
1E. Mohammed Abdullah Fathima Musliha
1F. Mohammed Abdullah Fathima Mufsiha
All of No. 06, Church Road,
Mawathagama.
SUBSTITUTED 1A-1F
APPLICANT-PETITIONER-APPELLANT-RESPONDENTS

Before : S. Thurairaja, P.C., J.

: Menaka Wijesundera, J.

: Sampath B. Abayakoon, J.

Counsel	: Manohara de Silva, P.C. with Hirosha Munasinghe instructed by Gaithri de Silva for the Respondent-Respondent-Respondent-Appellant.
	: Priyantha Gamage instructed by Sena Hemendra for the Applicant-Petitioner-Appellant-Respondents.
Argued on	: 24-07-2025
Written Submissions	: 28-03-2012 (By the Respondent-Respondent-Respondent-Appellant)
	: 09-05-2012 (By the Applicant-Petitioner-Appellant-Respondents)
Decided on	: 27-10-2025

Sampath B. Abayakoon, J.

This is an appeal preferred by the respondent-respondent-respondent-appellant (hereinafter referred to as the respondent-appellant) on being aggrieved by the judgment of the Court of Appeal pronounced on 18-03-2011 in Case No. CA (PHC) 11/1999.

When this matter was considered for the granting of special leave to appeal on 31-01-2012, this Court granted leave to appeal on the questions of law as set out in paragraph 12(a), (b), (c), (d) and (e) of the petition dated 04-04-2011.

The said questions of law read as follows,

1. The said order is contrary to law and against the weight of evidence,
2. The Court of Appeal has erred in law when interpreting the section 66(b) of the Primary Courts Procedure Act No. 44 of 1979,

3. The Court of Appeal erred in setting aside the concurrent findings of the Primary Court of Pilessa and the High Court of Kurunegala held in favour of the Petitioner, on the evidence led and the material produced in the case,
4. None of the documents which the Court of Appeal has accepted as showing possession of the Respondent, in fact shows the possession of the Respondent, payment of electricity bills can be made by the person who has got the electricity connection even though he was not in possession, and also the payment of rates too does not show possession,
5. The Court of Appeal has failed to consider the evidence of the Petitioner's documents marked 1වැ1, 1වැ5, 1වැ8, 1වැ11 and 1වැ16 which were considered by the Primary Court.

When this matter was taken up for argument before this Court, it was the submission of the learned President's Counsel who represented the respondent-appellant that the Court of Appeal erred in law, as well as facts, in relation to the manner under which an application of this nature should be considered.

It was his position that both the Primary Court, as well as the Provincial High Court of Kurunegala, where the revision application preferred by the applicant-petitioner-appellant-respondent (hereinafter referred to as the applicant-respondent) was considered and dismissed, were correct as to the respective findings.

It was his contention that this being a private plaint instituted in terms of section 66(1)(b) of the Primary Courts Procedure Act No. 44 of 1979, there should be evidence of breach of the peace or a likelihood of the breach of the peace, where there was none. It was his position that the respondent-appellant obtained possession of half of the building concerned with the consent of the applicant-respondent in January 1991 after he purchased the building from him. He submitted that subsequently, respondent-appellant also re-paid the mortgage amount due, to the Bank of Ceylon as a result of a loan obtained by the applicant-respondent.

It was his submission that the material relied on by the Court of Appeal to reverse the judgment of the High Court, as well as the order of the learned Judge of the Primary Court, were material which does not establish that the applicant-respondent was ousted from his possession of the entire building by the respondent-appellant as he claims, and clearly, the Court of Appeal has erred in that regard.

It was the submission of the learned Counsel for the applicant-respondent that the material placed before the Court by the applicant-respondent has clearly established a likelihood of the breach of peace, and there was sufficient material before the Primary Court to assume jurisdiction in terms of section 66 of the Primary Courts Procedure Act. It was also submitted that the documents considered by the Court of Appeal have clearly proved that the applicant-respondent had possession of the building concerned and that he has come before the Primary Court within the required two months period of him being dispossessed of his possession. It was his position that there are no compelling reasons to disturb the findings of the Court of Appeal and the appeal should be disallowed.

The applicant-respondent has preferred an application before the Primary Court of Pilessa under Case No. 57063 by way of an affidavit dated 13-05-1996. He has stated that he became the owner of the building morefully described in the schedule of his affidavit by deed No. 6120 dated 24-02-1989, held and possessed the building from that date onwards. He has stated that even before he purchased the building, he had the possession of the building where he conducted his own business as a tenant of the previous owners from 1966. He has submitted several receipts in relation to the payments made to the Local Authority for trade licenses, as well as assessment rates, and also payment of electricity bills in order to substantiate his possession of the building.

The position taken up in his affidavit to the Primary Court has been that because he fell into financial difficulties, he mortgaged the property to Mawathagama Bank of Ceylon and obtained a loan of Rs. 600,000/-. He has further stated that due to his monetary requirements, he obtained a similar

sum from the respondent-appellant and transferred the property to him as a security for the sum obtained. It has been stated that the respondent-appellant agreed to re-transfer the property to him once he settles the Rs. 650,000/- mentioned in the deed of transfer. He has claimed that although the property was transferred to the respondent-appellant, it was he who maintained the possession of the property.

It has been claimed that while this *status quo* remained, the respondent-appellant without his authority, repaid the mortgage amount due to the bank on 18-03-1996, using a blank paper signed by him and given to the respondent-appellant at the time he obtained the loan from him. It has been stated that thereafter, on 24-03-1996, the respondent-appellant forcibly entered half of the building and dispossessed him of that half and started possessing the said portion of the building.

It has been further stated that although he attempted to settle this dispute amicably it failed, and he lodged a complaint in this regard to the Mawathagama police on 08-04-1996. It was on the said basis that the applicant-respondent has claimed the likelihood of the breach of peace and the intervention of the Primary Court in terms of section 66 of the Primary Courts Procedure Act for him to be placed in possession of the portion of the building he claimed he was forcibly dispossessed.

When the respondent-appellant was notified by the Primary Court in relation to the application, he has tendered his affidavit dated 24-06-1996 where he has claimed that after purchasing the building from the applicant-respondent by deed No. 9217 dated 18-12-1994, he obtained possession of half of the building on 13-01-1996 where he commenced a television repair workshop. It has been his position that since the building was subjected to a mortgage in favour of the Bank of Ceylon, with the consent and agreement of the applicant-respondent, he settled that amount of Rs. 825,524.36/-.

He has claimed that he is in possession of the electricity bills that were subsequently issued in his favour and has denied that he dispossessed the applicant-respondent from half of the building. It has been his position that

he came into possession of the said half with the full consent of the applicant-respondent after he purchased the property as stated above.

Having considered the affidavits of the parties and the supporting documents tendered before the Courts, the learned Judge of the Primary Court, of her order dated 17-03-1997, has decided that she is unable to come to a finding from the documents and the affidavits tendered to Court that the respondent-appellant has dispossessed the applicant-respondent on the date as claimed by him. It has also been determined that there is no material before the Court to establish that there was a breach of the peace or the likelihood of the breach of the peace, whereas the matter reported is entirely of a dispute civil in nature. Accordingly, the application of the applicant-respondent has been dismissed by the learned Primary Court Judge.

The learned Judge of the Provincial High Court of the North Western Province holden in Kurunegala, having considered the revision application filed by the applicant-respondent on the basis of being aggrieved of the order of the learned Judge of the Primary Court, held the same view and dismissed the said revision application of his order dated 16-12-1998.

The applicant-respondent has preferred the appeal under consideration seeking to challenge both the orders pronounced by the learned Judge of the Primary Court and the learned Judge of the High Court. It appears from the impugned judgment of the Court of Appeal dated 18-08-2011, the main focus of the Court of Appeal had been whether the applicant-respondent has established that he was dispossessed from the building two months prior to filing of the application before the Primary Court. The Court has considered the electricity bills submitted by the applicant-respondent as well as the receipt relating to payment of assessment rates as relevant.

It has been concluded that the respondent-appellant was not in possession of the building from 15-01-1996 as claimed by him, and it was the applicant-respondent who has established his possession in the premises two months prior to the case being filed before the Primary Court.

It has also been decided that based on paragraph 11 and 13 of the affidavit filed by the applicant-respondent, it can be concluded that the respondent-appellant has forcibly entered the premises by breaking the padlock used by the applicant-respondent, and there was clear evidence to support the view that breach of peace was threatened and likely. It has been determined that both the Courts have erred in that regard, and accordingly, both orders have been set aside and it has been directed that the applicant-respondent should be placed in possession of the building.

In view of the above factual matrix, the question before this Court is whether the Court of Appeal had a sufficient basis to overturn the order of the Primary Court, as well as that of the appellate order of the High Court, on the basis that both the Courts erred as to the facts and the law in relation to an application in terms of section 66(1)(b) of the Primary Courts Procedure Act.

Towards this end, I find it necessary to reproduce the relevant section 66 of the Primary Courts Procedure Act in full for the better understanding of the judgment.

> **66. (1) Whenever owing to a dispute affecting land a breach of the peace is threatened or likely-**
>
> **(a) the police officer inquiring into the dispute-**
>
> **(i) shall with the least possible delay file an information regarding the dispute in the Primary Court within whose jurisdiction the land is situate and require each of the parties to the dispute to enter into a bond for his appearance before the Primary Court on the day immediately succeeding the date of filing the information on which sittings of such Court are held; or**
>
> **(ii) shall, if necessary in the interests of preserving the peace, arrest the parties to the dispute and produce them forthwith before the Primary Court within whose**

jurisdiction the land is situate to be dealt with according to law and shall also at the same time file in that Court the information regarding the dispute; or

(b) any party to such dispute may file an information by affidavit in such Primary Court setting out the facts and the relief sought and specifying as respondents the names and addresses of the other parties to the dispute and then such Court shall by its usual process or by registered post notice the parties named to appear in Court on the day specified in the notice-such day being not later than two weeks from the day on which the information was filed.

(2) Where an information is filed in a Primary Court under subsection (1), the Primary Court shall have and is hereby vested with jurisdiction to inquire into, and make a determination or order on, in the manner provided for in this Part, the dispute regarding which the information is filed.

(3) On the date on which the parties are produced under subsection (1) or on the date fixed for their appearance under that subsection, the Court shall appoint a day which shall not be later than three weeks from the date on which the parties were produced or the date fixed for their appearance directing the parties and any persons interested to file affidavits setting out their claims and annexing thereto any documents (or certified copies thereof) on which they rely.

(4) The Court shall, not later than one week of the filing of the information, cause a notice to be affixed in some conspicuous place on the land or part of the land which is the subject-matter of the dispute announcing that a dispute affecting the land has arisen and requiring any person interested to appear in Court on the date specified in such notice, such date being the day on which the case is next being called in Court:

Provided that where the information has been filed by a police officer, the notice referred to in the preceding provisions of this subsection shall also require that the person interested shall, in addition to appearing in Court, file affidavits setting out his claims and annexing thereto any documents (or certified copies thereof) on which he relies.

(5) Where any affidavits and documents are filed on the date fixed for filing them, the Court shall, on application made by the parties filing affidavits, grant such parties time not exceeding two weeks for filing counter-affidavits with documents if any. The Judge of the Primary Court shall permit such parties or their attorney-at-law to peruse the record in the presence of the Registrar for the preparation of the counter-affidavits.

(6) On the date fixed for filing affidavits and documents, where no application has been made for filing counter-affidavits, or on the date fixed for filing counter-affidavits, whether or not such affidavits and documents have been filed, the Court shall before fixing the case for inquiry make every effort to induce the parties and the persons interested (if any) to arrive at a settlement of the dispute and if the parties and persons interested agree to a settlement the settlement shall be recorded and signed by the parties and persons interested and an order made in accordance with the terms as settled.

(7) Where the parties and persons interested (if any) do not arrive at a settlement, the Court shall fix the case for inquiry on a date which shall not be later than two weeks from the date on which the case was called for the filing of affidavits and documents or counter-affidavits and documents, as the case may be.

(8)

(a) Where a party or person interested is required to enter an appearance under this Part he may enter such appearance by an attorney-at-law.

(b) Where a party fails to appear or having appeared fails to file his affidavit and also his documents (if any) he shall be deemed to be in default and not be entitled to participate at the inquiry but the Court shall consider such material as is before it respecting the claims of such party in making its determination and order.

The section clearly provides that for a dispute to be brought before the Primary Court in terms of section 66 of the Primary Courts Procedure Act, the dispute has to be one affecting land and also a situation where breach of the peace is threatened or likely.

Section 66(1)(a) provides for the manner in which a police officer who is inquiring into such a dispute can file an information in that regard before the Court in order to seek an order from Court.

Section 66(1)(b) is the provision where any party other than a police officer can come before a Primary Court seeking redress from the Primary Court in relation to a dispute affecting land where breach of the peace is threatened or likely.

The difference between the two subsections has been well explained in the case of **Velupillai and Others Vs. Sivanathan (1993) 1 SLR 123**, where it was held;

> *"Under section 66 (1)(a) of the Primary Courts Procedure Act, the formation of the opinion as to whether a breach of the peace is threatened or likely is left to the police officer inquiring into the dispute. The police officer is empowered to file the information if there is a dispute affecting land and a breach of the peace is threatened or likely. The Magistrate is not put on inquiry as to whether a breach of the peace is threatened or likely. In terms of section 66 (2) the Court is vested with jurisdiction to inquire into and make a determination on the dispute regarding which information is filed either under section 66 (1)(a) or 66 (1)(b).*
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> *However, when an information is filed under section 66 (1)(b) the only material that the Magistrate would have before him is the affidavit*

information of an interested person and in such a situation without the benefit of further assistance from a police report, the Magistrate should proceed cautiously and ascertain for himself whether there is a dispute affecting land and whether a breach of the peace is threatened or likely.

The scope of the inquiry under this special jurisdiction is of a purely preventive and provisional nature pending the final adjudication of the rights of the parties in a civil court. The Magistrate is not involved in the investigation into title or right to possession which is the function of a civil court."

It is abundantly clear from the order of the learned Primary Court Judge and from the judgment of the High Court that both the Courts have considered whether there was sufficient material before the Court to satisfy whether there was a breach of the peace or such likelihood.

It is clear from the documents tendered to Court by the applicant-respondent when he initiated proceedings in terms of section 66(1)(b) of the Act that he has tendered a copy of the police complaint he made on 08-04-1996 to Mawathagama police marking and producing it as ඔඵ-46.

Apart from that, the applicant-respondent in his affidavit filed before the Primary Court has stated in paragraph 11 that the respondent-appellant forcibly evicted him from half of the building, and although he attempted to resolve the matter peacefully, it did not materialize and as a result, he lodged the above-mentioned police complaint.

Having scrutinized the said material, it was the view of both the Primary Court, as well as the High Court that the applicant-respondent has failed to establish the necessary ingredients that makes him entitled to complain to the Primary Court in terms of section 66(1)(b).

However, when the Court of Appeal decided to set aside both the said order and the judgment, it appears that the Court of Appeal have relied solely on the affidavit filed before the Court by the applicant-respondent. This reliance was to justify that there was a likelihood of breach of the peace, thereby aside the order of the Primary Court and the judgment of the High Court.

It must be noted that it is not only the contents of an affidavit that should be considered in determining such a matter, as such an affidavit would definitely claim that there was a breach of the peace or likelihood. It is clear that the learned Primary Court Judge has not only relied on what the affidavit says, but has independently considered whether it has any justification.

The police complaint made by the applicant-respondent marked ඔබ-46 makes it manifestly clear that it was a self-serving document as correctly viewed by the Primary Court and the High Court, which has been made in order to justify the claim of breach of the peace, and also to show that the applicant-respondent came before the Court within two months of him being allegedly disposed from half of the building.

It is clear from the overall contents of the police complaint that there had been no breach of the peace, other than the attempts to settle the civil dispute that arose between the parties through negotiations.

It is also clear that what prompted the applicant-respondent to lodge this complaint was the instructions he received from his lawyer, which goes on to show that this complaint was pre-planned with legal instructions.

It is my view that there can be little value for such a self-serving document in deciding whether it provides sufficient proof of a likelihood of breach of the peace. The learned Primary Court Judge has, as she should have, inquired from the OIC of the relevant police station as to the steps the police took in relation to this complaint. It has been informed to the Court that the police have decided not to file action in terms of section 66 Primary Courts Procedure Act, which infers that they have not found a basis to consider any breach of the peace or likelihood of breach of the peace.

Under the circumstances, with due respect to the judgment of the Court of Appeal, it is my considered view that the Court of Appeal erred when deciding that there was sufficient material before the original Court in relation to a likelihood of breach of the peace.

The next matter that needs consideration is the reliance on the electricity bills and the payment of assessment rates by the applicant-respondent to conclude that he had possession of the property between the relevant period of two months as required under section 66.

The case has been initiated before the Primary Court on 13-05-1996 and the Court of Appeal has considered that the relevant two months period would be 13-03-1996 to 13-05-1996. It has been the position of the respondent-appellant that he took possession of half of the building on 15-01-1996 after he purchased the whole building from the applicant-respondent. Relying on the electricity bill for the month of March 1996 and the electricity disconnection notice, it has been determined that by 07-03-1996, the applicant-respondent was in possession of the building.

It has also been determined that although the respondent-appellant has claimed that he was in possession of the building from January 1996, he has failed to produce any electricity bills for the months of January, February, March and April 1996. Similarly, it has been determined that although the respondent-appellant has produced a payment receipt of assessment rates dated 30-04-1996, the applicant-respondent has paid the same on 23-04-1996, which shows that the respondent-appellant has paid it after the payment made by the applicant-respondent. It was on that basis the Court of Appeal had decided on the question of two months possession prior to initiating proceedings before the Primary Court.

There again, I am in no position to agree with such a view. It is my view that once a Court decides that there was a breach of the peace or likelihood of breach of the peace, the question of possession needs to be decided in the overall context of the matter before the Court, and having considered all the relevant documents. It is clear that the applicant-respondent has sold the property to the respondent-appellant for a valuable consideration. Although he has claimed that it was sold only as a security, there is no basis to accept such a contention.

It cannot be believed that anybody would pay such a consideration without having the possession of a building. It may be the very reason why the respondent-appellant has subsequently settled the mortgage that was due to the bank by paying over Rs. 800,000/-. When considering the fact that it was half of the building that the respondent-appellant has taken possession, I find that his stand that it was given on agreement has much value than that of the applicant-respondent's contention.

What is necessary to be considered is the fact that it was the applicant-respondent who owned the building before it was purchased by the respondent-appellant, and it may very well be that it was the applicant-respondent who obtained the electricity connection to the whole building and the assessment rates register would also bear his name as the owner. The fact that the applicant-respondent was in possession of half of the building shows that the electricity bills may have been collected by him rather than the respondent-appellant, which explains the applicant-respondent having the possession of the electricity bills, as well as the disconnection notice.

When it comes to the payment of assessment rates, it is common knowledge that a Local Authority will accept payments made by anyone and issue receipts, which do not provide conclusive proof of the possession of a building as required in terms of section 66 of the Act.

When considering the facts in the overall context, it is clear that the police complaint has been made with the intention of initiating proceedings under section 66. When the police decided not to act under section 66(1)(a) of the Act, the proceedings have been initiated under section 66(1)(b). It is my considered view that the learned Judge of the Primary Court was correct in dismissing the application of the applicant-respondent, and the learned High Court Judge was also correct in refusing the revision application filed in that regard.

It is my view that an order made by a Primary Court in terms of section 66 of the Act serves only as a temporary order until the parties go before a competent Court and resolve their dispute. It is the Judge of the original Court

who would have the best opportunity of deciding the matter as the parties are before the Court and has the opportunity of inquiring into the matter and listening to the submissions of the parties. I am of the view that an appellate Court should intervene into a decision of an original Court only if it can be concluded that the decision has been reached without considering the material placed before the Court and had come to a finding not supported by facts and circumstances.

It is well settled law that an appellate Court will be very slow to interfere with a judgment pronounced by a trial Judge as it is the trial Judge who has the benefit of hearing and determining the demeanour and deportment, and also the other relevant matters of evidence, unless the said judgment is not according to the law or can be termed as a judgment that has not been supported by evidence, and therefore, perverse.

Mahinda Samayawardhena, J. having considered several case laws on this matter, in the case of **Rev. E.H. Palitha and Others Vs. K. Kingsley Perera SC/Appeal/30/2022 decided on 31-01-2024** observed;

> *"It is trite law that the findings of fact of the trial Judge who has the priceless advantage of seeing and hearing witnesses giving evidence, thereby getting the opportunity to observe inter alia the demeanour and deportment of witnesses, are regarded as sacrosanct and should not be lightly disturbed unless there are compelling reasons. There are no live witnesses before the appellate Court but only printed evidence. It is important to bear in mind that the trial Judge has the benefit of assessing the evidence in its overall context to reach the final decision, unlike the piece meal approach adopted in presenting the case before the appellate Court."*

Under the circumstances, I find that the Court of Appeal had no basis to interfere with the findings of the Primary Court and the High Court based on the factual matters in the manner the Court of Appeal proceeded to decide the matter.

Hence, I answer the questions of law under which this appeal was considered in the affirmative.

Accordingly, I set aside the judgment dated 18-03-2011 of the Court of Appeal and affirm the order dated 17-03-1997 by the learned Judge of the Primary Court of Pilessa, and the order dated 16-12-1998 by the learned High Court Judge of the High Court of North-Western Province holden in Kurunegala.

Appeal Allowed.

There will be no costs of the appeal.

Judge of the Supreme Court

S. Thurairaja, P.C., J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court