

1964

*Present : Sri Skanda Rajah, J.*R.C. FERNANDO, Petitioner, and E. WIJESEKERA *et al.*, Respondents

*S. C. 524/63—Application for Revision in M. C. Colombo, 29,426
and 33,359 (No. 33/64)*

Criminal procedure—Assumption by Magistrate of civil jurisdiction in a criminal case—Illegality—Criminal trespass.

Where, in a prosecution for criminal trespass, the Magistrate decided to have an inspection and to fix the boundary between two lands—

Held, that a Magistrate is not entitled to convert his criminal jurisdiction into one of civil jurisdiction. Even by agreement parties cannot confer that jurisdiction on a Magistrate.

APPPLICATION to revise an order of the Magistrate's Court, Colombo.

N. E. Weerasooria, Q.C., with *H. Mohideen*, for the petitioner.

A. C. Nadarajah, for the 1st and 3rd respondents.

February 20, 1964. SRI SKANDA RAJAH, J.—

Magistrates appear to be assuming jurisdictions which are not theirs. Only recently I had occasion to refer to a similar matter—vide S. C. 767–768 M. C. Balapitiya 37267, Supreme Court Minutes of 12th December,

1963. The order that was made by the Magistrate in that case was "At this stage parties move that a commission be issued to a commissioner to define the southern boundary of lot 4 in plan No. 630 and to depict the milla tree which had been felled from lot 4. If the milla tree is found within lot 4, the accused to pay the costs of the survey and the value of the tree. If the tree is found outside lot 4, the plaintiff to pay the costs of the survey. Kachcheri Receipt and commission on 13.3.63. Survey to be taken out at the expense of the complainant." That was also a case of alleged criminal trespass, and after the survey, even without the accused pleading guilty, the Magistrate committed the accused to jail because they refused to pay the survey fees." I set aside these proceedings, indicating that it was not sanctioned by any provision of law.

In these cases too the Magistrate has converted his criminal jurisdiction into one of civil jurisdiction. Even by agreement parties cannot confer that jurisdiction on a Magistrate. These were also cases of alleged criminal trespass and the Magistrate decided to have an inspection and to fix the boundary between the two lands.

I would also refer to the judgment of Mr. Justice Dias in the case of *Perera v. Mendis*¹. In the course of his judgment the learned Judge went on to say, "Compounding an offence does not mean that it entitles a Magistrate to turn a criminal proceeding into a civil proceeding by issuing commissions to surveyors and entering agreements on record. When a case is compounded parties inform the Magistrate that the case is compounded and the accused is then set free. That is all that the Magistrate has to do."

Acting by way of revision, I set aside all the proceedings in these two cases, M. C. Colombo No. 33359/B and 29426/B. As these cases refer to a civil matter, I acquit the accused. I direct the Magistrate to have the fence that has been erected on his order removed either through the Fiscal or the Police. Convey this order to the Magistrate.

Application allowed.

¹ (1948) 49 N. L. R. 240.
