

PUNCHI NONA  
v.  
PADUMASENA AND OTHERS

COURT OF APPEAL.

ISMAIL, J.

PRIMARY COURT.

MATARA CASE NO. 47970.

C.A. NO. 104/90.

MAY 03 AND JUNE 09, 1994.

*Primary Courts Procedure – Primary Courts Procedure Act, ss. 66(1) (a), (b), 68(1) & (3), 69 – Distinction between section 68(1) & (3) and section 69 – Jurisdiction distinction between section 66(1) (a) and section 66(1) (b) – Section 68(1) of the Primary Courts Procedure Act is concerned with the determination as to who was in possession of the land on the date of the filing of the information to Court.*

Section 68(3) becomes applicable only if the judge can come to a definite finding that some other party had been forcibly dispossessed within a period of two months next preceding the date on which the information was filed. The distinction in section 69 is that it requires the Court to determine the question as to which party is entitled to the disputed right preliminary to making an order under section 69(2) of the Act.

Where the information is filed under section 66(1) (a) of the Primary Courts Procedure Act by a police officer, a Primary Court is vested with jurisdiction to inquire into the dispute. The Police Officer is empowered to file the information only if there is a dispute affecting land and a breach of the peace is threatened or likely. However, when an information is filed by a party to the dispute under section 66(1) (b) it is left to the judge to satisfy himself that there is a dispute affecting land owing to which a breach of the peace is threatened or likely.

The jurisdiction conferred on a Primary Court under section 66 is a special jurisdiction. It is a quasi-criminal jurisdiction. The primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land. The Court in exercising this jurisdiction is not involved in an investigation into title or the right to possession which is the function of a civil court. He is required to take action of a preventive and provisional nature pending final adjudication of rights in a Civil Court.

In an information by a private party under section 66(1) (b) it is incumbent upon the Primary Court Judge to initially satisfy himself as to whether there was a threat or likelihood of a breach of the peace and whether he was justified in assuming such a special jurisdiction under the circumstances. Failure to so satisfy himself deprives the judge of jurisdiction.

**Case referred to:**

*Velupillai and Others v. Sivanathan* [1993] 1 Sri L.R. 123, 126.

**APPLICATION** for revision of order of the Primary Court Judge, Matara.

*W. Dayaratne* for respondent-petitioners.

*Ananda Kasturiaratchi* for 1st respondent.

2nd respondent absent and unrepresented.

*Cur. adv. vult.*

October 14, 1994.

**ISMAIL, J.**

The 1st respondent initiated proceedings in the Primary Court, Matara by filing a plaint and an affidavit together with a letter from the grama sevaka, all dated 31.10.89. The caption to the plaint described it as an action instituted in terms of section 66(1) (b) of the Primary Courts Procedure Act.

It was averred in her plaint and the affidavit that she was in possession of the land called 'Kottege Ruppewatte' in extent of about an acre, and that the petitioners entered the land forcibly on 27.10.89, caused damage by cutting down trees and had built a cadjan house thereon. The grama sevaka's letter annexed to the pleadings and which was issued at the request of the 1st respondent for the purpose of instituting legal proceedings certified that she was in possession of the said land. The 1st respondent prayed that the petitioners be evicted and that she be given vacant possession of the said land. This prayer was stated to be sought in terms of section 66(1) and (2) of the Primary Courts Procedure Act, No. 44 of 1979.

The case for the 1st respondent Punchi Nona was that she was in possession of this land since 1946 and that though her son Abraham Chandratilake Pujitha Thilakawardana had later become its owner, yet she continued to possess the said land along with her son. She did not produce any deed or further evidence in regard to her claim to the said land.

The 2nd respondent in his affidavit stated that he purchased the said land called Kottagodage Ruppewatte in extent 1A 0R 0P from the said Pujitha Thilakawardana by deed No. 2766 dated 26.01.92 attested by D. Samaratunge N.P and that since then he had undisturbed and uninterrupted possession of the land until he sold the same to the petitioners by deed No. 10 dated 3.10.89 attested by P. Batagoda N.P.

The petitioners in their affidavit stated that possession of the said land was handed over to them by the 2nd respondent when they purchased it from him on the said deed No. 10 dated 3.10.89. They confirmed that they commenced clearing the land on 27.10.89 and that on 30.10.89 they erected a cadjan shed in which they are presently living.

The 1st respondent claims to have made a complaint to the police but no such statement was produced in the course of the proceedings. However it is in evidence that the 1st respondent made a complaint to the grama sevaka on 31.10.89.

The grama sevaka who submitted a report dated 3.01.90 on the direction of Court stated that the 1st respondent had made a complaint to him on 31.10.89 to the effect that petitioners had forcibly entered the land and had caused damage to the value of Rs. 5000/-. The grama sevaka visited the land and met the petitioners who informed him that they had purchased the land for valuable consideration. They produced the deed before him at his office on 3.11.89. According to the observation of the grama sevaka the petitioners had cut 3 coconut trees at the entrance to the land and were engaged in erecting a cadjan shed. He concluded by stating that this was the subject-matter of the dispute.

The grama sevaka had earlier issued a letter, annexed to the plaint, dated 31.10.89 at the request of the 1st respondent that she was in possession of the land. He had also issued a letter dated 3.11.89 at the request of the petitioners to the effect that they were in occupation of the land since 27.10.89 after purchasing the same. The land was a bare land with no buildings standing thereon. The report of the grama sevaka to Court and his letters issued at the instance of

the parties did not contain any fresh material besides the admitted facts relating to the purchase of the land by the petitioners, entering into occupation by them, clearing the land on 27.10.89 and erecting a cadjan shed on 30.10.89. There is no reference either to the purchase of the land by the 2nd respondent in 1982 or to his possession of the land since then prior to its sale to the petitioners.

The learned Primary Court Judge at the conclusion of the proceedings found the facts, as admitted, to be that the 2nd respondent sold the land to the petitioners and handed over possession to them on 3.10.89. As the 1st respondent alleged that the petitioners forcibly entered the land on 27.10.89 and evicted her, the Judge proceeded to consider the question as to who was in possession of the land prior to its sale to the petitioners. The Judge upon a consideration of the report of the grama sevaka and upon a consideration of the affidavits filed by the parties held that the 1st respondent was in possession of the land before its purchase by the petitioners and made order restoring possession of the land to her. He has failed to refer to the deeds produced by the 1st and 2nd respondents.

The petitioners seek to have the said order dated 31.10.90 revised. The petitioners in the present application filed dated 8.2.90 had pleaded that they have invested money in the purchase of this land and that they were living with their children in a house put up on the land. They therefore moved for an order that no further proceedings be taken consequent upon the order of the Primary Court Judge till the final determination of this application. An interim order to this effect was made by this Court on 28.3.90.

Counsel for the petitioners submitted that there has been no finding by the Judge as to who was in possession of the land at the time of the filing of the information as required by section 68(1) of the Primary Courts Procedure Act. His submission further is that the Judge has failed to arrive at a determination on the affidavits and documents furnished and that he has acted solely on the report of the grama sevaka in arriving at the decision that the 1st respondent had possession of the land prior to its purchase by the petitioners. He alleged that the report of the grama sevaka was based on hearsay

material and that he had been posted to the area only a few months previously.

In my view the error is more fundamental. The learned Judge has proceeded to treat the dispute as one in regard to possession of the land under section 68(1) of the Primary Courts Procedure Act when it was in fact a dispute under section 69(1), as to who was entitled to the right to the land other than the right to the possession of such land. It was in the forefront of the case for the 1st respondent that though the ownership of the land passed to her son that she continued to possess the land together with her son. She has not furnished any specific dates in regard to this. It is common ground that the land was a bare land with no buildings standing on it. On the other hand, the petitioners claimed to be entitled to the land on the deed of purchase from the 2nd respondent. The 2nd respondent himself claimed to have purchased the land in 1982 from the 1st respondent's son. It was then the duty of Court to have determined under section 69(1) of the Act as to which of the parties had acquired the ownership of the right to the land or became entitled to the right to the land.

Section 68(1) of the Act is concerned with the determination as to who was in possession of the land on the date of the filing of the information to Court. Section 68(3) becomes applicable only if the Judge can come to a definite finding that some other party had been forcibly dispossessed within a period of 2 months next preceding the date on which the information was filed. The distinction in section 69 is that it requires the Court to determine the question as to which party is entitled to the disputed right preliminary to making an order under section 69(2) of the Act. By failing to appreciate the nature of the dispute between the parties initially, the Court failed to consider the merits of the rival claims in deciding as to who is entitled to the disputed right. The plaint filed was itself no assistance as it claimed relief under unrelated sections in the Act.

However the main submission on behalf of the petitioner was that the Judge did not have the jurisdiction to deal with the information filed by the 1st respondent as there was no finding by him that the dispute was likely to cause a breach of the peace. Where the

information is filed under section 66(1) (a) of the Primary Courts Procedure Act by a police officer a Primary Court is vested with jurisdiction to inquire into the dispute. The Police Officer is empowered to file the information only if there is a dispute affecting land and the breach of the peace is threatened or likely. However, when an information is filed by a party to the dispute under section 66(1) (b) it is left to the judge to satisfy himself that there is a dispute affecting land owing to which a breach of the peace is threatened or likely. As observed in *Velupillai and Others v. Sivanathan* <sup>(1)</sup> "...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".

In the present case the 1st respondent filed a plaint together with an affidavit and prayed for the eviction of the petitioners and for restoration of possession. The petitioners then filed their affidavit setting out the basis on which they lawfully came to occupy the land. The learned Primary Court Judge has failed to express his view in regard to the question of the dispute escalating and causing a breach of the peace. The grama sevaka did not state that he anticipated a breach of the peace and there was no intervention by the police though the 1st respondent claimed to have made a statement. The jurisdiction conferred on a Primary Court under section 66 is a special jurisdiction. It is quasi-criminal jurisdiction. The primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land. The Court in exercising this jurisdiction is not involved in an investigation into title or the right to possession which is the function of a civil Court. He is required to take action of a preventive and provisional nature pending final adjudication of rights in a civil Court. It was therefore incumbent upon the Primary Court Judge to have initially satisfied himself as to whether there was a threat or likelihood of a breach of peace and whether he was justified in assuming such a special jurisdiction under the circumstances. The failure of the judge to satisfy himself initially in regard to the threat or likelihood of the breach of peace deprived him of the jurisdiction to proceed with

the inquiry and this vitiates the subsequent proceedings. For these reasons, acting in revision, I set aside the order of the Primary Court Judge dated 30.1.90.

The Application is allowed with costs.

*Application allowed.*

*Order set aside.*

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