

1978 Present: Vythialingam, J. and Gunasekera, J.

RATNAM SELVANAYAGAM, Petitioner

and

SELLAMMAH, WIFE OF PAVILU PHILIP, Respondent

S. C. Application 919/76—M. C. Jaffna 11447

Administration of Justice Law, No. 44 of 1973, section 62—Nature of the proceedings in an inquiry under this section—What orders has the Magistrate power to make.

Proceedings under section 62 of the Administration of Justice Law, No. 44 of 1973, are not meant to be a determination of the rights of parties in dispute relating to land, but are intended only to preserve the peace, by maintaining the status quo with regard to possession until the rights of parties are decided in a proper action in a civil Court. What a Magistrate is expected to do in cases of this nature is to determine on the evidence as to who was in possession of the land on the date the notice was issued by him in these proceedings and to make order that that person is entitled to remain in possession of the land in dispute until a civil Court decided the rights of parties. If, however, he finds that the person in possession had been forcibly evicted from the land during a period of two months prior to such notice, the Magistrate can then order the person so forcibly ousted to be restored to possession. These are the only two orders a Magistrate can make in these proceedings except by consent of parties.

Case referred to :

Kanagasabai v. Mylwaganam, 78 N.L.R. 280.

APPEAL from an order of the Magistrate's Court, Jaffna.

K. Kanag-Iswaran, for the petitioner.

V. Tharmalingam, for the respondent.

Cur. adv. vult.

June 1, 1978. GUNASEKERA, J.

The respondent (who was the 1st respondent in the proceedings in the Magistrate's Court), who was the owner of certain business premises in the Jaffna town complained to the police that she was obstructed by the petitioner (2nd respondent in the Magistrate's Court) when she attempted to build on the vacant land adjacent to the shop building owned by her and tenanted by the petitioner. The petitioner claimed that this vacant lot was appurtenant to his tenancy. On this dispute the police instituted these proceedings in terms of section 62 of the Administration of Justice Law on 17.11.1975. The petitioner thereafter filed action No. D. C. Jaffna 5876/L on 12.2.1976 seeking a declaration that the petitioner was the monthly tenant of the vacant allotment and prayed for an interim and permanent Injunction restraining the respondent from interfering with his possession thereof. On 9.4.1976 at the inquiry into this application for an interim Injunction the parties arrived at a settle-

ment, both parties agreeing not to build on this land until the final determination of that action and the petitioner also agreed to remove a temporary hut he had erected there before 16.4.1976.

In the meantime the learned Magistrate in these proceedings inspected the premises on 25.3.1976 and 13.7.1976 and ordered the petitioner to remove a fence and cement a doorway of his premises opening to the vacant land. After several intervening days during which the petitioner was not present in Court, on 5.10.1976 the Court ordered a notice to be sent by registered post to the petitioner to appear for inquiry on 8.10.1976 and on 8.10.1976 the petitioner not being present he proceeded to inquiry ex parte, and made order granting the prayer in the respondent's statement of claim, namely,

- “ (a) that this Court do direct the 2nd respondent to remove the door and the roof erected by the 2nd respondent with a view to preventing this respondent's possession of this land ;
- (b) that the 2nd respondent be directed not to interfere with the possession of this respondent of this lot B ;
- (c) for such other and further relief as to which this Court shall seem meet ”.

It is against this Order of the learned Magistrate that the petitioner has moved in revision in this Court. The petitioner has produced before us marked X7 the notice received by him from the post office to show that he received the notice sent by Court of the inquiry fixed for 8.10.1976 only on 11.10.1976. We are satisfied that the Petitioner had no notice of the inquiry held on 8.10.1976.

We are also of the view that the learned Magistrate failed to appreciate the nature of the proceedings under section 62 of the Administration of Justice Law and misdirected himself with regard to his jurisdiction in such proceedings. Proceedings under this section are not meant to be a determination of the rights of parties in dispute relating to land but are intended only to preserve the peace, by maintaining the status quo with regard to possession until the rights of parties are decided in a proper

action in a Civil Court. As has been pointed out in several decisions of this Court (see for instance *Kanagasabai v. Mylwaganam*, (1976) 78 N.L.R. 280) all that a Magistrate is expected to do in cases of this nature is to determine on the evidence as who was in possession of the land on the date the notice was issued by him in these proceedings and to make order that that person is entitled to remain in possession of the land in dispute until a Civil Court decided the rights of the parties. If however he finds that the person in possession had been forcibly evicted from the land during a period of two months prior to such notice the Magistrate can order the person so forcibly ousted to be restored to possession. These are the only two orders a Magistrate can make in proceedings under this chapter and except by consent of parties he cannot make an order of the nature he has made in this case.

We therefore set aside the order of the learned Magistrate dated 3.11.1976 and send the record back to the Magistrate's Court for him to proceed with the inquiry and make a proper order in terms of the law having regard also to any orders made in the District Court case above referred to. The petitioner will be entitled to his costs of this application.

VYTHIALINGAM, J.—I agree.

Set aside and sent back.