# IQBAL
# v.
# MAJEDUDEEN AND OTHERS

COURT OF APPEAL.
YAPA, J.,
GUNAWARDANA, J.
C.A. (PHC) NO. 100/97.
HCRA NO. 820/96
M.C. COLOMBO NO. 72192/3.
SEPTEMBER 7, 1998.
DECEMBER 15, 1998.
MAY 8, 1999.

*Primary Courts Procedure Act – Possession – Actual or constructive – Forcible dispossession – S. 68 (3) – Breach of Peace – Dispossession in the absence of the party.*

The 1st respondent-respondent upon the death of her husband, went to live with her mother, and the premises in question, where she was living earlier was locked up by her. The 2nd respondent-appellant, after she returned to Sri Lanka, broke open the door of the premises and entered into possession.

The 1st respondent-respondent was restored to possession by the Primary Court and the High Court. On appeal –

**Held:**

1. The fact for determining whether a person is in possession of any corporeal thing, such as a house, is to ascertain whether he is in general control of it.

2. The law recognises two kinds of possession:

   (i) When a person has direct physical control over a thing at a given time – actual possession.

(ii) When he though not in actual possession has both the power and intention at a given time to exercise dominion or control over a thing either directly or through another person – constructive possession.

3. "Forcibly dispossessed" in s. 68 (3) means, that dispossession had taken place against the will of the persons entitled to possess and without authority of the law.

4. "Breach of the Peace is likely" does not mean that the Breach of the Peace would ensue for certainty, rather it means that a Breach of the Peace is a result such as might well happen or occur or is something that is, so to speak, on the cards.

*S. Mahenthiran* with *Ms. P. Narendran* for petitioner.

*M. C. M. Muneer* with *Ms. Inoka Ranasinghe* for respondents.

*Cur. adv. vult.*

September 30, 1999.

**GUNAWARDANA, J.**

This is an appeal against an order dated 30. 06. 1997 made by the High Court dismissing an application in revision in respect of an order dated 27. 12. 1996 whereby the learned Primary Court Judge had restored, in terms of that order, Samsunnisa Majeebuden (hereinafter referred to as the 1st respondent) to the possession of the premises in dispute, ie No. 24/67, Maha Vidyalaya Mawatha, Colombo 13.

The aforesaid 1st respondent had made a complaint to the Kotahena Police on 15. 08. 1996 to the effect that she was ousted from the possession of the relevant premises on or about the same date by the 2nd respondent-petitioner-appellant, viz Affeerun Nihar Hasnoon Iqbal.

The 1st respondent in her statement to the Police, referred to above, had stated that she upon the death of her husband, somewhere

in June, 1995, with whom she had been living along with their children, went to live with her mother at No. 49/20, 17th lane, Kotahena, but that she kept the premises in question locked up and retained control there of. The 1st respondent had explained that she went to live with her mother temporarily as she had to live in seclusion on the death of her husband for a period of 04 months in observance of the custom prevalent amongst Muslims.

The statement marked 1 V 21 made by the 2nd respondent-petitioner-appellant to the Police on the same date, ie 15. 08. 1996 is revealing, in that she had admitted therein, that some time after she returned to Sri Lanka, somewhere in May, 1995, from the Middle East, she broke open the door of the premises No. 24/67 which is the subject-matter of this case, and entered into possession thereof. The 2nd respondent-petitioner-appellant had, in that statement to the Police, even chosen to give a reason for doing so – the reason given by her being that the premises, ie No. 24/68 occupied by her was not spacious enough for her family consisting, as it did, of six persons or members. In her statement to the Police, the 2nd respondent-petitioner-appellant had clearly admitted that she gained entry into or possession of premises No. 24/67 (which is the subject-matter of this case) which premises had been closed or locked up by the 1st respondent. This admission, that is, that the premises in question was kept locked up by the 1st respondent confirms the fact that the 1st respondent had actual control and management of the same which served to show that the 1st respondent had possession of the property in question, before the 1st respondent was, admittedly, ousted by the 2nd respondent-petitioner-appellant. The test for determining whether a person is in possession of any corporeal thing, such as a house, is to ascertain whether he is in general control of it. Salmond observes that a person could be said to be in possession of, say, a house, even though that person is miles away and able to exercise very little control, if any. It is also significant to note that in her statement to the Police, the 2nd respondent-appellant had admitted that the 1st respondent lived in the relevant premises during the life-time of the latter's husband. It is interesting to notice that the 1st respondent's

position that she was in possession and was ousted by 2nd respondent-petitioner-appellant is largely proved, as explained above, on the statement that the 2nd respondent-petitioner-appellant herself has made to the Police.

The law recognizes two kinds of possession:

(i) when a person has direct physical control over a thing at a given time, he is said to have actual possession of it;

(ii) a person has constructive possession when he, though not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing either directly or through another person. In this case in hand, perhaps, it cannot be said that the 1st respondent has actual physical possession because she was not in physical occupation of the house in question; but she clearly had, at least, constructive possession because she, by keeping the premises locked, clearly exercised not only dominium or control over the property in question but also excluded others from the possession there of. By keeping the premises locked, she, ie the 1st respondent, had not only continued to retain her rights in respect of the property in question but also was exercising a claim to the exclusive control there of, and her affidavit evidence is that she had not terminated her intention to revert to the physical occupation of the relevant premises.

The report of the officer in charge of the Police station whereby this dispute was brought to the cognizance of the Primary Court had been filed on 16. 09. 1996 and according to the statements that had been made to the Police, the 2nd respondent-petitioner-appellant had entered into occupation of the relevant premises on or about 15. 08. 1996. But, as the dispossession of the 1st respondent had been effected forcibly within 02 months of the date immediately preceding the date on which information regarding the dispute had been filed by the Police, the 1st respondent is entitled to be restored to

possession. "Forcibly dispossessed" in 68 (3) of the Primary Courts' Procedure Act, means that dispossession had taken place against the will of the person entitled to possess and without the authority of law. Such dispossession is calculated to or tend to a breach of the peace although, in this instance, there had been no such breach, because the dispossession had taken place in the absence of the party, ie the 1st respondent who would have opposed and resisted the dispossession had she been, in fact, present on the scene, at the relevant time.

There is somewhat of an interesting feature in this case: it was the 2nd respondent-petitioner-appellant who had, rather surprisingly, first, made a statement to the Police, regarding this incident, wherein she had made the admissions referred to above – one such admission being, as pointed out above, that she entered into occupation of the premises No. 24/67 which had till then remained locked up by the 1st respondent. This statement had been made on 15. 08. 1996 at 9.30 am, whereas the 1st respondent, who was ousted, had made the complaint, subsequently, on the same day at 4.30 pm. In her statement, the 2nd respondent-petitioner-appellant had stated that she was making that statement to the Police for, to use her own words, her "future safety or protection" – perhaps, protection from or against the consequences of her own wrongful act. it is significant to note that by the time, ie 9.30 am, that the 2nd respondent-petitioner-appellant made the statement to the Police, nobody had made any complaint against her regarding her entry into premises No. 24/67, for the 1st respondent's complaint of ouster, although made on the same date, ie 15. 08. 1996 was later in point of time, ie at 4.30 pm. It is not difficult to put two and two together and infer that the 2nd respondent-petitioner-appellant had been prompted, by the consciousness of her own wrongdoing in forcibly entering the premises under the control of the 1st respondent – to make the first move in bringing what she had done to the notice of the Police.

I see no reason to interfere with the said orders made by the learned Magistrate and the High Court Judge respectively, restoring

the 1st respondent to possession of the premises in question, viz No. 24/67, Maha Vidyalaya Mawatha, Colombo 13, and I affirm both the said orders. The appeal is hereby dismissed.

In conclusion, it is to be remarked that it would not be inopportune to add to what I have said above, in regard to the vexed or much discussed question: under what circumstances can it be said that a given dispute is likely to lead to a breach of the peace. A hint or slight indication relative to that question may be helpul, in that it would offer a directing principle in regard to the question whether any given dispute or circumstances are likely to lead to a breach of the peace which expression generally signifies disorderly, dangerous conduct and acts tending to a violation of public tranquility or order. One may safely conclude that if the entry into possession is done or effected by force or involves force it is, in the nature of things, such an entry as is likely to evoke resistance which would invariably be fraught with the danger that it would be productive of friction. "BREACH OF THE PEACE IS LIKELY" DOES NOT MEAN THAT THE BREACH OF THE PEACE WOULD ENSUE FOR A CERTAINTY; RATHER, IT MEANS THAT A BREACH OF THE PEACE (OR DISORDER) IS A RESULT SUCH AS MIGHT WELL HAPPEN OR OCCUR OR IS SOMETHING THAT IS, SO TO SPEAK, ON THE CARDS.

**HECTOR YAPA, J.** – I agree.

*Appeal dismissed.*