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

In the matter of an appeal to the Supreme Court of the Democratic Socialist Republic of Sri Lanka.

SC. Appeal 98/2011

SC/HCCA/LA 374/2010
SP/HCCA/KAG 28/2010/RV
D.C. Kegalle Case No. 7732/L

Karunarathna Liyanage,
No. 102/1A,
Poorwarama Road,
Kirulapone,
Colombo 05.

Plaintiff

Vs.

Mahara Mudiyanselage Loku Bandara,
No. 16A, Subithipura,
Battaramulla.

Defendant

And Between

Mahara Mudiyanselage Loku Bandara,
No. 16A, Subithipura,
Battaramulla.

Defendant-Petitioner

Vs.

Karunarathna Liyanage,
No. 102/1A,
Poorwarama Road,
Kirulapone,
Colombo 05.

Plaintiff-Respondent

And Between

Mahara Mudiyanselage Loku Bandara,
No. 16A, Subithipura,
Battaramulla.

Defendant-Petitioner-Petitioner

Vs.

Karunarathna Liyanage,
No. 102/1A,
Poorwarama Road,
Kirulapone,
Colombo 05.

Plaintiff-Respondent-Respondent

And Now Between

Karunarathna Liyanage,
No. 102/1A,
Poorwarama Road,
Kirulapone,
Colombo 05.

Plaintiff- Respondent-Respondent Petitioner

Vs.

Mahara Mudiyanselage Loku Bandara,
No. 16A, Subithipura,
Battaramulla.

Defendant-Petitioner-Petitioner-Respondent

* * * * *

SC. Appeal 98/2011

Before : **Tilakawardane, J.**
Dep, PC. J. &
Wanasundera, PC,J.

Counsel : Wijeyadasa Rajapaksha, PC. with Vidura Ranawaka and Nilantha Kumarage for the Plaintiff-Respondent- Respondent-Petitioner.

Sudarshani Cooray for the Defendant-Petitioner-Petitioner-Respondent.

Argued On : **22-03-2013**

Decided On : **12 .11.2013**

*** * * ***

Wanasundera, PC.J.

In this matter on 01.7.2011, leave to appeal was granted on the questions of law set out in paragraphs 'a', 'b', 'c', 'd' and 'f' of the petition dated 22.11.2010. This Court added one more question of law as follows:-

> "In any event, whether the Civil Appellate High Court of Kegalle was justified in making an order for the restoration of the relevant property to the Defendant, without holding an inquiry into the complaint made by the Defendant with regard to 'forcible dispossession contrary to law".

The Counsel of both parties, the Plaintiff-Respondent-Respondent-Petitioner (hereinafter referred to as the Plaintiff-Petitioner) and the Defendant-Petitioner-Petitioner-Respondent (hereinafter referred to as the Defendant-Respondent), at the

hearing on 22.3.2013 agreed that this Court should go into only the question of law which the Court suggested as aforementioned.

The Plaintiff-Petitioner had filed action in the District Court claiming that he is the owner of the lands described in the schedules to the plaint and praying for a declaration to that effect. He pleaded that the Defendant-Respondent was holding the lands subject to a constructive trust even though by deed No. 2364 dated 24.12.2008 the Plaintiff-Petitioner had transferred the land to the Defendant-Respondent. He further prayed that an interim injunction be granted restraining the Defendant-Respondent from alienating the land and from forcibly entering upon the same. The District Judge granted an enjoining order in the first instance and ordered that the Defendant-Respondent be noticed and summons be served with the enjoining order.

The Defendant-Respondent states that he in fact bought the land for good consideration and he came into occupation right after he bought the land and completed building the house which was half built at the time he bought it, developed the land etc. and was in possession of the land and building until the day he received summons, notice of injunction and the enjoining order, ie. 02.09.2009 when the Plaintiff came to the land with some others and forcibly evicted him. He filed objections and stated that he has already sold the land to another person namely Milton de Silva but since that person had gone abroad, he was still in possession holding the land on behalf of Milton de Silva. After the forced dispossession, on the next day in open Court he obtained permission of Court to take out his belongings which were in the house when he was forcibly evicted. In the presence of Grama Niladhari of the village he took his belongings, out of the house thereafter. Even though the enjoining order was granted to restrain the Defendant-Respondent from entering upon the said land, in fact by that time he had been there for over eight months. As such, the enjoining order was used by the Plaintiff-Petitioner to forcibly evict the Defendant-Respondent from the land.

After the dispossession of the Defendant-Respondent, the Plaintiff-Petitioner moved to withdraw the action on 06.10.2009. The District Judge then allowed the application of the Plaintiff- Petitioner and dismissed the action with costs. On the very next day ie. on

03.9.2009, the Defendant-Respondent by way of a motion moved the District Court to have him placed back in possession. On 23.02.2010 the District Court refused the application. The Defendant-Respondent filed a revision application as well as a leave to appeal application in the Civil Appellate High Court. The High Court took up both matters together and decided the matter in favour of the Defendant-Respondent making order that he be restored back into possession of the property from which he was evicted.

The Plaintiff-Petitioner has now appealed to this Court from that judgment and the only question of law to be decided now is the question raised by this Court.

The Defendant-Respondent had filed affidavits and documents with his objections to the grant of an interim injunction against him in the District Court. There is ample evidence to show that the Defendant-Respondent was in possession of the land and the house thereon from December, 2008 to 02.09.2009, such as the affidavits from the Grama Sevaka, the incumbent priest of the temple, the watcher of the Belgoda estate, friends who visited and the photographs with him in the house and on the estate, the workers who worked on the pineapple plantation etc. supported by the statements to the Police by the Defendant-Respondent and his watcher regarding threats to life and demands to leave the estate made to him, by the Plaintiff-Petitioner. On the other hand there is no evidence to show that the Plaintiff- Petitioner was in occupation of the house or in possession of the land by September, 2009 or any complaint to the police by the Plaintiff-Petitioner to show that the Defendant-Respondent was trying to come into possession or that the Defendant-Respondent was trying to get into the land forcibly. There should have been at least a police complaint to that effect before coming to Court. The Plaintiff-Petitioner filed a case in the District Court and received an enjoining order ex-parte having deliberately misrepresented facts to Court, the most important being that the Defendant-Respondent was trying to forcibly get into possession whereas the fact was that the Defendant-Respondent was in occupation of the house and in possession of the lands from the day he bought them on an outright transfer. Both the Defendant-Respondent and the Plaintiff-Petitioner are not uneducated or under

privileged persons and their businesses ran into millions of rupees. With the enjoining order obtained by misrepresentation only, the Defendant-Respondent was dispossessed by force. The process was contrary to law as the Court order was "to refrain the Defendant-Respondent from entering into possession" and not "to forcibly evict him who was in possession." Another fact to be noted is that no Court officers were present or used for this eviction. Only the Plaintiff-Petitioner and some other persons including police personnel had been used to evict the Defendant-Respondent who was in occupation. The Defendant-Respondent got permission from Court on the next day to remove his belongings from the house in front of the Grama-Sevaka and that was allowed which further supports the fact that the Defendant-Respondent had already been there for some time.

When any action filed in Court which gives an interim relief ex parte to any party, is withdrawn before the conclusion of the action, it is nothing but correct to set the status quo before the interim relief was granted, back into place. Otherwise such interim relief as an enjoining order could be used by many litigants to their advantage. It is in fact the duty of Court to put the parties to the same position as they were, before allowing withdrawal of the action. The District Judge should have been mindful of that fact and done his duty which he has failed to do.

Yet, in such a case, the party affected has only to bring it to the notice of the Judge and he would promptly act. In this case the junior lawyer who appeared on behalf of the Defendant-Respondent failed to do it as and when the action was withdrawn and thus created the repercussions thereafter. The very next day, the Defendant-Respondent brought it to the notice of Court by way of a motion. The Plaintiff-Petitioner also objected by way of a motion and the District Judge gave order after about a month that since there is no pending action, she cannot make any orders, hardly remembering that it was the duty of Court to set the status quo back to base right away before the interim relief was granted.

In the case of Sivapathalingam Vs. Sivasubramaniam 1990 1 SLR 378, the Court of Appeal issued an injunction on 26.05.1988 on the application of the Petitioner-

Appellant Sivapathalingam, which was valid until the Petitioner is able to file an action in the District Court of Jaffna or for six months in the first instance whichever is earlier, restraining the Respondents from preventing the Petitioner from entering the land described in the schedule. On 29.06.1989 the Court of Appeal stayed the operation of the injunction granted by it upon an ex-parte application by the Respondent. The Respondent claimed that he was in lawful possession of the land on an indenture of lease but the Petitioner had him ejected upon obtaining the injunction and on entering into possession demolished the parapet wall and gate on the east which had been in existence prior to August 1988. Upon the suspension of the injunction the Petitioner-Appellant filed papers complaining against the suspension without notice to him. On 25th July 1989 the Court of Appeal heard the argument and on 5th September 1989 dissolved and discharged the injunction. It was the injunction that brought about the dispossession of the Respondent and placing in possession of the Appellant.

It was held that "a Superior Court has jurisdiction in the exercise of its inherent power to direct a Court inferior to remedy an inquiry done by its act". Therefore when the injunction issued by the Court of Appeal on 26.05.1989 was dissolved, it was competent for the Court to direct that the Appellant who had obtained possession of the property on the strength of the injunction by displacing the Respondent, be in turn displaced and possession handed back to the Respondent. A Court whose act has caused injury to a suitor has an inherent power to make restitution. This power is exercisable by a Court of original jurisdiction as well as by a Superior Court.

The dispossession of the Defendant-Respondent by the Plaintiff-Petitioner, with only an enjoining order in hand to the effect that the Defendant- Respondent should be restrained from forcibly entering the land, is contrary to law. It is abuse of process of Court. An enjoining order to restrain someone from entering the land is not an instrument to evict someone who is already in possession of the house and land. The Plaintiff-Petitioner misused the document and by himself evicted the Defendant-Respondent with force unduly using police personnel and others and not the officers of Court. The dispossession was done through abuse of process of Court and when it was

brought to the notice of the District court by way of a motion the very next day after the dispossession, the Court wrongfully ordered that there is no pending case to be looked into as it was already withdrawn and turned a blind eye to the complaint of injustice and abuse of Court process by the Plaintiff-Petitioner. I am of the view that the Learned High Court Judges were quite correct in their order to put back the Defendant-Respondent into possession as that was the only way to get back to the status quo before the withdrawal of the action by the Plaintiff-Petitioner. It's the legal right of the affected party who was forcibly evicted abusing the process of Court, to be placed back in possession and that is where it is now.

Since there was enough evidence on record by way of affidavits, police complaints, statements of people, etc. before the Civil Appellate High Court, I am of the view that there was no necessity to hold an inquiry into the complaint made by the Defendant with regard to 'forcible dispossession contrary to law' at the stage when the case was before the High Court. The District Judge should have placed the Defendant- Respondent back in possession at the time when he agitated the 'loss of possession' in the District Court, after an inquiry into dispossession which was complained of at that time.

Therefore I confirm the judgment of the Civil Appellate High Court. Defendant-Respondent is granted costs in this Court as well as in the Civil Appellate High Court and the District Court of Kegalle. The appeal is dismissed.

Judge of the Supreme Court

Tilakawardane, J.

I agree.

Judge of the Supreme Court

Dep, PC. J.

I agree.

Judge of the Supreme Court