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

SC/APPEAL/56/2018

SC/SPL/LA 222/2015

CA PHC 18/2013

PHC Hambantota HCA 52/2002

PC Hambantota 43361

Rupika Sarojini Thuduwewatte,

No. 24/31, Rangiri Vihara Road,

Ambalanthota.

1ST PARTY PETITIONER

Vs

1. Kodithuwakku Kankanamge Shantha,
   "Gayani", Kiribathgoda,
   Dehigahalanda,
   Ambalanthota.

2. Jagath Kankanam Abeykoon Jennona,
   "Ransiri", 4th Channel,
   Beragama,
   Ambalanthota.

3. Hewa Walimunige Chandrawathi,
   Koggala,
   Ambalanthota.

RESPONDENTS

AND BETWEEN

Rupika Sarojini Thuduwewatte,

No. 24/31, Rangiri Vihara Road,

Ambalanthota.

1ST PARTY PETITIONER - APPELLANT

Vs

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   Shantha,
   "Gayani", Kiribathgoda,
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   Chandrawathi,
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RESPONDENTS – RESPONDENTS

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RESPONDENTS –
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Before: Hon. Murdu N.B. Fernando, PC, J.

Hon. E.A.G.R. Amarasekara, J.

Hon. Achala Wengappuli, J.

Counsel: Rohan Sahabandu, PC with Ms. Chathurika Elvitigala for the 1st Party Petitioner – Appellant – Petitioner.

Razik Zarook, PC, with Rohana Deshapriya & Ms. Chanakya Liyanage for the 1st & 2nd Respondent- Respondent – Respondent.

Argued on: 17.03.2021

Decided on: 05.02.2025

E.A.G.R. Amarasekara, J.

This is an Appeal made by the 1st Party Petitioner – Appellant – Petitioner (hereinafter sometimes referred to as the Petitioner) against the Judgment of the Court of Appeal dated 25.09.2015, whereby the Court of Appeal dismissed the Appeal made to it by the Petitioner, and affirmed the Judgments of the High Court of Hambantota in HCA 52/2002 and the Primary Court Order in case No. 43361. In fact, the said case No. 43361 was an action filed under section 66 of the Primary Court Act, while HCA 52/2002 was a revision application filed against the order made in the said section 66 action, No.43361.

To comprehend the matters in issue, it is necessary to refer to the Magistrate Court case No. 42705 which was instituted by the Assistant Commissioner of Agrarian Services (hereinafter referred to as the Commissioner) under section 8(1) of the Agrarian Development Act No.46 of 2000. By filing said application, the Commissioner sought an order for the eviction of the Respondent named in that application, namely one A. J. S. P. Jinadasa, from the paddy land

called Hinchimula Kumbura in extent of 6 acres and to hand over the vacant possession to the Petitioner in this application -vide pages 127,128 of the brief. In fact, it was to evict the tenant cultivator and hand over the possession to the landlord who is the Petitioner in the matter at hand now, but was not intended to evict anyone named under the term 2nd Party or as an intervenient in the aforesaid Action No.43361 (hereinafter referred to as the 2nd Party Respondents in aforesaid action No.43361) some of whom are made Respondents in the matter at hand.

Thus, the learned Magistrate in case No 42705 issued an eviction order dated 15.05.2001 to evict said A.J.S.P Jinadasa directing the fiscal officer of the Magistrate Court of Hambantota to hand over the possession of the said paddy field to the Petitioner of this application- vide page 129 of the brief. However, said eviction order is relevant to said A.J.S.P. Jinadasa who was the Tenant Cultivator for not paying the rent-(vide pages 128-131 of the brief) and not to the 2nd Party Respondents or any other in the case No.43361 and was limited to a land of 6 acres described therein the said order and not exceeding that extent and description.

In executing the said order in case No.42705, the fiscal officer handed over the possession of a paddy land to the Petitioner on 31.05.2001. However, the identification of the land appears to have been done as per the boundaries shown by the Petitinor herself. No plan appears to have been used or prepared and no service of a surveyor was taken in executing the said order -vide - the Report of the fiscal officer at pages 131, 132 and 133. Even though the extent referred to in the said order was 6 acres, since no plan was used and no survey was done in executing the said order and the identification was dependant on the showing of the boundaries by the Petitioner herself, it is doubtful whether the identification of 6-acre land was precise. Aforesaid fiscal officer's report does not indicate that the fiscal officer, through independent sources, was able to identify the boundaries described in the said order.

In terms of section 8(5) and (6) of the Agrarian Development Act, if any person unlawfully dispossesses a person so placed in possession through a direction of the Magistrate Court, he can be prosecuted before the magistrate. Nothing has been placed before this court that the Petitioner and /or the Commissioner took steps under those provisions with regard to the present dispute. This creates a doubt as to the fact whether the enforcement of the order in case No.42705 was correctly done limiting the execution to the correct corpus. It must be noted that, as appears from the brief, the position of some of the Respondent- Respondent-Respondents (hereinafter Respondents) is that in executing the direction of the magistrate court order in case No.42705, the Petitioner had shown the paddy lands they had in their possession perhaps in excess of the 6-acre land for which the said order relates. It must be observed that there is no provision similar to Sections 325 or 328 of the Civil Procedure Code in the Agrarian Development Act providing relief for a person who was wrongfully dispossessed in executing the magistrate's direction. It is also observed that there is no material to indicate that any one belong to the 2nd Party Respondents in case No. 43361 were claiming their rights through the evicted person, the tenant cultivator. The 1st Party Respondent in the said case No.43361 was the Petitioner in the matter at hand. If the execution of the direction of the Magistrate in case No. 42705 gave rise to a new dispute as to the possession creating situation that may cause breach of peace, the police have sufficient ground to file an action in terms of section 66 of the Primary Court's Procedure Act. Furthermore, the Primary Court is empowered to make a suitable order in terms of the Primary Courts Procedure Act to maintain peace until the parties get that new dispute resolved through the proper forum or Court with the jurisdiction to solve

that dispute, and if necessary, until an eviction under an order or decree of a competent Court of the person whose possession is confirmed or restored by the Primary Court is made. In this regard, at this juncture, it must be said that if a person misuse or abuse the power of a Court and dispossess someone from a land and come into the possession of that land, that possession cannot be recognized as a lawful possession and it may become a forcible possession as the force of law was used abusively. As far as the case at hand is concerned, if the said execution was limited to the eviction of tenant cultivator and people claiming under him and to the 6-acre land mentioned in the order, it is a lawful eviction and a handing over of possession, and if the execution exceeds the limits and power given through the order, the possession taken through that order to the extent of the breach of the limits and the power becomes unlawful and forcible.

The background facts of the matter at hand indicate that as a result of the Petitioner getting the possession to the paddy land shown by him through the direction given by the Magistrate Court in case No.42705 had given rise to the dispute between the parties in Primary Court Case No. 43361 which commenced on a report submitted by the Police to the Primary Court under section 66 of the Primary Court's Procedure Act. In fact, the report filed by the Police in case No. 43361 refers to the 6-acre land relevant to the order in case No.42705 but the facts revealed through pleadings in Case No. 43361 indicates that there was no clarity as to the extent and boundaries of the paddy land handed over through the order in case No 42705 and in effect it had dispossessed the 2nd Party Respondents in case No. 43361 or deprived them from enjoying what they have possessed.

It must be noted that the Commissioner's powers are circumscribed by the provisions of the relevant Act or Acts, if it is not the same dispute resolved by him earlier and is a new dispute that has to be resolved by him or a competent Court, if there is a breach of peace or possibility of imminent breach of peace, there is no bar for the Police to file a report in terms of the section 66 of the Primary Court Act as the intention of the legislature is to make provisional order through the Primary Court to maintain peace. Even though, the Petitioner attempts to argue that an enforcement order made by a Court cannot give rise to a breach of peace, if the enforcement is not properly done or the enforcement give rise to a new dispute between new parties who do not claim through the person evicted, till such new disputes are resolved through the competent court or forum and enforce through an order or decree of a competent court, I do not see any ground that hinder the Police in filing a 66 application to get a provisional order as contemplated by the Primary Courts Act to maintain peace. On the other hand, the Petitioner herself, as the 1st Party Respondent in the said case No.43361, in her affidavit dated 06.07.2001 in paragraph 6 has admitted that a land dispute that may cause breach of peace had arisen in terms of section 66 of the Primary Courts Procedure Act and further she had prayed for relief accordingly- vide pages 109 to112 of the brief. Now she cannot be allowed to say that placing her in possession cannot give rise to an application in terms of section 66 of the Primary Courts Act and/or no breach of peace can occur due to an enforcement order made by the Magistrate Court in her own revision application. It may be noted that a breach of peace may occur if the enforcement affected the rights of other parties who do not claim under the person evicted through that eviction order, especially when the enforcement was done according to the boundary shown by the Petitioner herself without getting the boundaries and the extent verified through a survey plan.

When the Petitioner was placed in possession in terms of the said order of the Magistrate Court in case No. 42705, parties who became the 2nd Party Respondents in Case No.43361(some have

become Respondents to the matter at hand), who apparently were not present at the time of handing over, disputed the possession of the Petitioner. Thus, the officer in charge of Ambalanthota Police filed information on 21.06.2001 in terms of Section 66(1) of the Primary Courts Procedure Act No.44 of 1979 of a land dispute which had culminated to a breach of the peace.

The learned judge of the Primary Court in Primary Court Case No.43361 after the inquiry into the dispute, entered Judgment dated 02.05.2002 in favour of the 2nd Party Respondents in that case *inter alia* on the following grounds;

- The OIC Ambalanthota had submitted that if the dispute is not resolved, it is difficult to maintain peace and that might cause a loss of life.
- When the Commissioner of Agrarian Development tenders notice of eviction in terms of Section 8(1) under the Agrarian Development Act, the Magistrate is not empowered to question such notice, but should issue the same.
- The possession of the 6-acre land had been handed over as per the boundaries shown by the 1st Party Respondent in case No. 43361 (Petitioner in the matter at hand) without the help of a survey being done in that regard.
- The Position of the 2nd Party Respondents was that there is a partition action filed for a larger land of 11 acres and 36 perches and the 1st Party Respondent in case No.43361 (the Petitioner) owns only 3 acres and 3 roods and the petitioner's attempt to grab the whole land had caused the dispute.
- When as an interim measure, it was directed to sell the harvest and deposit the money, only the harvest of certain parties belonged to the 2nd Party Respondents had been sold and deposited in Courts and the 1st Party Respondent in case No.43361 (the Petitioner) had failed to show any harvest belonged to her indicating that she was not in possession.
- This matter was reported to Court in terms of Section 66(1) of the Primary Court Act and it is incumbent on Court to decide who was in possession of the disputed land during the 2 months period prior to the filing of the information in Court.
- The fiscal had handed over the possession of the disputed land to the Appellant on 31.05.2001 and the Police had reported the matter to Court on 21.06.2001. Therefore, two months prior to reporting the matter in terms of Section 66(1) of the above Act, the 2nd Party Respondent had been in possession of the disputed paddy field until the handing over by the fiscal officer took place.
- The 1st Party Respondent in case No.43361 (the Petitioner) had been placed in possession by the fiscal officer as per the boundaries shown by her and thus, the 1st Party Respondent in case No. 43361 (the Petitioner) was not in possession during the two months period prior to the date of filing the information under section 66 of the Primary Courts Procedure Act in Court.
- Thus, the 2nd Party Respondents has to be placed in possession till a competent Court makes an order or decree resolving the dispute - [vide – Pages 85 – 94 of the Brief or pages 187 – 196 of the brief]

In terms of the provisions of the Primary Courts Procedure Act, after an inquiry what the Primary Court had to do was to find the party who was in possession on the date of filing the application before it. However, if he has come to possess the land within the two months immediately before the filing of the information by forcibly dispossessing the person who was

in possession, the Primary Court has to restore that person's possession. As per the judgment of the Primary Court Judge it appears that the Judge found that even though the 1st party Respondent in case No.43361 (the Petitioner) was placed in possession through an enforcement of an order of a Court, the 2nd Party Respondents were dispossessed within that two-month period. Thus, the Primary Court Judge ordered not to disturb the possession of the 2nd Party Respondents. It must be noted that there is nothing to say that 2nd Party Respondents were claiming through the person who was evicted through the order of the Magistrate Court. The handing over of the paddy land was done without a survey being done but as per the boundaries shown by the Petitioner herself creating a dispute as to the identification of 6 acres relevant to the order of the Magistrate to hand over possession in view of the application made by the Commissioner.

An order made by the Primary Court Judge is a provisional remedy to maintain peace until the parties seek proper remedy from the competent forum or Court and get it executed. If the 1st party Respondent in case No.43361 (the Petitioner) has no doubt that he was placed in the 6-acre land referred to in the order made by the Magistrate in accordance with the application made by the Commissioner, she could have easily taken steps, if necessary, through the commissioner, in terms of the section 8(5) and (6) of the Agrarian development Act. If the dispute relates to any other dispute relating to the possession or any other right, she could have sought remedies from the competent court or forum in that regard. Instead, being aggrieved by the decision of the Primary Court Judge, the Petitioner invoked the revisionary jurisdiction of the High Court by filing a Revision application. Even though the Primary Court Judge's order was not to disturb the possession of the 2nd Party Respondents, in her petition in Revision application, the Petitioner did not include all the parties named as 2nd Party Respondents before the Primary Court. She in her petition in the revision application has stated that the parties who failed to file affidavit in the application under section 66 are considered as defaulters, they need not be noticed with regard to the Revision application indicating that they need not be made parties. However, unlike a direct appeal, a revision application originates in the Court which has revisionary powers. It is not a continuation of the action that was concluded in the Court below but a new application. Thus, if the revision application affects the rights of any person whose rights have been confirmed by the Court below, it is the duty of the Petitioner to the revision application to make that person a party to the revision application. As said before, the order of the Primary Court was not to disturb the possession of the 2nd Party Respondents. Thus, any revision application to vary or set aside such order will affect the rights of all the parties who were named as the 2nd Party Respondents before the Primary Court. It further appears that the Petitioner failed to reveal in her petition in the revision application that there is a Partition action pending for the lager land of 11 acres and that there is an interim order in that case against her not to disturb the possession of some of the parties named as the 2nd Party Respondents.

The learned High Court Judge in the revision application HCA 52/2002, delivered Order dated 10.10.2002 in favour of the Respondents *inter alia* on the following grounds;

- Even though the primary Court Judge misapprehended section 68 of the Primary Court Procedure Act in making the impugned order, there is an indecisiveness regarding the paddy land where the Petitioner was placed in possession in accordance with the order in 42705, especially whether it is the 6-acre land referred to in the order or the whole land which is more than 11acres or the land of 5 acre 2 roods 5 perches where the

Respondents were later placed in possession. In other words, there is an indecisiveness as to the land in dispute in the matter in section 66 application whether it is the 6-acre land which was directed to be handed over in MC Case No. 40725 or some other part of paddy land in the same paddy land called Hinchimulla. Because of indefiniteness and ambiguity as to the land, it is not appropriate to use revisionary powers in favour of the Petitioner and such disputes has to be resolved through the partition action P30/96 which is pending or through a competent Civil Court and not by revision applications.

- The Petitioner has failed to name some of the parties who were named as 2nd Party Respondents in the Primary Court case, namely Gnanapala, Saminona Palliyaguru, Ranasinhage Dhammika, Gamini Palliyaguru and Upul Satharasinghe who were also beneficiaries of the Primary Court Order. This failure is a grave and fatal error in the revision application.
- The Petitioner has failed to reveal in the revision application, the institution of the Partition action No. P 30/96 to the whole land and the fact that a restraining order was in force against her prohibiting the entry to the portion of paddyland which was possessed by the 1st and 2nd Respondents. Thus, the petitioner has not come with clean hands and is guilty of non-disclosing the material facts and it is fatal to the revision application.
- There are alternative remedies available such as the Partition action which was pending and/or any other remedy through an action in a competent civil court. As such, exceptional circumstances should be established to grant remedies in revision to avoid irremediable harm but the Petitioner has failed in establishing such grounds.
- If only 6 acres were handed over to the Petitioner and the Petitioner attempts to hold the entire paddy land, she cannot be treated as one with clean hands.
- A doubt has arisen whether the Petitioner has obtained the stay order against the execution of the order of the Primary Court while knowing that order has been already executed.

In the above exposition of reasons, the Learned High Court Judge refused to exercise the Revisionary Jurisdiction as urged by the Petitioner and dismissed the Petitioner's application to set aside the order of the learned Magistrate. [vide – order dated 10.10.2002 found at Page 53- 75 of the Brief].

Being aggrieved by the said order, the Petitioner appears to have lodged an appeal and Court of Appeal Case No. CA PHC 18/2013 has been allocated to that appeal and judgment dated 25.09.2015 has been delivered by the Court of Appeal in that regard. However, the petition of appeal to the Court of Appeal cannot be found in the brief. As per the page description found just prior to the high Court brief marked 'A' does not indicate that such Petition is available in the brief. A dubious letter dated 07.01.2003 found at page 499 of the brief addressing the Registrar of Court of Appeal signed at Magistrate Court, Matara, by the Registrar, High Court Hambantota states that, as an appeal has been lodged and accordingly an order has been made to send the brief to the Court of Appeal, the brief is forwarded to the Court of Appeal for necessary purposes. As per the Journal entries dated 14.10.2002 and 28.02. 2002 found at page 10 of the brief which are the final journal entries of the High Court, a notice of Appeal and Petition of Appeal appears to have been tendered in the manner that direct appeals are made in term of the Civil Procedure Code before District Courts and an order has been made accordingly to send the brief to the Court of Appeal. However, as there is no challenge to the

procedure followed in tendering an appeal, above is mentioned as observations made by this Court. Anyhow, due to the dubious nature of the letter found at page 499 of the brief along with the non-availability of the Petition of Appeal, the Registrar is directed to inquire from the relevant High Court whether, as per the registers maintained by that court, a petition of appeal had been in fact filed to the Court of Appeal in this matter. If no such appeal is registered there to send the file to the Court of Appeal, report it to the Supreme Court and Judicial service Commission to take necessary actions.

The learned Court of Appeal Judges dismissed the Appeal by their Judgment dated 25.09.2015. While referring to the reasons given by the learned Primary Court Judge and the learned High Court Judge in their decisions, The Learned Court of Appeal Judges stressed the following reasons among other things;

- The contention that the learned Primary Court Judge has made an order in terms of Section 72 of the Primary Court Procedure in respect of a dispute arising as to the right to cultivate which does not fall within Section 66 (1) of the Primary Court Procedure Act No. 44 of 1979 cannot be sustained as the OIC Ambalanthota Police had specifically stated that there is a breach of peace and moved Court to take appropriate steps.
- The alleged dispute arose due to the fact, that the Petitioner's attempt to take possession of a larger land of 11 Acres. Therefore, as contended by the 2nd party Respondents the dispute has arisen due to the afore said act of the Petitioner.
- When the revision application, before the High Court is reviewed in the given backdrop it was clear that the Petitioner has not established exceptional circumstances, to exercise revisionary jurisdiction by the learned High Court Judge, in determining the application before court.

Thus, the Court of Appeal by Judgment dated 25.09.2015, dismissed the Appeal made against the order of the High Court of Hambantota HCA 52/2002 which refused to act in revision over the Primary Court Order in case No. 43361 on the grounds that;

- The impugned orders are well within the confines of the Primary Court Procedure Act
- The orders do not warrant to any variation. [vide – Page 379 to 394 of the brief].

When the leave to appeal application against the Court of Appeal judgment was supported before this court, the leave was granted on the questions of law referred to in paragraph 25(1), (2) and (6) of the petition dated 29. 10. 15. Aforesaid 3 questions are mentioned below;

1. Did the High Court as well as the Primary Court appreciate that dispossession by an order of Court, would not fall under dispossession contemplated under section 66 of the Primary Court Procedure Act?
2. Did the Court err in law in falling to appreciate that, Agrarian Development Act is a special statute dealing with all matters in relation to paddy lands and matters connected there to, and the provisions of Primary Court Act -part V11 would not become applicable?
3. Are the Judgments of the Court of Appeal, High Court as well as the Primary Court given according to law?

The aforesaid questions of laws allowed, do not focus on two factors considered by the relevant High Court judge in dismissing the revision application. First being the failure to name certain necessary parties of the 2nd Party Respondents as mentioned above to the revision application. As stated earlier in this decision, revision application, which is not a direct appeal, is not a continuation of the Primary Court case filed in this regard. Any default in appearing or making representation in the Primary Court cannot be a reason not to make the said parties who get the benefit of the Primary Court Judgment. As said before, Revision application was a new application originated in the High Court itself. The learned High Court Judge referring to section 66(8) (b) of the Act has clearly pointed out that defaulter is not entitled to participate at the inquiry before the Primary Court but the Primary Court has to consider the facts before the court in coming to a decision. If that Court has come to a decision favourable even to the defaulters, in my view, it is the duty of the Petitioner to make them party to the revision application as it is not a continuation of the original action and the decision may affect the rights of the said parties.

The second factor that has not been focused in the questions of law mentioned above is the non-disclosure of the material facts by the Petitioner in her petition to the High Court, especially the fact that there is a partition action pending for the larger land where a restraining order was made against the Petitioner not to enter into portion of the paddy land enjoyed by some of the Respondents. This is material because the cause for the breach of peace appeared to have been arisen due to the fact that the Petitioner allegedly have taken into her possession by misleadingly showing the boundaries of a land exceeding the entitlement as stated in the Magistrate Court order or after the execution of that order deceptively grabbing possession of the lands possessed by the Respondents in the guise that they were handed over to him through the execution of that order. Therefore, as contended by the 2nd Party Respondents, the dispute has arisen due to the aforesaid acts of the Petitioner when there is a pending partition action with a restraining order against the Petitioner and not per se through the correct execution of the Magistrate Court's order in MC No. 42705.

Answers to the Questions of Law mentioned above

It is true that a dispossession caused through a court order per se under normal circumstances cannot be considered as an instance that may give rise to a breach of peace that paves way for an application in terms of section 66 of the Primary Court Procedure Act. If it is considered so, no court order could be implemented. However, if it is done in abuse of process or not in accordance with the order made or against people who does not contemplate in the said order, it may give rise to new causes of action or disputes that may have to be resolved through a competent Court or a forum. As such, if breach of peace occurs and if it is a dispute involving land, till that is resolved, the Primary Court may get jurisdiction in terms of section 66 of the Primary Courts Procedure Act to involve and make appropriate order in accordance with the law to maintain peace unless it is specifically prohibited by law. As explained above, abuse or misuse of the process of Court may create situation of forcible possession by dispossession of the person who is entitled to possess, without authority of law. In the matter at hand, the 2nd Party Respondents were not the party to be evicted in terms of the Magistrate Court's order in Case No.42705 and there was no clarity as to the proper identification of the land in executing the said order.

In the matter at hand, as explained above, there is no clarity as to the paddy land handed over to the Petitioner in MC No. 42705 as to whether it is the exact 6-acre land or another portion belonged to a bigger land was included when handing over as per the showing of boundaries by the Petitioner herself. On the other hand, even if the correct land was handed over, whether the Petitioner using the situation came to possess the paddy lands possessed by the 2nd Party Respondents in case No.43361. The boundaries of the land and extent that is contained in the order and the fiscal officer's report in said case No 42705(vide pages 129 to 134 of the brief) and the boundaries and extent of the land contained in the fiscal report in the primary court case No 43361 where the possession was handed over to the Respondent on behalf of the 2nd Party Respondents in that case (vide pages no.257 and 258) had been differently described making it clear that there is a dispute as to the identification of the land for which the Petitioners are entitled in terms of the order made in case no.42705 and the land disputed by the 2nd Party Respondents in the said case No.43361. On the other hand, order in the case No.42705 was against one A. J. S. Jinadasa and was to hand over possession from him to the Petitioner and the said order does not empower to hand over possession from the 2nd Party Respondents in Case No 43361 to the Petitioner. The Fiscal officer's report in case No.42705 shows that the possession was handed over to the Petitioner as per her showing of the boundaries when the said Jinadasa was not there and as per the report it is not mentioned that any of the 2nd Party Respondents were present on that occasion. As said before there is nothing to show that the 2nd Party Respondents in case No.43361 were claiming under said Jinadasa who was to be evicted in terms of the order. Thus, a doubt arises as to whether the Petitioner might have abused the process to grab the possession of other portions the land which were possessed by the 2nd Party Respondents irrespective of the pending partition action and the restraining order issued in that case. Thus, there is a clear dispute relating to land which was not resolved by the Commissioner in the inquiry related to MC case No. 42705. As there is no provision similar to section 325 and 328 of the Civil Procedure Code in the Agrarian Development Act, the said disputes have to be resolved through a competent court or forum and as such, when there was a breach of peace or imminent threat of breaching the peace as indicated by the Police reports, the Primary Court had jurisdiction to exercise its powers unless there is a prohibition created by law. It must be noted again that the intention of the legislature with regard to section 66 application is to maintain peace until the dispute is resolved through the proper forum or court. The real dispute here is not the power to execute the order in MC No.42705 with regard to the 6 acres to be handed over in accordance with that order but whether the Petitioner in the guise of that order dispossessed the 2nd Party Respondents in Case No.43361 from lands in their possession when the order to be executed does not relate to them or lands in their possession. It does not appear that there was any affidavit from the fiscal officer who executed the order in MC. 42705 to say that the land in his report, namely what was handed over by him contained the land possessed by the 2nd Party Respondents. It must be noted that the land referred to in that order and the relevant fiscal report is a 6-acre land within the boundaries described in that order. As such, there may be a possibility that the Petitioner just after the handing over of possession by the fiscal officer, in the guise of said handing over, grabbed the possession of the paddy lands possessed by the said 2nd Party Respondents in case No. 43361 who were not subject to the said eviction order. Thus, the real dispute is not the execution of the order in MC 42705, but whether the Petitioner came into forcible possession of the 2nd Party Respondents' paddy land by abusing the process of court or in the guise of the execution of the said order in MC 42705 within the period of two months prior to the filing of the report by police in action No.43361.

If one misuses or abuse the power of a court, it is using force of law unlawfully and possession gained by such means has to be considered forcible and unlawful. Thus, there was a situation to be resolved by a proper court or a forum as to the possession of land and as such the Primary Court had jurisdiction to intervene and make suitable order to maintain peace.

The Petitioner endeavour to highlight in their written submissions that the dispossession was done by the fiscal officer on a directive given by a court and as such there is no forcible possession, and forcible possession is such that it has to be taken place against the will of the persons who are entitled to possess and without the authority of law. The Petitioner highlights that according to fiscal's report it was a peaceful handing over of possession. The Petitioner further argues that if the Respondents are aggrieved, they must go to the same court and seek relief and that a parallel court has no power to set aside or over rule an order made according to law. Referring to **Mansoor V OIC Avissawella** (1991) 2 Sri L R 75 and **Velupillai v Sivanathan** (1993) 1 Sri L R 123, the Petitioner contends that if there is specific remedy and /or specific tribunal created to hear and /or enforcement of an dispute, parties must resort to such Tribunal and as such the procedure laid down by Agrarian laws was the remedy for the dispute between the landlord and the tenant cultivator and accordingly one cannot use the Primary Courts Procedure Act to nullify the directive given by the Magistrate in terms of the application made by the Commissioner. In this regard the Petitioner brings the attention of Court to section 98 of the Agrarian Development Act.

Even though the Petitioner now attempts to take up the possession that the dispossession through a Court order cannot be the foundation for a breach of peace as contemplated in an action under section 66 of the Primary Courts Procedure Act, I have already explained above that misuse or abuse of the enforcement of an order may contribute to initiate a situation of forcible possession in certain occasions and thus may be the ground for breach of peace as required for the commencement of section 66 action. On the other hand, as stated above, the Petitioner herself in her affidavit filed in the section 66 action, without making any objection to exercising the powers under section 66 on the basis that there is no breach of peace that can be considered in terms of that section, had moved the Primary Court to intervene and grant relief while clearly stating that there was a dispute causing breach of peace that falls under the aforesaid section 66- Vide paragraph 6 and prayer of the affidavit dated 06.07.2001 filed by the Petitioner in MC No.43361. If she took up this position in the Primary Court the opposite parties could have placed more relevant facts to meet such stance which would have helped the original Courts as well as this Court. The Petitioner cannot be allowed to change her position and move for revision on that ground. On the other hand, if the execution of an order exceeds the power given by the order itself and the outcome affects the rights of third parties, to that extent it cannot be said that such deprivation of rights is within the authority of law. It is true that the fiscal officer's report in MC No 42705 indicated a peaceful handing over of possession but it must be noted that neither the Commissioner nor the Magistrate Court nor the fiscal officer gave notice of eviction to the 2nd Party Respondents in case no. 43361; nor they were present at the occasion to present their objection for the eviction of them from the land on the basis of an order against another person. Thus, the dispute and the breach of peace could have arisen only when the said 2nd Party Respondents came to know that the Petitioner was in possession claiming through an execution of an order of Court. As explained earlier, there is no provision in the Agrarian Development Act which is similar to section 325 or 328 of the Civil Procedure Code for any aggrieved third party to make claims based on their rights if they

are affected from the execution of the order of the Magistrate Court. Even if it is considered that they could have moved the same court to use inherent powers or they could have complained to the Commissioner or any other competent court to settle the new dispute relating to land caused by the execution of the order, if there is breach of peace or an imminent threat of breaching the peace the primary court has power to entertain a 66 application and make appropriate order until such new dispute is resolved through such process and order or decree is issued through a competent court in that regard. It must be noted that the primary court has not set aside nor overrule the order made by the Magistrate Court in MC.No.42705 which was to evict aforesaid A.J.S. Jinadasa and hand over the possession to the Petitioner. The intervention of the Primary Court is limited to the dispossession of the 2nd Party Respondents in case No.43361. It is true that if the dispute relates to specific procedure or remedy that falls within the Agrarian Development Act, the parties have to finally resolved it through the mechanism provided by that Act but if it is a dispute relating to land where the breach of peace has occurred or is imminent, the Primary Court has power to make provisional orders to maintain peace as contemplated by section 66 Action. It must be noted the dispute in case No. 43361 was regarding dispossession and thus, it was a dispute relating to land.

Even though the Petitioner has not brought this Court's attention to section 32(2) and 4th Schedule to the Judicature Act, it is also necessary to consider the exclusions created by the said 4th schedule to the jurisdiction of the Primary Court. Among the 36 categories listed in the said schedule, what has some relevance to the matter at hand is item 2 which excludes from the jurisdiction of the Primary Court the following actions;

"(2) Any action concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or Judicial officer acting in execution of his office."

It is true that there was an order in MC. No.42705 to hand over the possession to the Petitioner of a 6-acre paddy land mentioned therein which was against one A.J.S.P. Jinadasa but not against the 2nd Party Respondents in the case No. 43361. For the following reasons dispossession complained of by the 2nd Party Respondents in case No. 43361 cannot be considered as an act purporting to be done in pursuance of a judgment or order of a Court or judicial officer acting in execution of his office.

- That order was not to evict the 2nd Party Respondents in Case No.43361 but to evict one A.J.S.P. Jinadasa and/or
- There is no clarity that the 2nd Party Respondents in case No.43361 was in possession within the 6 acres referred to in the order in MC. Case No. 42705. The relevant Fiscal Report does not disclose that the said officer in executing the said Court order evicted the said 2nd Party Respondents or that he handed over the lands possessed by the 2nd Party Respondents. Further, no affidavit of the said officer is filed to that effect, and /or
- Perhaps the Petitioner might have misled the fiscal officer, irrespective of the partition case and restraining order made in that case, and took into his possession the paddy lands possessed by the 2nd Party Respondents by showing boundaries according to her wish or after handing over the correct 6-acre paddy land, would have got into the possession of the paddy lands which were in the possession of the said 2nd Party Respondents in the guise of coming into possession through the said execution of the order in MC Case No.42705 as it appears neither the said 2nd Party Respondents nor

the said A.J.S.P. Jinadasa was present on the occasion of handing over of possession in case No.42705, and /or

- The said fiscal officer who executed the said order in case No.42705 is not a party to the Primary Court case No 43361 and thus it was not an action against his official acts, and /or
- Action No.43361 was a dispute and an action based on the conduct of the Petitioner who have allegedly come in to the possession of paddy lands possessed by the said 2nd Party Respondents in case No.43361 misusing or using the cover of the said order in MC.42705 which was not against the said 2nd Party Respondents.

The other item 35 in the said schedule 4 of the Judicature Act have no relevance at all to the matter at hand. The Petitioner endeavours to argue that, since Agrarian Development Act is a special Act enacted for specific purpose, Primary Court Act has no application to the given situation. As said before this stance is contrary to her own affidavit tendered in the original Court. On the other hand, said Act is not included in the said list contained in the schedule 4 to the Judicature Act. Whatever it is, the dispute and the action before the Primary Court was not to resolve cultivation rights or dispute between landlord and tenant cultivators. It was based on the dispossession caused by the Petitioner's conduct as to the Paddylands allegedly possessed by the 2nd Party Respondents in case No.43361 and the police report alleged that there would be breach of the Peace moving for appropriate orders to maintain peace. Thus, the Primary Court had power to make order till the parties get their disputes resolved through a proper forum or a Court and get it executed through an order or decree of a court even if such dispute relates to cultivation rights or possession or title etc.

Thus, the answer to the first question of law is that even if the said learned judges mentioned in the question of law appreciated that a dispossession by a Court Order cannot be a base for a breach of peace as contemplated in section 66 of the Primary Court Act, they did not err in making their respective orders since the dispute presented to the Primary Court was not an dispute arisen per se due to a Court order but due to the conduct of the Petitioner who either misused the court order in case No.42705 to dispossess the aforesaid 2nd Party Respondents or in the guise of taking over of the possession through the court order in said case No.42705 caused the dispossession of the said 2nd Party Respondents in case no.43361 among whom the Respondents in the matter at hand were parties, from the paddy lands which were in their possession causing breach of peace.

For the reasons given above, the answer to question of law No.2 is given in the Negative and the question of law No.3 is answered in the affirmative as the conclusion the Primary Court in making orders in terms of section 66 of the Primary Court Procedure Act is correct and thus, the refusal to intervene in revision and confirmation of that refusal in appeal are also correct.

Hence this appeal is dismissed with Costs.

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Judge of the Supreme Court

Hon. Murdu N.B. Fernando, PC, CJ.

I agree.

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The Chief Justice

Hon. Achala Wengappuli, J.

I agree.

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Judge of the Supreme Court