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

1. Ramalingam Nadarajah
2. Rasathurai Thayaparan
3. Sundaramoorthy Prabhakaran
4. Sivapatham Ganeshalingam
5. Kanagalingam Parameswaran
6. Vinasithamby Kanaganayam
7. Mylvaganam Poopalarajah
8. Maruthalingam Ramesh
9. Sinnathamby Ratnam
10. Balasubramanium Sivasenthan
11. Sellathurai Ganeshapillai
12. Sivapatham Sothilingam
13. Ratnasingam Pameshwaranthan
14. Shanmuganathan Navanneesan
15. Muthulingam Senthilnathan
16. Sivasubramanium Thivakaran

All of Kondavil West, Kondavil.

1st Party-Petitioners-Respondents-Appellants

SC/APPEAL/140/2019

CA/PHC/41/2004

HC JAFFNA 107/2003 (REV)

PC JAFFNA 5060

Vs.

Sanmugasundara Kurukkal
Sriskantharajah Kurukkul
Kondavil West, Kondavil

2nd Party-Respondent-Appellant-Respondent

Before: Hon. Justice S. Thurairaja, P.C.
Hon. Justice Mahinda Samayawardhena
Hon. Justice M. Sampath K.B. Wijeratne

Counsel: Anura Meddegoda, P.C., with V. Puvitharan, P.C., Nadeesha Kannangara and Ashani Kankanange for the 1st Party-Petitioners-Respondents-Appellants.

K.V.S. Ganesharajan with Mangaleswary Shanker and Vithusha Loganathan for the 2nd Party-Respondent-Appellant-Respondent.

Argued on: 31.07.2025

Written submissions:

By the 1st Party-Petitioners-Respondents-Appellants on 08.09.2025.
By the 2nd Party-Respondent-Appellant-Respondent on 09.09.2025.

Decided on: 13.02.2026

Samayawardhena, J.

Introduction

The Officer-in-Charge of the Police Station, Kopay, instituted these proceedings in the Primary Court of Jaffna on 11.09.2002 under section 66(1)(a) of the Primary Courts' Procedure Act, No. 44 of 1979. Sixteen persons were named as the first party, claiming to be members of the Board of Management of the Maha Ganapathy Pillayar Kali Kovil at Kondavil West, while another person was named as the second party, claiming to be the priest of the said Kovil. It was alleged that persistent disputes had arisen between the two parties in relation to the affairs of the Kovil and that such disputes were likely to result in a serious breach of the peace. Accordingly, an order was sought under section 66 of the Primary Courts' Procedure Act to prevent an apprehended breach of the peace arising from such disputes.

A number of complaints made to the police, together with statements recorded in relation thereto from the parties to the case and certain other persons, were tendered to the court along with the aforesaid first information.

In terms of section 66(3) read with the proviso to section 66(4) of the Act, the parties filed affidavits dated 08.01.2003 setting out their respective claims in relation to the dispute.

In his affidavit dated 08.01.2003, the second party, Sri Skantharaja Kurukkal, stated that the land on which the Kovil stands belonged to his ancestors. According to him, the Kovil originated as a small shrine and was subsequently expanded into a larger Kovil by his grandfather, who functioned as its trustee, manager, and priest. Upon the demise of his grandfather, his son continued in those capacities. Thereafter, upon the demise of the said son, the grandfather's brother, who was also the father of the second party, succeeded to those responsibilities. The second party stated that he himself assumed those responsibilities in 1963.

The Kovil had suffered damage during the civil war. The second party further stated that he left for Singapore in 1983, having entrusted the administration of the Kovil and the performance of religious rituals to his nephew, and that upon his return in 1989 he resumed the administration and possession of the Kovil, exercising full control over its religious activities and properties. The second party tendered documents in support of his position.

According to the second party, on 05.09.2002, the first person of the first party, Ramalingam Nadarajah, arrived at the Kovil in a three-wheeler accompanied by four others, forcibly broke open the padlocks, and dispossessed him of the Kovil.

He prayed that he be restored to possession and that an order be issued restraining the first party from interfering with his possession until they obtain appropriate relief from the District Court.

The first party filed two affidavits dated 08.01.2003. It is evident that both parties filed their affidavits on the same date. The first person of the first party, Ramalingam Nadarajah, claimed to be the Chairman of the Board of Management of the Kovil. The second party does not accept such a Board of Management. The first party admitted that the second party, Sri Skantharaja Kurukkal, had functioned as the priest of the Kovil since 1998, but stated that he had been appointed to that position by the Board of Management. It was further stated that the Kovil is a public temple registered with the Department of Hindu Religious and Cultural Affairs and that the second party had admitted this fact in writing. The first party tendered documents in support of their position.

The first party alleged that the second party attempted to treat the Kovil as his personal property and had arbitrarily closed the Kovil for four days commencing from 01.09.2002. As the Board could not tolerate such conduct, they admitted that they broke open the Kovil and commenced the performance of religious rituals through another priest.

The first party prayed that the application be dismissed on the ground that the Primary Court lacked jurisdiction, as the Fourth Schedule to the Judicature Act, No. 2 of 1978, excluded disputes of this nature from its jurisdiction.

Although section 66(5) of the Act permits the filing of counter-affidavits, the record does not disclose that either party sought time to file counter-affidavits in response to the affidavits of the opposing party. After both parties filed their affidavits dated 08.01.2003, the case was fixed for written submissions.

In proceedings under section 66 of the Primary Courts' Procedure Act, as the inquiry is generally disposed of by way of written submissions, it is preferable for the court to grant a date for the filing of counter-affidavits. Although section 66(5) provides for the grant of such a date only upon an application made by the parties filing affidavits, affording an

opportunity to file counter-affidavits would assist the Judge in arriving at a correct and informed decision.

Upon the filing of written submissions by both parties, the learned Judge of the Primary Court, by order dated 02.04.2003, found that the second party had been in actual possession of the Kovil and that the first party had forcibly dispossessed him within two months prior to the institution of proceedings by the police. The court accordingly ordered the restoration of possession of the Kovil to the second party and directed the first party to seek a final determination of their rights before a competent court.

Being dissatisfied with the aforesaid order of the Primary Court, the first party invoked the revisionary jurisdiction of the High Court of Jaffna, primarily on the ground that the Primary Court lacked jurisdiction to hear and determine the dispute. Although the learned High Court Judge correctly held that the Primary Court had jurisdiction to entertain the matter, he thereafter proceeded to undertake an extensive examination of the merits of the dispute and ultimately accepted the version advanced by the first party.

Although the High Court Judge went into the merits of the competing claims of the parties, it may be recalled that both parties filed their affidavits on the same date and that no counter-affidavits were tendered by either party. No oral evidence was led. Neither party accepted the position of the other, save in relation to the fact of physical possession of the Kovil by the second party and his forcible dispossession. The second party did not accept that he had been appointed as the chief priest by the first party. His position was that he was the hereditary priest and that the Kovil belonged to his ancestors.

On the basis of the documents tendered by the first party together with their affidavits before the Primary Court, the learned High Court Judge, by judgment dated 14.10.2003, concluded that the second party, who had been forcibly dispossessed, had been appointed as the priest by the

village community and that the Kovil in question is a public temple administered by a Board of Management. The court declined to accept the documents tendered by the second party in support of his claim to ownership of the Kovil and his status as its trustee and hereditary priest.

The learned High Court Judge further held that a priest occupies the position of an employee under the Board of Management and, as such, cannot claim possession of the Kovil in his own right, drawing an analogy to a bank manager who, though in custody of the keys, cannot claim ownership or possession of the bank. Accordingly, the order of the Primary Court was set aside, and possession of the Kovil was directed to be restored to the first party. It was further observed that the reliefs sought by the second party could only be granted by the District Court.

Aggrieved by the judgment of the High Court, the second party preferred an appeal to the Court of Appeal. By judgment dated 08.08.2018, the Court of Appeal set aside the judgment of the High Court mainly on the ground that the High Court had erred in law in its assessment of the nature of possession required under section 68 of the Primary Courts' Procedure Act.

The present appeal by the first party is against the judgment of the Court of Appeal. A previous Bench of this Court has granted leave to appeal against the said judgment on the following questions of law, as formulated by the first party.

(1). Has the Court of Appeal erred in law in holding that the second party was in possession of the temple totally disregarding;

(a) that the administration and management of the temple is carried out by Paripalana Sabai (Board of Management) and are and have been in possession of the temple since 1993;

(b) letter dated 23.08.2001, in which the second party admitted that he was appointed by the Paripalana Sabai (Board of Management) to perform pujas;

(c) that the priest who was appointed to perform poojas has no right to claim possession of the temple;

(d) that though a key was kept in the custody of the second party, the actual and constructive possession of the temple continued to be with the first party, the Paripalana Sabai?

(2) Is the second party, who is a priest, only entitled to pooja rights and not the right to possession of the temple and/or the administration and management of the temple?

Jurisdiction of the Primary Court

The principal contention advanced by the first party before both the Primary Court and the High Court was that the Primary Court lacked jurisdiction to entertain the matter by reason of section 32(2) read with item 11 of the Fourth Schedule to the Judicature Act, No. 2 of 1978. The Fourth Schedule enumerates the actions excluded from the jurisdiction of the Primary Courts. Item 11 thereof reads as follows: "*Any action relating to a trust, including an action to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and any action by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.*"

This contention is not entitled to succeed. The exclusion in section 32(2) read with item 11 of the Fourth Schedule to the Judicature Act applies only to actions in which the court is required to adjudicate substantive rights relating to a trust, including questions of trusteeship or breach of trust. Proceedings under section 66 of the Primary Courts' Procedure Act are preventive and summary in nature, confined to determining actual possession for the purpose of averting a breach of the peace, without adjudicating upon the substantive rights of the parties. The incidental involvement of a Kovil or the assertion of rival claims to trusteeship does not oust the jurisdiction of the Primary Court, which remains competent to make a preventive order, leaving the parties to seek a final determination of their rights before a competent court.

In terms of section 66(1) of the Primary Courts' Procedure Act, for the Primary Court to assume jurisdiction under Part VII of the Act, there must exist (a) a dispute affecting land, and (b) a situation where, owing to such dispute, a breach of the peace is threatened or is likely to occur.

The expression "likely" does not connote that the apprehended breach of the peace must be imminent or immediately impending. It signifies no more than the existence of a probability or a reasonable likelihood of such a breach of the peace. Therefore, to invoke the jurisdiction of the Primary Court under section 66(1) of the Primary Courts' Procedure Act, it is not necessary to wait until the dispute escalates into physical violence or a grave breach of the peace.

The expression *"dispute affecting land"* has been accorded a wide meaning and is not strictly confined to disputes relating to land alone. Section 75 of the Primary Courts' Procedure Act defines the said expression to include disputes relating to the possession of land or buildings thereon, boundaries, cultivation, crops or produce, and rights in the nature of servitudes. The use of the word *"includes"* makes it clear that the definition is not exhaustive, but illustrative, and that the expression is intended to be interpreted broadly. Section 75 provides as follows:

> *In this part "dispute affecting land" includes any dispute as to the right to the possession of any land or part of a land and the buildings thereon or the boundaries thereof or as to the right to cultivate any land or part of a land, or as to the right to the crops or produce of any land, or part of a land, or as to any right in the nature of a servitude affecting the land.*

Formation of opinion regarding breach of the peace

The next question is whether the Judge of the Primary Court must also be independently satisfied that the dispute is likely to result in a breach

of the peace in order to clothe himself with jurisdiction under section 66. As Judges fall into error on this point, let me clarify the legal position.

Under the Administration of Justice Law, No. 44 of 1973, sections 62 to 65 introduced a special procedure enabling the Magistrate's Court to deal with disputes affecting land where a breach of the peace was threatened or likely. Those provisions were repealed by the Code of Criminal Procedure Act, No. 15 of 1979, and were replaced by sections 66 to 76 of the Primary Courts' Procedure Act, No. 44 of 1979. There is a material difference between the scheme of the Administration of Justice Law and that of the Primary Courts' Procedure Act in relation to the manner in which jurisdiction is conferred in respect of such matters.

Section 62(1) of the Administration of Justice Law provided as follows:

> *Whenever a Magistrate, on information furnished by any police officer or otherwise, has reason to believe that the existence of a dispute affecting any land situated within his jurisdiction is likely to cause a breach of the peace, he may issue a notice (a) fixing a date for the holding of an inquiry into the dispute; and (b) requiring every person concerned in the dispute to attend at such inquiry and to furnish to the court, on or before the date so fixed, a written statement setting out his claim in respect of actual possession of the land or the part in dispute and in respect of any right which is the subject of the dispute.*

It is noteworthy that section 62 of the Administration of Justice Law conferred jurisdiction on the Magistrate only upon the formation of an opinion that the dispute relating to land was likely to cause a breach of the peace. The Magistrate was required to have *"reason to believe"* that such a likelihood existed before assuming jurisdiction to proceed with the inquiry. Jurisdiction was therefore not automatic upon the mere filing of the first information.

This requirement applied irrespective of whether the information was filed by a police officer or *"otherwise"*. The expression *"otherwise"* was wide enough to include information filed by a party to the dispute.

Section 145(1) of the Indian Code of Criminal Procedure, 1973, corresponds to section 62 of the Administrative Justice Law. Section 145(1) of the Indian Code reads as follows:

> *Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.*

Even under section 145 of the Indian Code of Criminal Procedure, an essential precondition for the assumption of jurisdiction by the Magistrate is that he must be *"satisfied"*, on the basis of a police report or other information, that a dispute likely to cause a breach of the peace exists. It has been held that failure to record such satisfaction renders the proceedings void in terms of section 461 of the Indian Code of Criminal Procedure.

Kanagasabai v. Mylwaganam (1976) 78 NLR 280 is regarded as the leading local authority on the interpretation of section 62 of the Administration of Justice Law. In that case, Sharvananda J. (as he then was), explained at pages 286 and 287 the circumstances in which jurisdiction may be invoked under section 62 of the said Law, stating as follows:

> *It is essential for the assumption of jurisdiction under section 62 that the Magistrate should have reason to believe from a Police report or*

other information that a dispute relating to land, which is likely to cause a breach of the peace, exists. The report or other information should contain sufficient material to enable the Magistrate to form the belief that the dispute is likely to cause a breach of the peace. The jurisdiction conferred on a Magistrate to institute an inquiry under this section can be exercised only when the dispute is such that it is likely to cause a breach of the peace. It is the apprehension of a breach of the peace, and not any infringement of private rights or dispossession of any of the parties, which determines the jurisdiction of the Magistrate. It is sufficient for a Magistrate to exercise the powers under this section if he is satisfied on the material on record that there is a present fear that there will be a breach of the peace stemming from the dispute unless proceedings are taken under the section. Power is conferred by section 62 in subjective terms—the Magistrate, being the competent authority, is entitled to act when he has reason to believe that the existence of a dispute affecting land is likely to cause a breach of the peace. The condition precedent to the exercise of the power is the formation of such opinion—the factual basis of the opinion being the information furnished by any Police officer or otherwise. A Magistrate is not bound to take action on a Police report or upon an expression of opinion by the Police. But, before he takes action, he should have a statement of facts before him so that he may exercise his own judgment in arriving at a conclusion as to the necessity of taking action under this section. The question whether, upon the material placed before him, proceedings should be instituted under this section is one entirely within the Magistrate's discretion. He may form his opinion on any information received. In my view, he can base his action on a complaint filed by any of the parties, or on a Police report. The Magistrate should however proceed with great caution where there is no Police report and the only material before him are statements of interested persons.

It is important to note that the principles articulated by Sharvananda J. in *Kanagasabai v. Mylwaganam* with regard to the invocation of jurisdiction under section 62 of the Administration of Justice Law are inapplicable to proceedings under section 66 of the Primary Courts' Procedure Act, having regard to the material differences in the statutory scheme governing the assumption of jurisdiction.

Under section 62 of the Administration of Justice Law, substantial judicial time was often consumed in preliminary jurisdictional inquiries, as the Magistrate was required, in the first instance, to determine whether a breach of the peace was imminent before issuing process. Such determinations frequently became the subject of review before appellate courts, consuming the judicial time of the appellate courts as well. In addition, parties were often reluctant to invoke section 62 in circumstances where police officers, for various reasons, failed or declined to report the relevant facts to court.

These practical difficulties were sought to be remedied by the legislature through the enactment of the Primary Courts' Procedure Act, a home-grown legislative response designed to streamline the procedure and minimise jurisdictional objections.

Section 66 of the Primary Courts' Procedure Act, which replaced section 62 of the Administration of Justice Law, provides as follows:

> *66(1) Whenever owing to a dispute affecting land a breach of the peace is threatened or likely-*
>
> *(a) the police officer inquiring into the dispute-*
>
> *(i) shall with the least possible delay file an information regarding the dispute in the Primary Court within whose jurisdiction the land is situate and require each of the parties to the dispute to enter into a bond for his appearance before the Primary Court on the day immediately succeeding the*

date of filing the information on which sittings of such court are held; or

(ii) shall, if necessary in the interests of preserving the peace, arrest the parties to the dispute and produce them forthwith before the Primary Court within whose jurisdiction the land is situate to be dealt with according to law and shall also at the same time file in that court the information regarding the dispute; or

(b) any party to such dispute may file an information by affidavit in such Primary Court setting out the facts and the relief sought and specifying as respondents the names and addresses of the other parties to the dispute and then such court shall by its usual process or by registered post notice the parties named to appear in court on the day specified in the notice—such day being not later than two weeks from the day on which the information was filed.

Section 66(1) thus makes it abundantly clear that the first information may be filed either by the police officer inquiring into the dispute under paragraph (a) or by any party to the dispute under paragraph (b).

Section 66(2) then expressly provides that, once an information is filed under section 66(1), irrespective of whether it is filed by the police or by a party to the dispute, the Primary Court is automatically vested with jurisdiction to inquire into and determine the matter. Section 66(2) reads as follows:

Where an information is filed in a Primary Court under subsection (1), the Primary Court shall have and is hereby vested with jurisdiction to inquire into, and make a determination or order on, in the manner provided for in this Part, the dispute regarding which the information is filed.

Accordingly, under the scheme of section 66, the formation of an opinion as to whether a breach of the peace is threatened or is likely is entrusted either to the police officer inquiring into the dispute or to any party to the dispute. Both stand on an equal footing. Unlike the position under section 62 of the Administration of Justice Law, the Judge of the Primary Court is not required, at the threshold, to form an independent opinion as to the imminence or likelihood of a breach of the peace as a condition precedent to the assumption of jurisdiction.

However, in *Velupillai v. Sivanathan* [1993] 1 Sri LR 123, Ismail J., sitting in the Court of Appeal, stated that where the information is filed by a party to the dispute, as opposed to being filed by the police, the Magistrate should exercise a higher degree of caution before proceeding with the matter. This reasoning was explained at page 126 in the following terms:

> *In Kanagasabai v. Mylvaganam (1976) 78 NLR 280, 283, Sharvananda, J. observed "Section 62 of the Administration of Justice Law confers special jurisdiction on a Magistrate to make orders to prevent a dispute affecting land escalating and causing a breach of the peace…The section requires that the Magistrate should be satisfied, before initiating the proceedings, that a dispute affecting land exists and that such a dispute is likely to cause a breach of the peace".*
>
> *Under section 66(1)(a) of the Primary Courts Procedure Act, the formation of the opinion as to whether a breach of the peace is threatened or likely is left to the police officer inquiring into the dispute. The police officer is empowered to file the information if there is a dispute affecting land and a breach of the peace is threatened or likely. The Magistrate is not put on inquiry as to whether a breach of the peace is threatened or likely. In terms of section 66(2) the Court is vested with jurisdiction to inquire into and*

> *make a determination on the dispute regarding which information is filed either under section 66(1)(a) or 66(1)(b).*
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> *However 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.*

This approach articulated by Ismail J. in *Velupillai v. Sivanathan* was reiterated by Ismail J. in *Punchi Nona v. Padumasena* [1994] 2 Sri LR 117 and has been followed in subsequent decisions. However, these observations proceed on the premise that the jurisdictional scheme under section 62 of the Administration of Justice Law continues to govern proceedings under section 66 of the Primary Courts' Procedure Act. That premise is erroneous. As explained previously, sections 62 of the Administration of Justice Law and 66 of the Primary Courts' Procedure Act are materially different, and the latter represents a deliberate legislative departure from the former.

Accordingly, I hold that the view expressed by Ismail J. in *Velupillai v. Sivanathan* [1993] 1 Sri LR 123, to the effect that the Magistrate shall independently ascertain the existence of a threatened or likely breach of the peace before assuming jurisdiction when the information is filed by a party to the dispute, does not represent the correct position of law under the Primary Courts' Procedure Act. To that extent, the decision in *Velupillai v. Sivanathan* is hereby overruled.

State land

It is also sometimes contended that proceedings under section 66 of the Primary Courts' Procedure Act can be invoked only where the dispute relates to private land and not to State land. This contention is

unacceptable. Where the dispute is one affecting land, as defined in section 75 of the Act, and such dispute gives rise to a threatened or likely breach of the peace, the Primary Court is clothed with jurisdiction to make an order under Part VII of the Act, irrespective of whether the land in question is State land or private land. The jurisdiction so exercised is solely for the purpose of preventing a breach of the peace and not for the determination of title or proprietary rights.

However, it must be made clear that the State is not bound by an order made under Part VII of the Act, nor should State officials, in their official capacity, be made parties to such proceedings. Where the dispute relates to State land held under a permit or grant issued under the Land Development Ordinance, any order made by the Primary Court will operate only until the Divisional Secretary or any other competent authority makes an order in terms of that Ordinance or any other law regulating State land.

Paddy land

Another argument advanced is that where the dispute relates to paddy land, the Primary Court lacks jurisdiction, and such dispute must be resolved under the mechanism provided in the Agrarian Development Act, No. 46 of 2000. This argument is primarily founded on the judgment of the Court of Appeal delivered by S.N. Silva J. (as he then was) in *Mansoor v. OIC, Avissawella* [1991] 2 Sri LR 75. That decision is based on the well-established general principle articulated in *Wilkinson v. Barking Corporation* (1948) 1 KB 721 at 724, that "*where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others*."

The Agrarian Development Act is an undoubtedly a special Act passed, as the long title of the Act suggests, to "*provide for matters relating to landlords and tenant cultivators of paddy lands*", and therefore, according to the aforementioned general principle, the jurisdiction of the

ordinary courts to entertain and determine disputes falling within that statutory scheme stands excluded to the extent so provided. Section 98 of the Agrarian Development Act further stipulates that the provisions of that Act shall prevail notwithstanding anything to the contrary in any other written law.

However, the Agrarian Development Act does not oust the jurisdiction of the Primary Court merely because the dispute relates to paddy land or the rights of a tenant cultivator of such land. For the provisions of the Agrarian Development Act to apply and for the jurisdiction of the Primary Court to be excluded, there must exist a landlord and tenant cultivator relationship between the contending parties before the court. Although one party asserts that he is the tenant cultivator of the other party, if the other party denies the existence of such a relationship, the court will have jurisdiction to inquire into and determine that issue. This law was settled by Ranasinghe J. (as he then was), with the concurrence of Sharvananda C.J. and Wanasundera J., in *Suneetha Rohini Dolawatte v. Buddhadasa Gamage* (SC Appeal No. 45/83, SC Minutes of 27.09.1985), which was cited with approval in *Herath v. Peter* [1989] 2 Sri LR 323 and followed in subsequent decisions. However, it must be emphasised that this exception operates subject to any order made under the Agrarian Development Act, whether during the pendency or after the conclusion of the section 66 proceedings.

In *Thuduwewatte v. Shantha* (SC/APPEAL/56/2018, SC Minutes of 05.02.2025), a case relating to possession of paddy land, Amarasekera J. held at pages 13–14 as follows:

> *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 (……) 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 paddy lands 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.*

What Justice Amarasekera states is that the proceedings before the Primary Court are not intended to resolve disputes between landlords and tenant cultivators or their cultivation rights, but to address dispossession giving rise to an imminent threat of a breach of the peace. Accordingly, the Primary Court has jurisdiction to make an order to prevent such breach of the peace until the dispute is resolved through the mechanism provided by the Agrarian Development Act.

It must also be observed that, having regard to the legislative intention underlying section 66 of the Primary Courts' Procedure Act, even where the court concludes that it lacks jurisdiction by reason of the acceptance of a landlord-tenant cultivator relationship, the court nevertheless has inherent jurisdiction to make an appropriate interim order to maintain the *status quo*, solely for the purpose of preventing a breach of the peace, pending the parties seeking relief under the provisions of the Agrarian Development Act.

The object of section 66 applications

The object of Part VII of the Primary Courts' Procedure Act, under the broad theme *"Inquiries into Disputes Affecting Lands Where a Breach of the Peace Is Threatened or Likely"*, is to enable the Primary Court to make a temporary and summary order under sections 68 or 69 of the Act for

the limited purpose of preventing a breach of the peace arising from a land dispute and preserving the *status quo* until the substantive rights of the parties are determined by a competent court.

The expression "competent court" in this context does not refer only to the District Court. In *Podisingho v. Chandradasa* [1978/79] 2 Sri LR 93 at 96, Atukorala J. stated that the term "competent court" encompasses a "Tribunal of competent jurisdiction". It refers to a Court, Tribunal, or any other Authority vested with jurisdictional competence to adjudicate upon the substantive rights of the parties. It is in that sense that I stated earlier that an order made by the Primary Court will subsist until the Divisional Secretary makes an order under the Land Development Ordinance in respect of State land, and an order is made by the Agrarian Tribunal under the Agrarian Development Act in respect of paddy land. The Primary Court is not a competent court to adjudicate upon the substantive rights of parties in disputes affecting land. Its competence is confined to the making of a provisional order to avert a breach of the peace.

Sections 68 and 69 expressly provide that an order made thereunder shall remain in force until it is altered or set aside by "*an order or decree of a competent court*". This position is reiterated in section 74(1).

> *74(1) An order under this Part shall not affect or prejudice any right or interest in any land or part of a land which any person may be able to establish in a civil suit; and it shall be the duty of a Judge of a Primary Court who commences to hold an inquiry under this Part to explain the effect of these sections to the persons concerned in the dispute.*

The failure to appreciate this limited and preventive purpose both by Judges and litigants inevitably leads to protracted proceedings. The present case is a stark illustration. Although the case was instituted in 2002, litigation has continued for more than twenty-three years, and the

substantive rights of the parties have yet to be adjudicated by a competent court.

The orders a Judge of the Primary Court may make

In addition to the final orders that a Judge of the Primary Court is empowered to make under sections 68 and 69 of the Primary Courts' Procedure Act, the Judge may, pending the conclusion of the inquiry, make interim orders under section 67(3) of the Act.

> *67(3). Pending the conclusion of the inquiry it shall be lawful for the Judge of the Primary Court to make an interim order containing any provision which he is empowered to make under this Part at the conclusion of the inquiry.*

The Judge of the Primary Court is also empowered to make ancillary orders, depending on the nature of the dispute. This power is conferred by section 70 of the Act.

> *70. An order made under this Part may also contain such other directions as the Judge of the Primary Court may think fit with regard to the furnishing of security for the exercise of the right of possession of the land or part of it or for the exercise of any right in such land or with regard to the sale of any crop or produce or the manner of exercise of any right in such land or the custody or disposal of the proceeds of the sale of any crop or produce.*

Section 66(8)(a) further provides that where a party or person interested is required to enter an appearance under Part VII of the Act, such appearance may be entered through an Attorney-at-Law. Personal appearance is therefore not mandatory unless the Judge of the Primary Court so directs. However, having regard to the nature of applications under Part VII and the preventive purpose of the legislation, it is desirable that parties be required to be personally present, as this would assist the

court in effectively assessing the situation and taking timely measures to prevent a breach of the peace.

In terms of section 66(8)(b), where a party fails to appear or, having appeared, fails to set out his claim by way of an affidavit and documents, such party is deemed to be in default and is not entitled to participate in the inquiry. Nevertheless, the court is required to consider such material as is available before it in order to understand the nature of the dispute and to make its determination. This includes the first information and its annexures, police complaints, police statements, police inquiry notes, and police field notes together with a sketch.

> *66(8)(b). Where a party fails to appear or having appeared fails to file his affidavit and also his documents (if any) he shall be deemed to be in default and not be entitled to participate at the inquiry but the court shall consider such material as is before it respecting the claims of such party in making its determination and order.*

Section 71 prescribes the orders that the court shall make in such circumstances.

> *71. Where the parties to the dispute do not appear before court or having appeared or been produced do not file any affidavits whether with or without documents annexed the court shall—*
>
> *(a) in a case where the dispute is in regard to possession make order permitting the party in possession to continue in possession, and*
>
> *(b) in a case where the dispute is in regard to any other right, make order permitting the status quo in regard to such right to continue.*

Procedural timelines

It is of paramount importance that proceedings under section 66 be concluded summarily and speedily.

Section 66(3) provides that on the date on which the parties are produced before court, or on the date fixed for their appearance, the court shall grant time not more than three weeks for the filing of affidavits together with documents.

In terms of section 66(4), within one week of the filing of the first information, the court is required to cause notice to be affixed in a conspicuous place on the land, calling upon any interested persons to intervene and file affidavits setting out their positions on the date on which the case is next called in open court.

In terms of section 66(5), on the date affidavits are filed, and upon an application made by the parties filing such affidavits, the court shall grant a further period of two weeks for the filing of counter-affidavits together with documents. However, as I stated earlier, it would be prudent for the court to grant a further period of two weeks for the filing of counter-affidavits, whether or not a formal application is made, as this would assist the Judge in arriving at a correct decision.

Settlement

Upon the filing of counter-affidavits, section 66(6) mandates the court, on the same date, to make every endeavour to induce the parties to arrive at a settlement of the dispute. Where the parties agree to a settlement, the terms thereof shall be recorded and signed by the parties, and the order shall be made in accordance with such settlement. At this stage, the court ought also to explain to the parties the provisional nature of proceedings and encourage them, where appropriate, to institute a civil action for the vindication of their substantive rights.

> *66(6). On the date fixed for filing affidavits and documents, where no application has been made for filing counter-affidavits, or on the date fixed for filing counter-affidavits, whether or not such affidavits and documents have been filed, the court shall before fixing the case for inquiry make every effort to induce the parties and the persons*

> *interested (if any) to arrive at a settlement of the dispute and if the parties and persons interested agree to a settlement the settlement shall be recorded and signed by the parties and persons interested and an order made in accordance with the terms as settled.*

In terms of section 66(6), it is only after this statutory endeavour to secure a settlement that the court shall proceed to fix the matter for inquiry. Section 74(1) imposes a duty on the Judge of the Primary Court who commences to hold an inquiry under Part VII to explain to the parties concerned the temporary and provisional nature of any order made by the court.

The next question that arises is whether the failure of the Judge of the Primary Court to endeavour to induce the parties to settle the dispute would render the final order a nullity.

In *Ali v. Abdeen* [2001] 1 Sri LR 413, Gunawardena J., sitting in the Court of Appeal, held that such failure makes the final order invalid as "*it is the making of an effort to induce parties and the fact that the effort was not attended with success that clothe the Primary Court with jurisdiction to initiate an inquiry with regard to the question as to who was in possession*." While this view has been followed in some subsequent decisions, several other decisions have taken the contrary view.

As I have explained in *Kusumalatha v. Swarnakanthi* [2019] 3 Sri LR 158, the failure of the Judge of the Primary Court to induce the parties to settle the dispute, as contemplated by section 66(6), does not *ipso facto* vitiate the subsequent proceedings. Where the Primary Court has jurisdiction over the subject matter and is competent to make a valid order, a party cannot remain silent, permitting the court to proceed, and thereafter challenge the order on the basis of an alleged procedural irregularity only when he finds that the order is against him. In terms of section 39 of the Judicature Act, it is obligatory upon any party who seeks to raise an objection to jurisdiction to do so at the earliest opportunity. Failure to do so results in the objection being deemed to

have been waived, or the irregular exercise of jurisdiction being taken to have been acquiesced in.

The judgment in *Ali v. Abdeen* [2001] 1 Sri LR 413 does not state the correct position of the law insofar as it holds that non-compliance with section 66(6) denudes the Primary Court of jurisdiction and renders the subsequent proceedings a nullity. To that extent, the decision in *Ali v. Abdeen* is overruled.

Inquiry

Where no settlement is reached, section 66(7) requires the Judge to fix the inquiry on a date within two weeks from the date on which the case was called for the filing of counter-affidavits.

In terms of section 67(1), every inquiry shall be held in a summary manner and concluded within three months of its commencement.

Section 67(2) further provides that the Judge of the Primary Court shall deliver his order within one week of the conclusion of the inquiry.

These provisions underscore the legislative intent that such inquiries be conducted summarily and concluded expeditiously.

The material on which the Judge shall rely in determining the matter is set out in section 72 of the Act.

> *72. A determination and order under this Part shall be made after examination and consideration of—*
>
> *(a) the information filed and the affidavits and documents furnished;*
>
> *(b) such other evidence on any matter arising on the affidavits or documents furnished as the court may permit to be led on that matter; and*
>
> *(c) such oral or written submission as may be permitted by the Judge of the Primary Court in his discretion.*

Given the objective of filing section 66 applications and the strict time frame prescribed for their conclusion, inquiries into such applications ought, as a general rule, to be disposed of by way of written submissions. It may be noted that, in terms of section 72(a), the court shall take the first information filed and the affidavits tendered with documents in the determination of the case, but the permitting of oral evidence and oral or written submissions lies within the discretion of the court.

Identification of the land

The importance of proper identification of the land in proceedings under Part VII was emphasised in *David Appuhamy v. Yassassi Thera* [1987] 1 Sri LR 253.

Whether a dispute affecting land relates to the right to possession or to any right other than possession, such as a right of way, the proper identification of the land or the disputed portion thereof is a fundamental requirement in proceedings under Part VII of the Primary Courts' Procedure Act. An order made without adequate identification of the subject matter would be rendered ineffective and unenforceable.

Section 76 of the Act provides that *"the Fiscal of the court shall, where necessary, execute all orders made under the provisions of this Part."* An order lacking clarity as to the land or right to which it relates would place the Fiscal in an untenable position and defeat the purpose of the court's intervention.

Section 78 of the Act further enables the court to adopt appropriate procedural provisions from the Code of Criminal Procedure Act or the Civil Procedure Code, with necessary adaptations, where the Act makes no express provision.

Identification of the land need not necessarily be by way of a survey plan. It may be achieved by a sketch depicting clearly identifiable boundaries, landmarks, or other distinguishing features. In practice, the police

usually tender a sketch together with their scene visit notes when filing the first information. Where no such sketch is produced, or where identification is unclear or disputed, the Judge of the Primary Court may require the police or the parties to furnish an appropriate sketch or other material, either at the time of filing affidavits or at the inquiry.

Local inspection

As I have discussed in *Meherun Nisa v. Umma Nisa* (CA/REV/1247/2006, CA Minutes of 29.11.2019), it is permissible for a Judge of the Primary Court to dispose of an inquiry, with the consent of the parties, by way of a local inspection or scene visit. As Tennakoon J. (as he then was) held in *Walliammai v. Selliah* (1970) 73 NLR 509 at 512, there is "*no illegality in the parties informing the court that the only evidence in the case would be that afforded by a local inspection by the Judge*." This method has been frequently adopted in the past by Judges of the Primary Court, particularly in disputes relating to rights other than the right to possession, such as rights of way.

This mode of concluding cases by way of a local inspection conducted by the Judge at the invitation of the parties is not a recent development. As Seneviratne J. observed in *Perera v. Belin Menike* [1982] 1 Sri LR 206 at 211, "*This practice, as is well known, still continues. Thus, this mode of settlement has prevailed for eight decades*."

The District Court is expressly empowered to conduct a local inspection under section 428 of the Civil Procedure Code. As I stated previously, section 78 of the Primary Courts' Procedure Act provides that where any matter arises for which no provision is made in the Act, the provisions of the Code of Criminal Procedure Act or the Civil Procedure Code, as the case may be, shall, with such suitable adaptations as the justice of the case may require, be adopted and applied.

Prior to undertaking a local inspection, the intention of the parties should be clearly recorded, and the signatures of the parties obtained,

signifying their consent to abide by any decision given by court on the basis of such inspection.

A local inspection may also be resorted to for the limited purpose of clarifying specific factual matters arising in the inquiry, without necessarily making the final order solely or exclusively on the Judge's observations at the scene.

It must, however, be emphasised that the Judge must exercise caution to ensure that observations made at the scene do not transgress the preventive jurisdiction conferred by section 66, nor result in an adjudication of substantive rights reserved for determination by a court of competent jurisdiction. A local inspection may best be utilised to facilitate a consensual resolution of the dispute at the scene.

Exercise of revisionary jurisdiction

Courts must remain vigilant to ensure that their processes are not abused for collateral purposes. Litigation is not a commercial enterprise.

The present matter concerns the affairs of a popular Kovil, where substantial revenue is generated through offerings made by devotees. In such circumstances, even provisional orders made under Part VII of the Primary Courts' Procedure Act may have a significant bearing on the management and control of income during the pendency of proceedings. This reality underscores the need for particular circumspection in the exercise of revisionary jurisdiction.

Section 74(2) of the Act expressly provides that no appeal shall lie against an order made by a Judge of the Primary Court under Part VII, although such orders remain amenable to revision. The denial of a right of appeal is a clear legislative indication that orders made under section 66 are provisional in character and are intended to operate only until the parties seek a determination of their substantive rights before a court of competent jurisdiction, ordinarily the District Court.

In the instant case, had the High Court declined to entertain the revision application, the first party would have been compelled, if so advised, to promptly institute appropriate civil proceedings to vindicate any substantive rights claimed by them and obtain an appropriate interim order. The dispute could thereby have been finally resolved many years ago.

In this context, Judges of the High Court may exercise restraint in entertaining applications for revision against orders of the Primary Court made under Part VII. Revisionary jurisdiction should be invoked only where the impugned order is *ex facie* perverse, discloses a patent error of law or facts, or results in a manifest miscarriage of justice. In the absence of such circumstances, interference with a provisional order undermines the legislative objective underlying Part VII and serves only to protract disputes that the statute intends to resolve summarily.

The present case illustrates the consequences of a failure to observe such restraint. Although the legislature deliberately denied a right of appeal in order to ensure expeditious resolution, the invocation of revisionary jurisdiction has, in this instance, proved counterproductive. More than twenty-three years after the making of a provisional order, the parties remain embroiled in litigation, with their substantive rights yet to be adjudicated by a court of competent jurisdiction.

Stay of proceedings

There is no dispute that the mere filing of a revision application in the High Court against the final order of the Primary Court does not automatically stay the execution of proceedings of the Primary Court.

However, there was previously a divergence of opinion regarding the stay of proceedings where an appeal is filed before the Court of Appeal against a judgment of the High Court made in the exercise of its revisionary jurisdiction from the final order of the Primary Court. This issue was finally settled by Salam J. in the Divisional Bench decision of the Court

of Appeal in *Jayantha Gunasekara v. Jayatissa Gunasekara* [2011] 1 Sri LR 284, where His Lordship, after analysing the relevant law and the legislative intent underlying the introduction of Part VII of the Primary Courts' Procedure Act, held at page 300 that *"the mere lodging of an appeal against the judgment of the High Court, in the exercise of its revisionary power in terms of Article 154P(3)(b) of the Constitution, to the Court of Appeal does not automatically stay the execution of the order of the High Court."* I am in respectful agreement with that conclusion.

Pending Civil Action

The pendency of a civil action before the District Court in respect of the same land dispute does not, by itself, oust the jurisdiction of the Primary Court to make an order under Part VII of the Primary Courts' Procedure Act. Where a dispute affecting land gives rise to a threatened or likely breach of the peace, the Primary Court remains competent to entertain an application and to make a suitable order to prevent such breach.

As Sharvananda J. observed in *Kanagasabai v. Mylwaganam* (1976) 78 NLR 280 at 284:

> *If the mere institution of a suit in a civil Court is sufficient to divest the Magistrate of his jurisdiction, the whole purpose of section 62 will be defeated. A scheming party will be enabled to play hide and seek. A person who has taken forcible possession, realising that the decision of the Magistrate would go against him, may rush to a Civil Court to stall for time and in the meanwhile continue to be in unlawful possession of the premises. The law cannot countenance any such action which is calculated to render nugatory the proceedings before the Magistrate.*

However, the further observation made by Sharvananda J. in the same case at page 285, namely, *"if the Magistrate has already made an order under section 63 of the Administration of Justice Law, in my view, the civil court will not have jurisdiction to make any interim order which will in any*

way prejudice the right of a party who has succeeded in getting an order in his favour under section 63 of the Administration of Justice Law", has sometimes been misunderstood and misapplied. Reliance on that observation has led dissatisfied parties to invoke the revisionary jurisdiction of the High Court instead of promptly instituting civil proceedings and, where necessary, seeking appropriate interim relief, as District Courts are reluctant to grant interim injunctions that are inconsistent with orders made by the Primary Court. The present case, involving complex and substantive questions of fact and law, including the applicability of the Trusts Ordinance, which fall squarely within the jurisdiction of the District Court, provides a classic example. Following the order of the Primary Court, the first party did not go before the District Court but instead pursued a course which has resulted in the present litigation against a provisional order, now continuing for over two decades.

It may be observed that sections 68 and 69 of the Primary Courts' Procedure Act expressly provide that an order made by a Judge of the Primary Court shall remain in force until it is altered or set aside by "*an order or decree of a competent court*", and not until it is altered or set aside by "*a judgment of a competent court*". This clearly signifies that a court of competent jurisdiction, including the District Court, may make a contrary order not only upon the conclusion of the trial but also during the pendency of the action.

I need hardly emphasise that the jurisdiction of the District Court to issue interim injunctions, though provisional in nature, is far wider than the jurisdiction of the Primary Court to make an order under Part VII of the Act. When considering an application for an interim injunction, the District Court can, *inter alia*, go into the merits of the case and even grant the final relief as the interim relief. In *Shell Gas Lanka Ltd. v. Samyang Lanka (Pvt.) Ltd.* [2005] 3 Sri LR 14, Wimalachandra J. held that where there is a strong *prima facie* case in favour of the plaintiff, the balance of convenience also favours him, and no plausible defence is available to

the defendant, it is not contrary to law to grant an interim injunction even if such injunction gives the plaintiff the substantial relief claimed by him. This principle was subsequently cited with approval by the Supreme Court in *People's Bank v. Yasasiri Kasthuriarachchi* [2010] 1 Sri LR 227.

I therefore take the view that the District Court, being a court of competent jurisdiction, is not precluded from making an interim injunction in a properly constituted civil action, even if such order is inconsistent with the order made by the Primary Court, where such intervention is necessary to protect the substantive rights of the parties. However, the District Court shall exercise such jurisdiction with extreme caution and circumspection and not as a matter of course.

Section 68

The final orders that a Judge of the Primary Court may make under Part VII of the Act are set out in sections 68 and 69.

Where the dispute relates to the possession of any land or part thereof, the Judge is required to make an order in terms of section 68 of the Act. Section 68 provides as follows:

> *68(1) Where the dispute relates to the possession of any land or part thereof it shall be the duty of the Judge of the Primary Court holding the inquiry to determine as to who was in possession of the land or the part on the date of the filing of the information under section 66 and make order as to who is entitled to possession of such land or part thereof.*
>
> *(2) An order under subsection (1) shall declare any one or more persons therein specified to be entitled to the possession of the land or the part in the manner specified in such order until such person or persons are evicted therefrom under an order or decree of a*

competent court, and prohibit all disturbance of such possession otherwise than under the authority of such an order or decree.

(3) Where at an inquiry into a dispute relating to the right to the possession of any land or any part of a land the Judge of the Primary Court is satisfied that any person who had been in possession of the land or part has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under section 66, he may make a determination to that effect and make an order directing that the party dispossessed be restored to possession and prohibiting all disturbance of such possession otherwise than under the authority of an order or decree of a competent court.

(4) An order under subsection (1) may contain in addition to the declaration and prohibition referred to in subsection (2), a direction that any party specified in the order shall be restored to the possession of the land or any part thereof specified in such order.

The scheme of section 68 is simple and straightforward.

First, in terms of section 68(1), the Judge shall determine who was in possession of the land on the date of the filing of the first information under section 66(1) and make the order confirming possession of that party. This constitutes the general rule.

Section 68(3) provides an exception to this general rule. In terms of that provision, where the Judge of the Primary Court is satisfied that a person who had been in possession of the land has been forcibly dispossessed within a period of two months immediately preceding the date on which the first information was filed, the Judge shall make the order directing that the party so dispossessed be restored to possession.

The expression *"forcibly dispossessed"* does not connote the use of physical force or violence. It signifies dispossession otherwise than in due course of law.

The nature of possession

The next question concerns the nature of the possession envisaged by section 68. The possession contemplated under section 68 of the Primary Courts' Procedure Act is actual or *de facto* possession. Such possession must not be confused with title, a legal right to possession, or lawful possession.

Although section 68(1) provides that the Judge shall "*make order as to who is entitled to possession of such land*", and section 68(3) describes the inquiry as "*an inquiry into a dispute relating to the right to the possession of any land*", these expressions do not confer upon the Judge of the Primary Court the power to determine questions of ownership, title, or legal entitlement to possession. Such matters remain exclusively within the jurisdiction of a competent court. In this statutory context, the phrase "*entitled to possession*" means no more than an entitlement to retain actual possession until dispossession in due course of law.

Accordingly, even where an owner who had been in lawful possession of the land is forcibly dispossessed by a person having no title whatsoever, if such owner fails to invoke the jurisdiction of the Primary Court within two months of the dispossession, the Judge of the Primary Court is bound to confirm possession of the person in unlawful possession at the time of the filing of the first information, leaving the lawful owner to seek appropriate relief before a competent court.

In *Ramalingam v. Thangarajah* [1982] 2 Sri LR 693, Sharvananda J., at pages 698–699, emphasised the requirement of "actual possession" in proceedings under section 68 in the following manner:

> *Thus, the duty of the Judge in proceedings under section 68 is to ascertain which party was or deemed to have been in possession on the relevant date, namely, on the date of the filing of the information under section 66. Under section 68 the Judge is bound to maintain the possession of such person even if he be a rank trespasser as against any interference even by the rightful owner. This section entities even a squatter to the protection of the law, unless his possession was acquired within two months of the filing of the information. That person is entitled to possession until he is evicted by due process of law. A Judge should therefore in an inquiry under Part VII of the aforesaid Act, confine himself to the question of actual possession on the date of filing of the information except in a case where a person who had been in possession of the land had been dispossessed within a period of two months immediately before the date of the information. He is not to decide any question of title or right to possession of the parties to the land.*

The provision corresponding to section 68 of the Primary Courts' Procedure Act is section 145 of the Indian Code of Criminal Procedure, 1973. In this regard, *Sohoni's Code of Criminal Procedure, 1973* (22nd Edition 2018), Vol. I, at page 1462, states as follows:

> *This section is concerned solely with the fact of actual physical possession, whether lawful or unlawful, whether in contemplation of law enjoyed by the possessor in his own right or on behalf of others. Therefore, in proceedings under this section any question as to whether possession is on behalf of others or in one's own right is quite irrelevant. It is actual possession which is not under his right to possess nor it is which amounts to lawful or legal possession. In short, it is physical and continuous possession. It is clear from subsection 4 that the Magistrate is prevented from going into the merits of title or claim. So, any person or third party who may intervene in the dispute showing his right to possess or title to*

> *possess on the basis of some transaction, cannot be competent to invite the Magistrate to decide his claim.*

Similarly, *Sarkar on the Code of Criminal Procedure* (12th Edition 2019), Vol. I, at page 614, observes:

> *As section 145 is concerned only with the question of actual possession, question of title should not be decided or allowed to be agitated. Proceedings may be much shortened in many cases and rendered less difficult only if questions of title are kept at arm's length. It has been repeatedly held that questions of title or the right to possession are beyond the scope of section 145.*

The character of possession contemplated in proceedings relating to disputes affecting land has been lucidly explained in *Sohan Mushar v. Kailash Singh* (AIR 1962 Patna 249), where the court held as follows:

> *The possession contemplated in this section [section 145(1) of the Indian Code of Criminal Procedure] is the "actual possession of the subject of dispute". Actual physical possession means the possession of the person who has his feet on the land, who is ploughing it, sowing or growing crops in if, entirely irrespective of whether he has any right or title to possess it. But 'actual possession' does not always mean 'actual physical possession'. For example, if there is a tenant occupying a house and there is dispute between two persons, each claiming to be the landlord, admittedly neither is in actual physical possession, still a proceeding under section 145 of the Code will lie, and in such a case, the decision will rest upon who is in "actual possession" by realisation of rent from the tenant. 'Actual possession', postulated by sub-section (1) of section 145, however, is not the same as a 'right to possession' nor does it necessarily mean lawful or legal possession. It includes even the possession of a mere trespasser. It should, however, be read and tangible, that is, there should be effective occupation and control over the property.*

Although the question of title is ordinarily wholly irrelevant in proceedings of this nature, the court may, in rare and exceptional cases, make limited reference to title solely for the purpose of resolving the issue of possession, where the court is unable to arrive at a conclusion on possession either due to a lack of reliable evidence or because the competing parties have adduced evidence of equal probative value. In such circumstances, the court may advert to title, guided by the principle that possession is an essential incident of title and that, accordingly, the owner is *prima facie* entitled to possession. I must emphasise that the applicability of this exception is extremely rare. This position was also affirmed by Sharvananda J. in *Ramalingam v. Thangarajah* [1982] 2 Sri LR 693 at 699. In this regard, *Sohoni's Code of Criminal Procedure* (op. cit.) at page 1483 states as follows:

> *Evidence bearing on title can be considered only in two instances, one, in which the property admits of no actual possession, and second, in which the evidence as to possession is equally balanced and the presumption of possession which flows from title can be of help in a correct decision of the question of possession.*

However, the term "possession" is an intricate and subtle legal concept, assuming different legal meanings depending on the factual and legal context in which it arises.

In *Salmond on Jurisprudence*, (12th Edition 2004), edited by P. J. Fitzgerald, at page 266, the learned author observes that the concept of possession is inherently difficult to define, as it is an abstract notion and not one that is purely legal in character. He states:

> *Whether a person has ownership depends on rules of law; whether he has possession is a question that could be answered as a matter of fact and without reference to law at all.*

Salmond further explains, at page 282, that possession in law is not confined to direct possession:

> *In law one person may possess a thing for and on account of someone else. In such a case the latter is in possession by the agency of him who so holds the thing on his behalf. The possession thus held by one man through another may be termed mediate, while that which is acquired or retained directly or personally may be distinguished as immediate or direct.*

Accordingly, while the right to possession ordinarily resides in the owner, another may nevertheless be in actual possession of the property. Possession exercised by the owner through another is recognised in law and is commonly described as mediate or constructive possession, as distinct from immediate or direct possession.

Nevertheless, as a general rule, what is material for the purposes of section 68 of the Primary Courts' Procedure Act is actual possession, and not constructive or derivative possession.

However, actual possession has not always been understood to mean actual physical possession.

For example, in *Ranchi Zamindari Co. Ltd. v. Pratab Udainath Sahi Deo* (AIR 1939 Patna 209), for the purposes under section 145 of the Indian Code of Criminal Procedure, the owner of unworked minerals was held to be in actual possession thereof where he was in a position, at any moment, either to work them himself or to permit others to do so.

Similarly, as illustrated in *Sohan Mushar v. Kailash Singh* (AIR 1962 Patna 249), where a tenant is in occupation of a house and a dispute arises between two persons each claiming to be the landlord, neither claimant is in actual physical possession. Nevertheless, proceedings under section 145 of the Indian Code of Criminal Procedure would lie, and the determination would turn on who is in actual possession by reference to who collects rent from the tenant.

In *Iqbal v. Majedudeen* [1999] 3 Sri LR 213, following the death of her husband, the respondent went to live with her mother, having locked up the premises where she had previously resided. The appellant, upon returning to Sri Lanka, broke open the door and entered into possession within two months prior to the filing of the first information. The court held that the respondent remained in actual possession, emphasising that actual possession does not require uninterrupted physical presence throughout the day, and may subsist notwithstanding temporary absence.

Mediate or constructive possession typically arises in recognised legal relationships where control over property is exercised through another, including relationships such as landlord and tenant, lessor and lessee, licensor and licensee, principal and agent, and master and servant. In proceedings instituted under section 66(1) of the Primary Courts' Procedure Act, there is general acceptance that, as against third parties, the possession of the latter is, in law, attributable to the former. Thus, where a dispute as to possession arises between a principal and a third party, the principal may rely on the possession of the agent, notwithstanding the absence of actual physical possession.

The critical question, however, is whether this principle applies with equal force where the dispute regarding possession is between the former and the latter themselves, that is, between the principal and the agent.

Judicial opinion on this issue is divided, and no settled or uniform position has yet emerged.

One line of authority proceeds on the premise that possession capable of being asserted in such proceedings must be referable to a claim or right to possession, and that permissive or derivative possession enjoyed by an agent or servant cannot confer upon such person an independent standing as against the principal or master. According to this view, a person who enters into possession on behalf of another cannot

subsequently repudiate the character of that possession so as to exclude the person for whom such possession was originally held.

The other line of authority proceeds on the footing that an inquiry under this provision must remain strictly confined to the determination of actual possession. On this approach, the court should not be drawn into questions of title or legal entitlement, which properly fall within the domain of the civil courts. It therefore rejects any inflexible rule that an agent or servant can never assert possession in such proceedings, holding instead that the question must depend on the particular facts and circumstances of each case.

This divergence of views is succinctly captured in *Sohoni's Code of Criminal Procedure* (op. cit.) at page 1421, where the learned author states:

> *A view has also been taken that possession which may be pleaded under this section must be based on a claim or right of possession, and that possession of an agent or servant which is permissive, cannot give him a locus standi as against his principle or master. If possession has been given as a servant or employee, he cannot set up his possession to the exclusion of his employer. Pujaris are mere servants of the trustees. It should be borne in mind that possession of a trespasser would always be exclusively on his own. But when initially a person enters into possession for and on behalf of another, he will not be allowed to turn around all of a sudden and voluntarily disclaim the nature of that possession and exclude the persons for and on whose behalf he had entered into that possession.*
>
> *The other view, however, is that though in rare and exceptional cases that may be possible, the scope of an enquiry under this section is not to be extended beyond the determination of actual possession, and that the parties be allowed to agitate complicated questions of title in civil courts, and that it cannot be laid down as an inflexible rule of law that in no case can agent set up possession*

> *under this section. The question must turn upon the facts and circumstances of each case.*

Further guidance on this issue is found in *Sarkar on the Code of Criminal Procedure* (op. cit.) at page 603:

> *Possession of agent or servant is possession of master as section 145 is not meant to protect the possession of servant or manager against his master [Thaylee, AIR 1923 M 60; Perumal, 34 CrLJ 88; Bajirao, AIR 1926 N 286; Balak Das v. Bhagwan Das, AIR 1960 Pat 60: 1960 CrLJ 269:1959 BLJR 407]. But when the dispute is between master and servant about possession, it cannot be said that in no case can be invoked under section 145 [Thakur Jaikrit Singh v. Sohan Raj, AIR 1959 Raj 63: 1959 CrLJ 379: 1959 Raj LW 140].*

A licensee may continue in possession even after the termination of his licence and assert a claim of prescriptive title. A lessee may refuse to vacate the premises on the footing that he has become a statutory tenant upon the expiry of the lease. An agent may resist vacating the property until he is compensated for improvements effected thereon, invoking the right of *jus retentionis*. In such situations, can the licensor, lessor, or principal forcibly evict the person in possession, without recourse to court, on the footing that the possession of the latter is, in law, the possession of the former? Would not such conduct be likely to result in a serious breach of the peace?

Having regard to the object of the legislation and the scheme of the Primary Courts' Procedure Act, I am of the view that while, in a dispute affecting land between a principal and a third party, the possession of an agent may in law be attributed to the principal, where a dispute affecting land arises between a principal and an agent, the court should not proceed on the footing that the possession of the agent is necessarily the possession of the principal. The same principle applies, *mutatis mutandis*, to other recognised legal relationships involving derivative or

permissive possession, such as landlord and tenant, lessor and lessee, licensor and licensee, and master and servant.

This distinction flows from the fact that proceedings under section 66 are concerned solely with actual physical possession, and not with constructive or derivative possession. Questions relating to the right or entitlement to possession are wholly irrelevant in proceedings instituted for the limited purpose of preventing a threatened or likely breach of the peace.

Let me now recapitulate the nature of possession contemplated under section 68 of the Primary Courts' Procedure Act.

Under section 68:

(a) What is required is actual possession. Actual possession denotes actual or *de facto* possession, that is, direct or immediate possession.
(b) Where a dispute as to possession arises, such as between a landlord, lessor, licensor, principal, or master and a third party, the possession of a tenant, lessee, licensee, agent, or servant may, in law, be attributed to the former. Such possession is commonly described as constructive or mediate possession.
(c) However, where the dispute regarding possession is between the parties to such a relationship themselves—such as landlord and tenant, lessor and lessee, licensor and licensee, principal and agent, or master and servant—the court shall have regard to actual physical possession, and not to constructive or derivative possession, for the limited purpose of proceedings under section 68.

Section 69

Section 68 governs disputes relating to the right to possession, whereas section 69 applies where the dispute affecting land relates to any right other than the right to possession. Section 69 provides as follows:

> *69(1) Where the dispute relates to any right to any land or any part of a land, other than the right to possession of such land or part thereof, the Judge of the Primary Court shall determine as to who is entitled to the right which is the subject of the dispute and make an order under subsection (2).*
>
> *(2) An order under this subsection may declare that any person specified therein shall be entitled to any such right in or respecting the land or in any part of the land as may be specified in the order until such person is deprived of such right by virtue of an order or decree of a competent court, and prohibit all disturbance or interference with the exercise of such right by such party other than under the authority of an order or decree as aforesaid.*

In terms of section 69, where a dispute affecting land relates to a right other than possession, the Judge of the Primary Court is required to determine who is entitled to that right and to make an appropriate order. Section 75 clarifies that rights falling within the ambit of section 69 include the right to cultivate land, the right to crops or produce, and rights in the nature of servitudes.

The question arises whether there is a higher degree of proof under section 69 than section 68. As I have discussed earlier, although section 68 also uses the expressions "the right to the possession" and "entitled to possession", the courts have consistently interpreted those expressions to mean actual *de facto* possession or an entitlement to retain possession, without entering into the merits of the competing claims.

It is relevant to note that the same phraseology is employed in section 69, the only distinction being that section 68 concerns "who is entitled to possession", whereas section 69 concerns "who is entitled to the right" other than the right to possession. Both provisions form part of Part VII of the Primary Courts' Procedure Act, and the legislative intention underlying them is identical, namely the prevention of a breach of the

peace arising out of land disputes, pending a determination on the merits by a court of competent jurisdiction. Consistently with this shared objective, proceedings under sections 68 and 69 are governed by the same procedural framework and are subject to the same statutory timelines for their summary disposal. If the legislature had intended to require a higher degree of proof under section 69, it would have made that intention explicit by prescribing a different procedural framework and a different form of inquiry. In substance, sections 68 and 69 operate as complementary provisions within the same statutory scheme.

When the legislature employs the same word or expression in different provisions of the same statute, it is presumed to have intended that expression to bear the same meaning throughout, particularly where the provisions form part of the same statutory scheme or relate to the same subject matter, and there is no indication of a contrary legislative intention. This presumption promotes coherence, certainty, and internal consistency in statutory interpretation.

The principle is well stated in *Maxwell on the Interpretation of Statutes* (12th Edition 1969) at page 278, where the learned author observes:

> *It has been justly remarked that, when precision is required, no safer rule can be followed than always to call the same thing by the same name. It is, at all events, reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act. Accordingly, in ascertaining the meaning to be attached to a particular word in a section of an Act, though the proper cause would seem to be to ascertain that meaning from a consideration of the section itself if possible, yet, if the meaning cannot be so ascertained, other sections may be looked at to fix the sense in which the word is there used. Furthermore, where a word has been construed judicially in a certain legal area, it is, I think, right to give it the same meaning if it occurs in a statute dealing with the same*

> *general subject matter, unless the context makes it clear that the word must have a different construction.*

In *Ramalingam v. Thangarajah* [1982] 2 Sri LR 693 at 699, Sharvananda J. explained the scope of section 69 of the Act in the following terms:

> *On the other hand, if the dispute is in regard to any right to any land other than right of possession of such land, the question for decision, according to section 69(1), is who is entitled to the right which is subject of dispute. The word "entitle" here connotes the ownership of the right. The Court has to determine which of the parties has acquired that right, or is entitled for the time being to exercise that right. In contradistinction to section 68, section 69 requires the Court to determine the question which party is entitled to the disputed right preliminary to making an order under section 69(2).*

The dicta make it clear that, in order to obtain relief under section 69 in respect of a right other than possession, a party must satisfy the court, on the material placed before it, either:

(a) that he has acquired the right in question; or
(b) that he is entitled, for the time being, to exercise that right.

I had an occasion to discuss the scope of section 69 in the Court of Appeal in *Bernard v. Attorney-General* [2019] 2 Sri LR 228, where at page 234 I stated as follows:

> *There is a common misbelief that a high degree of proof of all the necessary ingredients to establish such a right is necessary even under section 69 of the Primary Courts' Procedure Act. It must be emphasised that a party seeking relief under section 69 need not establish entitlement to the right in the manner he is required to establish such entitlement before the District Court. For the purpose of this section, it would be sufficient for such party to satisfy the Magistrate that he "is entitled for the time being to exercise that right".*

It must be made clear that under section 68 or 69, the inquiry before the Magistrate's Court cannot be converted to a full-blown civil trial. The jurisdiction of the Magistrate cannot exceed the objective of this special piece of legislation, which is to make a provisional order in terms of the law to prevent a breach of the peace until the substantive rights of the parties are established, as seen from section 73 of the Act, "in a civil suit". If a high standard of proof is expected to be established before the Magistrate's Court in section 66 proceedings, there is no necessity to go before the District Court for the second time. If that is what is expected, it is meaningless to say in section 74 that the order of the Magistrate "shall not affect or prejudice any right or interest in any land or part of a land which any person may be able to establish in a civil suit".

In my view, the word "entitled" appearing in section 69 need not be given undue weight or importance.

My learned brother, Justice Wijeratne, in a recent judgment of this court in *Pallemulla v. Ananda* (SC/APPEAL/27/2023, SC Minutes of 12.11.2025), did not dissent from the foregoing view, but emphasised that "*actual use*" or "*mere user for the time being*" is inadequate to establish an entitlement in the nature of a servitude for the purposes of section 69. His Lordship further observed that, "*However, the expression 'in the nature of' inherently suggests that the right need not be proved as a servitude in the manner required in a civil action; nevertheless, the right must retain the essential characteristics of a servitude. It must also be emphasized that a case determined solely on documentary evidence and affidavits cannot be equated with findings reached after a full-scale trial in the District Court.*" I entirely agree.

I accept that, unlike in the case of section 68, the scope and application of section 69 are attended by a degree of uncertainty. However, it does not mean that section 68 is entirely free from ambiguity, particularly with regard to the nature of possession contemplated thereunder. The

expression "entitled, for the time being, to exercise that right" should never be understood to mean that, in making an order under section 69, the court is required to confirm the right (other than the right to possession) merely because it was being exercised at the time of the filing of the first information, as is done under section 68(1). The Judge of the Primary Court is required to look for additional material, though not of the same quality or extent as would be required by a District Judge if the matter were brought before the District Court in a properly constituted civil action. Under section 69, the question whether a party has satisfied the court that he is "entitled, for the time being, to exercise the right" depends on the nature of the right asserted and the unique facts and circumstances of each case.

Under section 68, a party seeking restoration of possession on the basis of forcible dispossession is required to invoke the jurisdiction of the Primary Court within two months of such dispossession. Section 69, by contrast, does not prescribe a specific time limit where the dispute relates to a right other than possession. That omission, however, does not imply that the jurisdiction of the Primary Court may be invoked at any time without restraint.

Having regard to the clear legislative purpose of Part VII, namely, the prevention of threatened or likely breaches of the peace arising from land disputes, a party seeking relief under section 69 must approach the Primary Court within a reasonable time of the alleged disturbance or denial of the right, as I observed in *Bernard v. Attorney General* (supra). What constitutes a reasonable time is necessarily fact-sensitive and cannot be reduced to a rigid formula. Undue delay may properly weigh against the grant of relief, as it would be inconsistent with the preventive and provisional character of the jurisdiction conferred by the Act.

Applicability of the law to the facts of this case and conclusion

What transpired in the instant case is largely undisputed. The factual background has already been set out earlier in this judgment. To

recapitulate briefly, the Officer-in-Charge of the Police Station, Kopay, filed the first information on 11.09.2002 under section 66(1)(a) of the Primary Courts' Procedure Act.

In their affidavit, the first party admitted that the second party had been functioning as the priest of the Kovil since 1998, though they asserted that he had been appointed by the Board of Management. They further claimed that the Kovil is a public temple and that the second party had admitted this in writing. The first party candidly admitted that, being dissatisfied with what they described as the arbitrary conduct of the second party, they forcibly broke open the Kovil on 05.09.2002 and recommenced religious rituals through another priest. Their position before the Primary Court was that they had acted lawfully and that the Primary Court lacked jurisdiction on the footing that the dispute related to trusteeship.

The second party categorically denied that the Kovil was a public temple. He asserted that it was private property descending from his ancestors and that he had remained in possession of the Kovil and functioned as its chief priest exercising full control over its affairs, until he was forcibly dispossessed on 05.09.2002. He prayed for restoration of possession until the first party obtained appropriate relief from a competent court.

On these facts it is abundantly clear that, when the second party had been in possession at least from 1998, the forcible dispossession took place within two months before the first information was filed (as the first information was filed on 11.09.2002 and the dispossession took place on 05.09.2002). Hence, the learned Judge of the Primary Court correctly applied section 68(3) of the Act and ordered restoration of possession to the second party.

The learned High Court Judge, however, gravely misdirected himself by embarking upon an examination of the competing claims of the parties relating to ownership, trusteeship, the status of the Kovil, and other substantive matters, and by ultimately accepting the version advanced

by the first party on those issues. Such matters lay wholly outside the limited and preventive jurisdiction conferred on the Primary Court under Part VII of the Act and were, correspondingly, beyond the proper scope of revisionary scrutiny.

As I have already explained, even assuming that the second party stood in a relationship of agency to the first party, where the dispute affecting land is between the principal and the agent themselves, the principle that the possession of the agent is the possession of the principal has no application in proceedings under Part VII of the Primary Courts' Procedure Act. What is decisive for the purposes of such proceedings is actual physical possession and the prevention of a breach of the peace, not the legal right to possession or the merits of competing claims.

In these circumstances, the Court of Appeal was correct in setting aside the judgment of the High Court and in restoring the order of the Primary Court.

Accordingly, I answer the questions of law on which leave to appeal was granted in the negative. The appeal is dismissed with costs.

Judge of the Supreme Court

S. Thurairaja, P.C. J.
I agree.

Judge of the Supreme Court

M. Sampath K.B. Wijeratne, J.
I agree.

Judge of the Supreme Court