

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

*In the matter of an Appeal made in terms
of Article 128 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka and the Supreme Court Rules
thereof.*

S.C. Appeal No:

76/2020

Lenadora Sarananda Thero,
No. 2, Buddhist College of Education,
Thennekubura.

S.C. (SPL)(LA) Application No:

462/2019

PLAINTIFF

Vs.

CA(PHC) 120/2015

01. Galketiwala Nandarathana Thero,
Sri Suvisuddharamaya, Gurudeniya.

HC Kandy Case No:

HC/RA/6/2013

02. Theripeha Ghanarathana Thero,
Sri Suvisuddharamaya, Gurudeniya.

RESPONDENTS

MC Kandy Case No:

46692/2012

AND

Lenadora Sarananda Thero,
No. 2, Buddhist College of Education,
Thennekubura

Now at:

Babbaragala Rajamaha Viharaya,
Bambaragala, Theldeniya.

PLAINTIFF-PETITIONER

Vs.

01.Galketiwala Nandarathana Thero,
Sri Suvisuddharamaya, Gurudeniya.

02.Theripeha Ghanarathana Thero,
Sri Suvisuddharamaya, Gurudeniya.

RESPONDENT-RESPONDENTS

AND BETWEEN

Lenadora Sarananda Thero,
No. 2, Buddhist College of Education,
Thennekubura

Now at:

Pothgul Rajamaha Viharaya,
Siyambalagoda,
Danture, Kandy.

PLAINTIFF-PETITIONER-APPELLANT

Vs.

01.Galketiwala Nandarathana Thero,
Sri Suvisuddharamaya, Gurudeniya.

02.Theripeha Ghanarathana Thero,
Sri Suvisuddharamaya, Gurudeniya.

**RESPONDENT-RESPONDENT-
RESPONDENTS**

AND NOW BETWEEN

01.Galketiwala Nandarathana Thero,
Sri Suvisuddharamaya, Gurudeniya.

02.Theripeha Ghanarathana Thero,
Sri Suvisuddharamaya, Gurudeniya.

Now Both are at:

No. 2 Buddhist College of Education,
Thennekubura.

RESPONDENT-RESPONDENT-
RESPONDENT-APPELLANTS

Vs.

Lenadora Sarananda Thero,
No. 2, Buddhist College of Education,
Thennekubura

Now at:

Pothgul Rajamaha Viharaya,
Siyambalagoda,
Danture, Kandy.

PLAINTIFF-PETITIONER-APPELLANT-
RESPONDENT

Before

: A.L. Shiran Gooneratne, J.

: Menaka Wijesundera, J.

: Sampath B. Abayakoon, J.

Counsel

: Manohara de Silva, P.C. with Hirosha Munasinghe
instructed by Anusha Perusinghe for the Appellant.

: Upul Ranjan Hewage with Priyadarshani

Gunaratne instructed by Nayani Priyanka

Amarasinghe for the Respondent.

Argued on

: 23-03-2026

Written Submissions : 14-05-2026 and 22-03-2021 (By the Respondent-
Respondent-Respondent-Appellants)

Decided on : 27-07-2026

Sampath B. Abayakoon, J.

The respondent-respondent-respondent-appellants (hereinafter sometimes referred to as the respondent-appellants) preferred this appeal on the basis of being aggrieved of the judgment dated 05-11-2019 pronounced in the Court of Appeal Case No. CA(PHC) 120/2015.

From the impugned judgment, the Court of Appeal set aside the order dated 20-12-2012 pronounced by the learned Magistrate of Kandy in the Magistrate's Court of Kandy Case No. 46692/2012, as well as the appellate judgment of the High Court of Kandy pronounced on 14-08-2015 in the High Court of Kandy Revision Application No. 06/2013. The Court of Appeal allowed all parties to the dispute to reside in the disputed temple until the parties go before a competent Court and resolve their dispute.

When this matter was considered before this Court on 22-07-2020 for the purpose of granting of leave to appeal from the impugned judgment, this Court granted leave on the questions of law as set out in sub-paragraph (b) and (c) of paragraph 9 of the petition dated 17-12-2019.

The said questions of law read as follows,

1. The Court of Appeal err in law in holding that the petitioners and the respondent can possess the temple in common in a 66 application.
2. The Court of Appeal err in law in setting aside the order of the Magistrate's Court and the judgment of the High Court and allowing the appeal filed before the Court of Appeal.

At the hearing of this appeal, this Court heard the submissions of the learned President's Counsel who represented the respondent-appellants and also the submissions of the learned Counsel who represented the plaintiff-petitioner-appellant-respondent (hereinafter referred to as the complainant-respondent).

The Court allowed the parties to file post-argument written submissions as well in addition to the written submissions already tendered by the parties for the consideration of the Court.

The Facts

This is a matter where the complainant-respondent has instituted an action before the Magistrate's Court of Kandy in terms of section 66(1)(b) of the Primary Courts' Procedure Act (The Act) by way of his complaint dated 26-01-2012 against the 1st and 2nd respondents named therein who are the present respondent-appellants before this Court.

The fact that the said action has been instituted in terms of section 66(1)(b) makes it clear that the action has been instituted in the form of a private plaint rather than a complaint by the Police.

Having considered the contents of the complaint, the learned Magistrate of Kandy has concluded that there exists a possibility of breach of peace, and had therefore issued notice on the respondent-appellants.

It needs to be noted that all the parties relating to this dispute are Buddhist clergy, and it appears from the order pronounced by the learned Magistrate that the matter has been considered as a dispute in relation to the possession of a temple. Considering the dispute before the Court in terms of section 68 of The Act, it has been determined by the learned Magistrate that it should be the respondent-appellants who are entitled to the possession of the disputed temple, allowing them to hold possession of the same.

Having considered the revision application filed against the order, the learned Judge of the High Court of Kandy also held the same view while dismissing the said revision application.

The complainant-respondent, being dissatisfied of the said judgment, preferred an appeal to the Court of Appeal.

After having heard the parties and the relevant law in this regard, the Court of Appeal, pronouncing the judgment dated 05-11-2019, has determined that the original complaint before the Magistrate's Court was not in respect of any

dispossession of the complainant-respondent from the temple, but rather concerned an attempt to disturb his possession. It was the view of the Court of Appeal that the application was for a declaration that he is entitled to the exclusive possession of the temple.

Having considered the material placed before the Court, the Court of Appeal has determined that the position of the respondent-appellants has been that the complainant-respondent is a resident Bhikku of the temple with leave and license of the 1st respondent, and all of them including several other Bhikkus reside in the temple under the Viharadhipathiship of the 1st respondent.

It was under the said factual circumstances, the Court of Appeal has determined that giving exclusive possession to the respondent-appellants was wrong, and therefore, all parties should be allowed to live in the temple since it is not practically feasible to give directions to the parties on how to maintain a common possession. While pronouncing the said judgment, the Court of Appeal has also emphasized the fact that any orders pronounced in terms of section 66 of The Act are in fact temporary orders in nature, which would be in effect only until the dispute was properly resolved by the parties through a competent Court.

The Court has also observed the importance of maintaining peace given the fact that all the parties to the dispute are Buddhist monks.

Consideration of the Questions of Law

Although the learned President's Counsel strenuously argued that in terms of section 66 of the Act relating to a question of possession, there exists no provision to grant possession to all the parties, and such a directive would result in no end to the dispute between the parties. Based on that premise, the learned President's Counsel made submissions to argue that the Court of Appeal erred in setting aside the Magistrate Court order as well as the order of the High Court pronounced in revision.

Having considered the facts and circumstances relating to the matter under appeal, I find it relevant to consider the complaint filed before the Magistrate's Court, as well as the respondent-appellants' answer to the said complaint.

It is clear from the complaint that what the complainant-respondent had stated was not about a situation where he was dispossessed from the temple, but attempts by the respondent-appellants to dispossess him, and thereby, claiming a declaration for exclusive possession.

The common affidavit filed by the respondent-appellants dated 27-09-2012 clearly indicates that their position had been that the complainant-respondent as well as the 2nd respondent-appellant and several other Bhikkhus are residing in the temple with leave and license of the 1st respondent-appellant, who is the Viharadhipathi of the temple. It is very much clear that the 1st respondent-appellant had never asked for the dispossession of the complainant-respondent from the temple.

For matters of clarity, I would like to reproduce the prayer of the mentioned affidavit, which reads thus:

එසේ හෙයින් අප මෙම ගරු අධිකරණයෙන් ඉතා ගෞරවයෙන් අයැද සිටින්නේ,

(අ). පැමිණිලිකාර හිමිනමගේ පෙත්සම නිෂ්ප්‍රභා කරන මෙන්ද,

(ආ). අපගේ මුල් දිවුරුම් ප්‍රකාශවල උපලේඛණයේ විස්තර කර ඇති දේපලෙහි සන්නකය 1 වන වගඋත්තරකාර හිමිනම වන මා සතු බවත්, සියලු අනෙක් වාසික හිමිවරුන් නියෝජිතයන් ලෙස එහි වැඩ වාසය කරන බවට නියෝග ප්‍රකාශ කරන මෙන්ද,

(ඇ). නඩු ගාස්තු සහ ගරු අධිකරණයට උචිත යැයි හැඟෙන වෙනත් සෑම සියලු සහනයක්ම ලබාදෙන ලෙසටත් වේ.

I find that it was in that context the Court of Appeal has considered the material placed before the original Court in order to come to its conclusions, which I find are the conclusions that should have been reached by the learned Magistrate in pronouncing his original order. I find that this factual position has evaded the attention of the learned Magistrate, and also the learned Judge of High Court of Kandy.

I find that the Court of Appeal had not erred in law when determining that the learned Magistrate had acted in terms of section 68 of the Act when granting reliefs to the respondent-appellants. As determined correctly, there had been no dispossession of any party to the dispute and hence, there was no need to restore possession of the respondent-appellants as it was not their position that they were dispossessed by the complainant-respondent.

I also find that the Court of Appeal was correct in determining that the application before the Magistrate's Court should have been considered in terms of section 68(1) read with 68(2) of The Act since the complainant-respondent had been seeking to prohibit disturbances to his possession of the temple. In my view, the attention should have been to decide whether the complainant-respondent is entitled to claim exclusive possession of the temple or whether the respondents are also entitled to possess the temple until their substantive rights are decided by a competent Court. I am of the view that there can be no justification for ordering that the respondent-appellants should be given the exclusive possession of the disputed property, which in effect allowed dispossession of a party whose possession was not a forcible possession.

For the reasons as considered above, I find no reasons to disturb the findings of the Court of Appeal, and accordingly, I answer the questions of law under which this appeal was considered in the negative.

In conclusion, I would like to reproduce the concluding remarks of the Justices of the Court of Appeal, which in my view stand valid to date.

“The Court expects that the 1st respondent, who appears to be the senior priest and claims to be the Viharadhipathi of the temple, will act responsibly and in exemplary manner to the laymen. In that process, I must mention that the Counsel for both parties also have a heavier responsibility. They also shall, as far as possible, assist the parties to amicably settle the matter, until the substantive matter is decided by a civil court.

If again there will be breach of the peace, the learned Magistrate shall take steps to prevent it by taking appropriate actions, however harsh it may be, irrespective of the fact that they are reverend Buddhist monks. The Counsel for both parties shall explain this to the parties in no uncertain terms.”

The appeal is dismissed. There will be no costs of the appeal.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court