

1978

Present : Walpita, J. and Ratwatte, J.

ALLICUDDY SINNADURAI, Petitioner

and

SUBRAMANIAM KANAGASABAI and TWO OTHERS,
Respondents

S. C. 940/76—M.C. Jaffna 14069

Administration of Justice Law, No. 44 of 1973, section 62, 83—Complaint regarding dispute to a pathway—Whether consideration of title or right to possession of land relevant—Scope and nature of summary inquiry under section 62.

Where a petitioner claiming to be owner of a certain land complained under section 62 of the Administration of Justice Law to the Magistrate that the path leading to his land had been obstructed by the respondents and the dispute that had thus arisen was likely to cause a breach of the peace, it would be a misdirection if the learned Magistrate in the course of the inquiry were to consider the title of the petitioner to his land or his right to possession, which matters were not in dispute. The principal purpose of a summary inquiry of this nature is to prevent a likely breach of the peace. The dispute in this instance involving a right to a servitude, the learned Magistrate should accordingly have considered it under section 63 (5) and (6) of the Administration of Justice Law.

APPPLICATION to revise an order of the Magistrate's Court, Jaffna.

P. Nagendra, for the petitioner.

M. Sivarajasingham, for the 1st 2nd, 3rd respondents.

cur. adv. vult.

January 24, 1978. WALPITA, J.

The petitioner claiming to be owner of a land called 'Uthalanai' on a deed of sale No. 5350 dated 5.10.75 complained to the Magistrate that the lane leading to his land had on 26.7.76 been obstructed by the respondents who had erected a fence across the entrance to the land. He alleged that the dispute that had arisen was likely to cause a breach of the peace. He therefore moved under section 62 of the Administration of Justice Law for an inquiry and an order for the removal of the obstructing fence.

On this application the Magistrate took steps to notice the parties concerned. The respondents filed a statement of claim. In that they also claimed to be owners of two lands called 'Uthalanai' which were situated to the east of the land claimed by the petitioner. While pleading they were in possession of the lands they owned they alleged the petitioner was not in possession of the land claimed by him and was therefore not entitled to relief under section 62 of the Administration of Justice Law.

The learned Magistrate on 28.9.76, a day fixed for inquiry made an interim order that the respondents were not to obstruct the path pending further inquiry.

On 13.11.76, this case was transferred to the High Court, Jaffna, as, according to the journal entry of the date, a connected matter had been forwarded to that court at the request of the parties. The circumstances under which this was done is not quite clear. The High Court Judge who has concurrent jurisdiction then continued the inquiry. After this further inquiry the judge made order that the Chairman of the Village Committee one Thirunavukkarasu enclose the path which was the subject of the dispute and no parties should use the path till the dispute is resolved in a civil court.

This application for revision is with regard to this order of the High Court Judge acting as Magistrate.

The simple issue in the case was whether the path leading to the petitioner's land had been obstructed and whether this dispute between the parties was likely to lead to a breach of the peace which would entail the Magistrate taking action to preserve the peace while the dispute was resolved in a civil court. It seems to me the learned Judge has lost sight of the real dispute involved. The respondents did not claim the land which the petitioner said was his under the Deed 5350 referred to earlier, though they alleged there was a defect in the petitioner's title and that he had no possession of his land. They also said the petitioner had no right to a path over their land though they admitted there was a path while a market functioned earlier on the land the petitioner claimed.

The learned Judge though he noted that the dispute was whether the respondents obstructed the path that leads to the petitioner's land has gone on to look into the title of the petitioner to his land. Having considered the title of the petitioner to his land, he points out various defects in his title and said that he temporarily holds, that the petitioner has no right to the land and therefore there was no use having an inquiry for a path to the land.

In my view the learned Judge has misdirected himself as to what the dispute in this case was. The dispute between the parties is not as to possession or title of the petitioner to the land but to the path leading to that land. Indeed the respondent never claimed the petitioner's land. So the learned Judge's investigation of the petitioner's title to his land was unwarranted. In a summary inquiry held under section 62 the disputes affecting land may be a dispute as to the right of possession of a land or part of a land, the right to 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. In the present case clearly the dispute was as to a right in the nature of a servitude and not as to possession of the land claimed by the petitioner. So that the examination of the title of the petitioner and his right to possession was unnecessary.

Section 63 (5) states that when the dispute relates to any right to any land or part of a land *other than the right to possession of such land or part* the Magistrate shall determine as to who is entitled to the right which is the subject of the dispute and make an order under section 63 (6). Under sub-section (6), the Magistrate can declare a person entitled to such right with directions as to the exercise of such right. As the dispute involved a right to a servitude the Magistrate should have considered this dispute

under section 63 (5) and (6) and not gone on to consider the right to possession of the petitioner's land which could not have been in dispute as the respondents made no claim themselves to the petitioner's land. In a summary inquiry of this nature it was an irrelevant investigation, the principal purpose of such inquiry being to prevent a likely breach of the peace. The threat to the peace in this case arose from the obstruction to the path leading to the petitioner's land and not from a denial of the right to possession of his land. The respondents in their affidavit filed in this court have realised this and have attempted to explain the averment in their statement of claim that the petitioner was never in possession of his land as meaning he was obliged to prove that he had a right to possession of the land and its appurtenances. As has been pointed out by me the dispute was one relating to the use of a servitude and not the possession of the petitioner's land. These are two distinct things. What the respondents contend may be necessary for the petitioner to prove in a civil action when he claims a right to the servitude. But it is obviously unnecessary here. In a summary inquiry under section 62 the principal concern is with a likely breach of the peace and the need to take action to preserve that peace.

In my view irrelevant matters have been taken into consideration by the Magistrate and he has come to a wrong conclusion.

I hold therefore that the Magistrate's order was wrong and I set it aside. A further inquiry should now be held before another Magistrate. He will consider whether there is still a likelihood of a breach of the peace on this dispute and make an appropriate order.

The petitioner is entitled to costs of this application.

RATWATTE, J.—I agree.

Application allowed.