

VELUPILLAI AND OTHERS
v.
SIVANATHAN

COURT OF APPEAL

ISMAIL, J.

CA APPLICATION NO. 909/85.

PRIMARY COURT, KILINOCCHI NO. 2817.

NOVEMBER 13 AND DECEMBER 16, 1992.

Primary Courts Procedure Act – Section 66 Application – Dispute affecting land under s. 66 (1)(a), 66 (1)(b) and 66 (2) of the Primary Courts Procedure Act – Jurisdiction.

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).

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.

The scope of the inquiry under this special jurisdiction is of a purely preventive and provisional nature pending the final adjudication of the rights of the parties in a civil court. The Magistrate is not involved in the investigation into title or right to possession which is the function of a civil court.

The expression "dispute affecting land" as interpreted in section 75 of the Primary Courts Procedure Act, includes "any dispute as to the right to possession of any land or as to the right to cultivate any land.....".

The Magistrate would have been slow to find that there was a dispute affecting land owing to which a breach of the peace was threatened or likely if he had focussed his attention on the substance of the mere complaint and viewed it in the background of the attempt to obtain title.

The complaint of being prevented from tending the crops in the lands claimed to have been cultivated by the complainant, is not a dispute as to the "right to cultivate" the land within the meaning of section 75 of the Primary Courts

Procedure Act. This was a complaint relating to interference with cultivation rights which could have resulted in damage or loss of crop in regard to which the Commissioner of Agrarian Services is vested with jurisdiction under section 57 of the Agrarian Services Act.

The information did not disclose a dispute affecting land upon which the Magistrate's Court could have made a determination under Part VII of the Primary Courts Procedure Act.

Cases referred to :

1. *Kanagasabai v. Mylvaganam* (1976) 78 NLR. 280, 283.
2. *Ramalingam v. Thangarajah* (1982) 2 Sri LR 693, 700.

APPLICATION to revise the order of the Primary Court Judge of Kilinochchi.

S. Mahenthiran for petitioners.

C. V. Vivekananthan with V. Pavitharan for respondent.

Cur. adv. vult.

February 24, 1993.

ISMAIL, J.

The 1st petitioner who is the father of the respondent was granted 2 acres 3 roods and 34 perches of high land for residential purposes and 4 acres and 39 perches of land for paddy cultivation on a permit dated 06.02.1985 under the Land Development Ordinance. These two extents of land were surveyed and subdivided each into two portions on or about 05. 09. 1984 and were each allotted new numbers. A permit dated 07.11.1984 for a divided extent of the high land bearing lot No. 74, in extent 1 acre 1 rood and 27 perches, and a divided extent of paddy land bearing lot No. 310, in extent 2 acres 19.5 perches, was granted to the respondent. These two extents were set out in the two schedules to her affidavit dated 11.01.1985 filed as information in terms of section 66 (1)(b) of the Primary Courts' Procedure Act, No. 44 of 1979.

The respondent's complaint was that the petitioners had on 06. 01.1985 fenced up that portion which served as the entrance to their land and had instead opened up another portion of the fence which separated the two divided extents of the high land and had

created a pathway to gain access to their portion of the land. The petitioners had threatened her husband with bodily harm and had also threatened her family that they would be forcibly ejected if they did not vacate the land by the end of January 1985. In regard to the paddy land she complained that she had sown the land for the 1984 maha season but that the petitioners were preventing her from tending the crop. She attempted to make a complaint regarding this on the same day to the Kilinochchi police station but it was not entertained.

The learned Magistrate having considered the affidavits and the documents filed by the parties and having inspected the land delivered his order on 16.07.1985, holding that the respondent was entitled to cultivate the paddy land without any interference from the petitioners and that she was entitled to reside in the house situated on the high land and to possess the same jointly with the 1st and 2nd petitioners. The 3rd petitioner was warned against interfering with the respondent and the 4th to 8th petitioners were held not to have any right or title to any of the said lands. The petitioners in this application seek to have the said order of the learned Magistrate revised.

Learned Counsel for the petitioners submitted that the respondent was the daughter of the 1st and 2nd petitioners who had initiated proceedings in the Magistrate's Court, without the intervention of the police, under section 66 (1)(b) of the Primary Courts Procedure Act, and that in the circumstances the failure of the Magistrate to arrive at a specific finding initially that the dispute was likely to cause a breach of the peace vitiated the subsequent proceedings. Learned Counsel for the respondent while conceding that such a finding by the Magistrate had been necessary to clothe himself with jurisdiction under the corresponding repealed section 62 of the Administration of Justice Law submitted that such a condition precedent was not necessary under section 66 of the present law.

The corresponding repealed section 62 of the Administration of Justice Law vested jurisdiction in him only after the Magistrate formed an opinion that the dispute was likely to cause a breach of the peace. It provided as follows : 62 (1) "Whenever a Magistrate on information furnished by a police officer or otherwise has reason to believe that the existence of a dispute affecting land situated within his jurisdiction is likely to cause a breach of the peace, he may issue notice.....".

In *Kanagasabai v. Mylvaganam*⁽¹⁾ 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).

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.

The respondent has in her affidavit filed under section 66 (1)(b) traced the history of the dispute with her parents since 1980 relating to her right or title to the high land and the paddy land originally held by the 1st petitioner on a permit under the Land Development Ordinance. She stated that pursuant to an agreement dated 21.05.1980 she was placed in possession of the entirety of the two lands and that her parents had promised to donate one half of the two lands while the other half was to be given to her and her husband for a consideration of Rs. 20,000 (P1). They continued to be in undisturbed possession of the entirety of the two lands for a period of about eight months, but later in January 1981 the 1st petitioner resiled from the agreement and had required her to settle the loan outstanding on this property to the Multi-Purpose Co-operative Society as a condition precedent to agreeing to transfer only half the portions of the two

lands and to obtain a permit in respect of them. Yet the 1st petitioner had failed to transfer half the portions of the two lands as promised despite the said loan having been settled by the respondent. She had then in this connection lodged a complaint to the police on 16.05.1984.

The 1st petitioner along with the other petitioners had thereafter signed an agreement on 24.05.81 (P6) agreeing to transfer to her one half of each of the two lands. Pursuant to this the 1st petitioner had written to the District Land Officer on 27.07.1984 requesting him to subdivide the two lands in such a way that 1 1/2 acres of the portion the high land with the house situated on it, and 2 acres out of the paddy land could be transferred to the respondent. Accordingly it appears that a subdivision as requested by the 1st petitioner had been done, and on 3.11.1981 the District Land Officer informed the respondent that the two extents of lands had been subdivided and that two lots of each had been transferred in her name (P9). She further averred that it was in these circumstances that she was granted a permit (P28) dated 7.11.1984 for the subdivided extents of the high land and the paddy land fully described in the 1st and 2nd schedules to her affidavit.

In such circumstances where the party to the dispute had initiated proceedings it was incumbent on the Magistrate to have ascertained for himself on the affidavit tendered by the respondent whether there was a dispute affecting either or both the extents of land described in the two schedules. The scope of the inquiry under this special jurisdiction is of a purely preventive and provisional nature pending the final adjudication of the rights of the parties in a civil Court. The Magistrate is not involved in the investigation into title or right to possession which is the function of a civil court—*Kanagasabai v. Mylvaganam* ⁽¹⁾, *Ramalingam v. Thangarajah* ⁽²⁾.

The expression "dispute affecting land" as interpreted in section 75 of the Primary Courts' Procedure Act, includes "any dispute as to the right to possession of any land..... or as to the right to cultivate any land.....".

The respondent resided in that portion of the high land described in the 1st schedule at the time of filing the information, and she further claimed to have resided therein even before she was granted the

permit dated 7. 11. 1984. Her complaint was that the petitioners who resided in the adjacent land threatened her husband with bodily harm and threatened the family with forcible eviction if they did not vacate the land by the end of that month. Her husband had not filed an affidavit in this connection nor had she specified as to which of the petitioners made the threats referred to. She further complained that the petitioners had created an alternate access to their land by removing a portion of the common fence having closed up another portion that served as the entrance to their land. No further material was placed before Court from which it could have been ascertained that this act on the part of the petitioners affected her right to possession and that a threat to peace was imminent.

The learned Magistrate would have been slow to find that there was a dispute affecting land owing to which a breach of the peace was threatened or likely if he had focused his attention on the substance of the mere complaint of the respondent and had viewed it in the background of her dispute with her parents since 1980 in attempting to obtain title in her name to the said lands.

Considering next her complaint in regard to the paddy land that the petitioners were preventing her from tending to the paddy crop cultivated by her in the maha season of 1984, this appears to be a complaint that could have been appropriately made to the Commissioner under the Agrarian Services Act, No. 58 of 1979. This section provides that where a complaint is made to the Commissioner by any owner, cultivator or occupier of agricultural land that any person is interfering with or attempting to interfere with the cultivation rights of such person and if he is satisfied that such interference or attempted interference will result in damage or loss of crop, he may issue an order requiring him to comply with such direction as may be necessary for the protection of such rights. The Commissioner is permitted to seek the assistance of a peace officer within the area to ensure compliance with such an order and the peace officer is obliged to render such assistance. Such an order is binding on the persons in respect of whom it is made until set aside by a Court.

The respondent had in fact made a complaint to the Assistant Commissioner in regard to the interference to her cultivation rights by the 3rd petitioner during the maha season of 1983. The Assistant Commissioner held an inquiry into her complaint and had by his

letter (P19) dated 19. 09.1984 warned the 3rd petitioner against interfering with the respondent's cultivation rights. The Assistant Commissioner had in this regard drawn the attention of the 3rd petitioner to the provisions of section 57 of the Agrarian Services Act.

I am of the view that the respondent's complaint that she was prevented from tending the crops in the land claimed to have been cultivated by her, is not a dispute as to the "right to cultivate" the land within the meaning of section 75 of the Primary Courts' Procedure Act. This was a complaint relating to interference with cultivation rights which could have resulted in damage or loss of crop in regard to which the Commissioner of Agrarian Services is vested with jurisdiction under section 57 of the Agrarian Services Act.

The learned Magistrate has, therefore, for these reasons erred in law in entertaining the respondent's complaint as a "dispute affecting land" and proceeding to exercise jurisdiction under Part VII of the Primary Courts' Procedure Act. I therefore set aside the order of the learned Magistrate dated 16.07.1985 made by him after an inquiry and an inspection of the land.

Learned Counsel for the petitioner took up further objections relating firstly to the validity of the affidavit filed by the respondent on the ground that the jurat did not disclose that the deponent affirmed to the contents of the affidavit and secondly that the respondent being governed by the law of Thesawalamai could not have invoked the jurisdiction of the Court by herself. Learned Counsel for the respondent contended that such objections could not be taken for the first time at the stage of appeal. In view of my finding that the information filed by affidavit by the respondent did not disclose a dispute affecting land upon which the learned Magistrate could have made a determination under part VII of the Primary Courts' Procedure Act, it does not appear to me to be necessary to come to a finding on these objections.

I make no order as to costs.

Order set aside.