

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA.**

C.A. (PHC) APN No:10/2012.

H.C Hambantota No:26/2008.

1. Ellawela Pahalage Samanlatha,
  2. Ellawela Pahalage Nelumkanthi
  3. Ellawela Pahalage Karunadasa
  4. Rajapurage Ishara
  5. Ruwan Premaratne.
- All of Yaya, 15,  
Yakagala,  
Angunakolapelassa.

2<sup>nd</sup> Party Respondent/  
Petitioner/Petitioners.

Vs.  
Vijemunige Gunawathi,  
Pinwewa, Jandura Road,  
Aluthwewa,  
Angunakolapelassa.

1<sup>st</sup> Party Complainant/  
Respondent/Respondents.

Before : **SISIRA DE ABREW,J. AND  
K.T. CHITRASIRI,J.**

Counsel : W.Dayaratne P.C with R. Jasundera for the 2<sup>nd</sup>  
Party Respondent-Petitioner-Petitioner.

Jagath Wickramanayake with H.B.D.N.  
Nicholas for the Respondent.

Argued &  
Decided on : 01.02.2012.

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**Sisira de Abrew, J.**

Heard both counsel in support of their respective cases. This is a revision application to set aside the order of the Learned High Court Judge dated 06.01.2012.

The Learned Primary Court Judge by his order dated 24.09.2008 decided the dispute before him in favour of the respondent. Being aggrieved by the said judgment of the Primary Court Judge the petitioner filed a revision application in the High Court. Learned High Court Judge by his order dated 06.01.2012 dismissed the said revision application.

The argument of the Learned President's counsel who is appearing for the petitioner is that the Learned Primary Court Judge did not have jurisdiction to hear and determine this case as there is no evidence to support the position that there was breach of peace. But we note in the affidavit filed by the respondent in the Primary Court, she has stated that there had been likelihood of breach of peace. Vide paragraph 16 of the affidavit dated 29.01.2008 filed by the respondent in this case (Vijemunige Gunawathi). Further, the appellant had threatened to kill the respondent if she entered the paddy field (vide paragraph 12 of her affidavit). The petitioner in her affidavit filed in the Primary Court has <sup>not</sup> deny the said paragraph 16 of the respondent Gunawathi. We note

that the petitioner in the affidavit filed in the Primary Court has denied paragraphs 9,10, 11, 12, 14 and 17 but did not deny the paragraph 16 of the said affidavit. Further we note that the petitioner in her affidavit filed in the Primary Court has prayed for an order directing the respondent not to disturb her peaceful possession of the disputed land. The above material clearly demonstrate that there was ample evidence before the Learned Primary Court Judge to decide that there was likelihood of breach of peace among the parties. If there is likelihood of breach of peace among the parties with regard to a land dispute, the Primary Court Judge under the Primary Court Procedure Act No: 44 of 1979 has jurisdiction to hear and conclude the case. For these reasons we reject the contention of the Learned President's Counsel.

Learned President Counsel's next contention was that the dispute among the parties should have been resolved under Provisions of Agrarian Development Act No. 46 of 2000. He therefore contended that the learned Primary Court Judge did not have jurisdiction since this was a dispute coming within the parameters of the said Act. But we have gone through the documents filed in the Primary Court and the High Court and note that there is no evidence to support the contention that this was a dispute which was coming under the Provisions of Agrarian Development Act No: 46 of 2000. In fact complaint of the respondent to the Primary Court was that she had been forcibly

dispossessed by the petitioner from the paddy field that she was cultivating. Even if the dispute between the parties is to come under the Provisions of Agrarian Development Act that dispute should be a dispute which arises in respect of a paddy land between a person who is a landlord within the meaning of the said law and a person who is a tenant cultivator within the meaning of that law. On this matter we rely on the judgment in the case of *Dolawatta Vs. Gamage* reported in 1989 2 SLR page 327 ( judgment of the Supreme Court). Considering all these matters we hold that the dispute before the learned Primary Court Judge was not a dispute coming within the parameters of the Agrarian Development Act No: 46 of 2000 but a dispute coming within the meaning of section 75 of the Primary Courts Procedure Act No: 44 of 1979.

Learned Primary Court Judge and the Learned High Court Judge have both decided that this was not a dispute coming within the meaning of Agrarian Development Act. In our view there is no material before this court to dispute the said view expressed by both judges.

Further we note that this is a revision application. Learned President's Counsel admitted before us that an appeal has been lodged against the impugned order of the Learned High Court Judge. Thus it appears that the Petitioner in this case has sought appellate jurisdiction

of this court. If the Petitioner has sought appellate jurisdiction, the Court of Appeal will not interfere by way of revision unless the petitioner establishes exceptional circumstances. This view is supported by the judgment of His Lordship Justice *Wanasundera* in *Razid Alli Vs. Mohamed Alli* 1981 1 SLR page 262 and the judgment of Sharvananda CJ in *Hotel Galaxy Ltd Vs. Mercantile Hotel Management* 1987 1 SLR page 5. We have gone through the petition of the petitioner and note that the petitioner has failed to establish exceptional circumstances. For these reasons, we see no merit in this petition and dismiss the petition.

*Petition dismissed.*

JUDGE OF THE COURT OF APPEAL

**K.T. Chitrasiri, J.**

I agree.

JUDGE OF THE COURT OF APPEAL

Vkg/-