

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

CA PHC 66/99 (F)

PHC Kagalle 946/Rev

D A Somaratna
21, Main Street,
Piliyandala

2nd party Petitioner
appellant

Vs

E M Gunapala Edirisingha,
Amithirigala North,
Amithirigala
1st party respondent
respondent

O I C
Police Statation,
Ruwanwella

Informant 2nd party
respondent

BEFORE: A.W.A SALAM & DEEPALI WIJESUNDARE JJ

COUNSEL:

W D Weeraratna for the appellant and Arosha Silva for the 1st
party respondent respondent.

ARGUED : 15.10.2012.

DECIDED ON : 19.12.2012.

A W Abdus Salām, J

This appeal arises from the judgment of the learned judge of High Court refusing to entertain a revision application filed against an order made in proceedings relating to a purported dispute affecting land under part VII of the Primary Court Procedure Act No 44 of 1979.

Admittedly, the dispute had been reported to the Primary Court consequent upon the first party respondent-respondent allegedly had cut a jack tree stood on the land in dispute. The learned Magistrate after inquiry held that she was unable to make an order under section 68 of the Primary Court Procedure Act as both parties had failed to adduce sufficient evidence with regard to possession. She further held that the identity of the corpus also cannot be ascertained with certainty as the boundaries are uncertain to come to a conclusion as to where the jack tree in question stood. This resulted in the learned Magistrate not having made any order in favour of any party.

A revision application being filed against the said order the learned High Court Judge refused to entertain the application based on the ground that no special circumstances have been set out to impugn the said order.

I have considered the order made by the learned Magistrate and the subsequent order of refusal made by the learned High Court judge to entertain the revision application.

As the learned Magistrate was quite emphatic that no evidence has been adduced to make an inappropriate order

under section 68, I am of the opinion that the refusal of the learned High Court judge to entertain the application in revision does not warrant any intervention of this court.

Appeal dismissed without costs.

A W A Salam, J

Judge of the Court of Appeal

I agree

DEEPALI WIJESUNDARE J

Judge of the Court of Appeal