

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

K.W.Ranjith Samarasinghe.

Respondent-Appellant.

**C.A.(P.H.C.) 127/99
P.H.C.Galle No.59/98**

K..Wilbert

Petitioner-Respondent.

C.A.(P.H.C) 127/99

P.H.C.Galle No.59/98

Before : Sisira de Abrew,J. and
K.T.Chitrasiri,J.

Counsel : Rohan Sahabandu with S. Collure for the
Appellant.

Shymal A. Collure for the Respondent.

**Argued and
Decided on** : 28.03.2011.

Sisra de Abrew, J.

Heard both counsel in support of their respective cases.

This is an appeal to set aside the order of the learned High Court Judge dated 23/11/1999 wherein he set aside the order of the learned Primary Court Judge dated 28/07/1998. The action in the Primary Court was filed under Section 66 of the Primary Court Procedure Act No.44/1979. Learned Primary Court Judge held in favour of the appellant. Being aggrieved by the said order, the respondent in this case invoked the reversionary jurisdiction of the High Court to set aside the order of the learned Primary Court Judge. This being an order made under Section 66 of the Primary Court Procedure Act, the parties have an alternative remedy to go to the District Court and obtain a permanent solution to this problem. When an alternative remedy is available a party dissatisfied with an order of the lower Court can invoke the revisionary jurisdiction of the Superior Court only upon establishment of exceptional circumstances. In this regard I would like to quote a judgment of Justice Wijetunge in C.A. Case No.1115/84 in U.K. Edirimanne Vs. H. Kandiah and another decided on 12/07/1991. His Lordship considering an application under Section 66 of the Primary Court Procedure Act observed thus. " It seems to me that when the legislature in its wisdom provided in Section 74(2) of the Primary Court's

Procedure Act that an appeal shall not lie against any determination or order under part VII of the Act, it intended that a party adversely affected by such determination or order should ordinarily seek his remedy in a Civil Court, as the Provisions of Section 74 (1) appear to suggest. It is only where there are exceptional circumstances that this Court would interfere with such determination or order and such situations would be the exception rather than the rule". It is a well established principle that a party who has an alternative remedy can invoke reversionary jurisdiction of a Superior Court only upon establishment of exceptional circumstances. Vide Rasheed Ali Vs. Mohamed Ali 1981 1 SLR Page 262 per Wanasundara, J., Hotel Galaxi Ltd. Vs. Mercantile Hotel Management 1987 1 SLR page 5. I would also like to consider a judgment of Justice Udalagama in Devi Property Development Private limited and another Vs. Lanka Medical Pvt. Ltd. C.A.518/01 decided on 20/06/2001. His Lordship in the said judgment observed thus: " revision is an extraordinary jurisdiction vested in Court to be exercised under exceptional circumstances if no other remedies are available. Revision is not available until and unless other remedies available to the petitioner are exhausted". As we observed that the respondent who sought the reversionary jurisdiction of the High Court has an alternative remedy in this case. We have gone through the proceedings before the High Court and note that the respondent has not established exceptional circumstances in the High Court. We note that the learned High Court

Judge has not considered this matter. In these circumstances we hold that the learned High Court Judge was in error when he decided to set aside the judgment of the learned Primary Court Judge. For the above reasons we set aside the judgment of the learned High Court Judge dated 23/11/1999. In these circumstances we affirm the order of the learned Primary Court Judge dated 28/07/1998. The party dissatisfied with the order of the learned Primary Court Judge is at liberty to litigate this matter in the relevant District Court and obtain a permanent order. We direct the learned Primary Court Judge to implement this order without delay.

JUDGE OF THE COURT OF APPEAL

K.T.Chitrasiri,J.

I agree.

JUDGE OF THE COURT OF APPEAL

WC/-