

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

In the matter of an application
for interim relief

CA Case No. 16/04 (F)

DC Colombo No. 18714/L

1. Agampodi Kamalawathie De Soysa,
 2. Indrani Gunasekera nee De Soysa
- Both of 430/1, Maligawa
Pedesa, Boralasgamuwa.

**Plaintiff-Appellant-
Petitioners**

- Vs -

Ranamuka Devage Siri Wijaya
479/1, Sudharma Road,
Wanawasala, Kelaniya.

**Defendant-Respondent-
Respondent**

Before : A.W.A. Salam, J. &
Sunil Rajapakshe, J.

Counsel : Dr. Jayatissa De Costa P.C. with Lahiru N. Silva
for the Plaintiff-Appellant-Petitioners

Decided on : 15.03.2013

A.W.A. SALAM, J.

This order relates to an application dated 26 February 2013 made by the plaintiff-appellant-petitioners seeking inter alia an order against the respondents restraining him from constructing any structure including permanent structures on the subject matter of this appeal until the final determination. The petitioners have further sought an interim order against the respondent directing him to maintain the status quo of the subject matter of the appeal until its final determination. The learned Presidents Counsel who supported the application on 12th March 2013 adverted us to Section 669 of the Civil Procedure Code and Rule 2 of the Court of Appeal (appellate procedure) Rule 1990 published in the gazette of the Democratic Socialist Republic of Sri Lanka extraordinary-under reference No 645/4 dated 15th January 1991. For

purpose of ready reference the Section of the Civil Procedure Code, namely 669 relied upon by the learned Presidents Counsel in support of his application is reproduced below.

669 - The court may, on the application of any party to an action, and on such terms as it thinks fit-

(A) make an application for the detention, preservation, or inspection and survey of any property being the subject of such action;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such action; and

(C) for all or any of the purposes aforesaid authorise any samples to be taken or any observation to be made, or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

On a clear reading of section 669 of the Civil Procedure Code it reveals that the order for detention, preservation or inspection of property is to be made in respect of an action and nowhere in this section it states that such an order can be made in the course of an appeal preferred under Section 754 of the code. In my opinion, the learned President's Counsel has totally

misconstrued Section 669 as being applicable at the stage of hearing an appeal.

The Court of Appeal appellate procedure Rules 1990-Rule – to wit: rule 2 cited by the learned Presidents Counsel is applicable to an application made to the Court of Appeal and not to an appeal preferred against a judgment under Section 754 of the Code.

In the circumstances, the application made by the petitioners pending the determination of the civil appeal for interim relief has been totally misconstrued. Hence, the application of the petitioners seeking interim reliefs in this matter stands rejected. There shall be no costs.

JUDGE OF THE COURT OF APPEAL

Sunil Rajapakse, J.

I agree.

JUDGE OF THE COURT OF APPEAL

KPM/-