

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

Case No. CA/PHC/192/2003

Edirisinghe Arachchige Sripala,
No. 382/1 Paragoda
Theketena
Accused Appellant

Vs

Asst: Commissioner of Agrarian
Services, AGS Officer,
Gampaha
Plaintiff Respondent

BEFORE: A.W.A. Salam, J.,
Sunil Rajapakse J.,

COUNSEL M.Nizam Kariappar with M.S.M.Iyanullah instd by
M.C.M. Navaz for the Appellant
T.M. Vasantha Abeykoon for the Agrarian
Development Department Assistant Commissioner

ARGUED ON 10.09.2013

DECIDED ON 22.10.2013

Sunil Rajapakse J.

This is an appeal filed by the Accused Appellant (hereinafter referred to as "the Appellant") to set aside the impugned order dated 08.07.2003 of the High Court of Gampaha. Learned Counsel for the Plaintiff Respondent Respondent at the commencement of the argument an objection of law was raised as to the maintainability of the said appeal. When the case was taken up for argument before this Court preliminary objection was raised on behalf of the Respondent to the effect that the Court of Appeal does not have the jurisdiction to entertain this appeal in terms of Article 138(1) read together with Article 154(b) of the Constitution. Further the Respondent submitted that the provisions of the Constitution are subjected to the provisions of Section 9(a) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 which determine the exercise of appellate jurisdiction from a decision made by a Provincial High Court in the exercise of its appellate jurisdiction.

In this case the Appellant's contention is that the Court of Appeal has the jurisdiction to hear an appeal against a decision of the High Court under the provision of Rule 2 of the Court of Appeal (procedure for

appeals from High Court) Rules of 1988 and Article 154P(6) of the Constitution. Rule 2 reads as follows :

“Any person who shall be dissatisfied with any judgment or final order or sentence pronounced by a High Court in the exercise of the appellate and revisionary jurisdiction vested in it by Article 154P(3)(b) of the Constitution may prefer an appeal to the Court of Appeal against such judgment for any error in law or on facts..”

In this regard the learned State Counsel cited Section 9(a) of High Court of the Provinces (Special Provisions) Act No.19 of 1990 which reads as follows :

“Subject to the provisions of this Act or any other law any person aggrieved by a Final Order, judgment, decree or sentence of a High Court established under Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3)(b) of Article 154P of the Constitution may appeal therefrom to the Supreme Court.”

Further the Respondent contended that the appellant has preferred this appeal to the wrong forum. After analyzing the

submissions made by both parties this Court accept the Respondent's contention.

In this regard I wish to cite the following authorities Wickremasekera Vs Officer in charge, Police Station, Ampara – 2004 1 SLR page 267 where it was held *“the Court of Appeal does not have appellate jurisdiction in terms of Article 138(1) of the Constitution read with Article 154(6) in respect of decisions of the Provincial High Court made in the exercise of its appellate jurisdiction in respect of appeals from the Provincial High Court set out in Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.”*

Further in Abeywardena vs Ajith de Silva – 1998 1 SLR page 135, it was held -

“The cumulative effect of the provisions of Article 154P(3)(b) 154P(6) and Section 9 of Act No. 19 of 1990 is that, while there is a right of appeal to the Supreme Court from the Orders etc., of the High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by Article

154P(3)(b) or Section 3 of Act No. 19 of 1990 or any other law there is no right of appeal to the Supreme Court from the orders in the exercise of the Revisionary jurisdiction.

Applying the principles laid down in the above judicial decisions, the Court uphold the preliminary objection raised by the Respondent.

Therefore, I am of the view that this Court has no jurisdiction to hear this appeal.

For the aforesaid reasons, the Appeal is dismissed.

Judge of the Court of Appeal.

Salam J.,

I agree.

Judge of the Court of Appeal