

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

CA (Rev) 06/2012

PHC. N'Eliya Case No.13/11/Rev

M.C. Walapone Case No. 39792

Konara Mudiyanseilage Kosgolle Gedara  
Somapala.

Galkotumulla, Theripaha.

Informant-Petitioner.

Vs.

01.Konara Mudiyanseilage Kogollegedara  
Kiribandara, Galkotumulla, Theripaha.

02.Officer-In-Charge, Police Station,  
Theripaha.

Respondents.

And

Konara Mudiyanseilage Kosgolle Gedara  
Somapala.

Galkotumulla, Theripaha.

Informant-Petitioner-Petitioner.

Vs.

01.Konara Mudiyanselage Kogollegedara  
Kiribandara, Galkotumulla, Theripaha.

02.Officer-In-Charge,  
Police Station, Theripaha.

Respondent-Respondents.

And Now Between

Konara Mudiyanselage Kosgolle Gedara  
Somapala.

Galkotumulla, Theripaha.

Informant-Petitioner-Petitioner-Petitioner.

Vs.

01.Konara Mudiyanselage Kogollegedara  
Kiribandara, Galkotumulla, Theripaha.

02.Officer-In-Charge,  
Police Station, Theripaha.

Respondent-Respondent-Respondents

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

Counsel : Daya Guruge for the Informant-Petitioner-Petitioner and  
Mrs.Machado for the Respondent-Respondent-Respondent.

Argued on : 10.09.2013

Decided on : 11.11.2013

A.W.A. Salam, J.

The informant-petitioner-petitioner (hereinafter referred to as the "petitioner") initiated proceedings in the Magistrate's Court by affidavit dated 28.3.2011 under Section 66 ((1) (B) of the Primary Court Procedure Act No 44 1979. In the said affidavit the petitioner stated that he used the land described in the second schedule to the affidavit from the year 1985 as a right away to serve the land on which she resided for a long period of time. The land on which the petitioner resided was described in the affidavit under the first schedule. The main allegation the petitioner made in his affidavit was against the 1<sup>st</sup> respondent whom he alleged had obstructed the said right of way to her house by constructing a fence on or about 8 March 2011. The learned Magistrate by order dated 19 April 2011 refused to issue notice on the petition and held that the respondent is entitled to the benefit of the judgement of the district court which dealt with the right of way in question. As has been observed by the learned Magistrate the identical dispute namely the question of the existence of the right of way in question was the subject of a suit in the District Court, where one of the alleged users filed an action seeking a declaration that he is entitled to the roadway in question. In that case the learned District Judge held *inter alia* that the person who claimed the right of way is not entitled to use the same. After the said judgement the judgement-creditor in that case namely the plaintiff who is the respondent in this case erected a fence and the petitioner filed the present application to obtain an interim order to prevent the

respondent from obstructing her right of way and certain other substantive reliefs. Admittedly the petitioner was not a party to the proceedings in the district court. The learned Magistrate having examined the affidavit and the documents annexed thereto came to the finding that the respondent had erected the fence in exercising his right under the judgement and decree in the district court which held *inter alia* that the existence of the right of way in question had not been established.

The learned High Court judge who was invited to exercise the revisionary jurisdiction over the determination of the learned Magistrate with regard to the non-existence of the road in question also held that the determination of the Magistrate is quite consistent with the facts of the case and the applicable Law.

Even though the party aggrieved by the judgement of the learned High Court judge in the exercise of his revisionary jurisdiction against the order made by the learned Magistrate has not appealed against the said order but had chosen to file the present application in revision. It is to be noted that the impugned judgement of the learned High Court judge has been delivered on 13 September 2011. However, the present revision application has been filed on 17 January 2012. The delay in filing the present application in revision is more than four months. The petitioner has failed to account for the delay. Further, as has been mentioned in the impugned judgement of the learned High Court judge, no exceptional circumstances have been established

warranting the intervention of this court by way of revisionary powers. In the circumstances, I am not disposed to think that the petitioner has made out a case for the exercise of revisionary powers of this court over the impugned judgement. As such, the revision application under consideration stands refused.

Judge of the Court of appeal

Sunil Rajapaksha,J

I agree

Judge of the Court of appeal

NR/-