

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

**C.A. (PHC) Appeal No.69/2012**

H.C. Kegalle No.43/981RV

Dahanaka Ralalage Somawathie,  
No. 108/2,  
Vihara Mawatha, Mirigama Pasyala.

**Respondent- Petitioner – Appellant**

**Vs.**

Meegahawattege Nilanthi Padma Padmini, but more  
correctly, Meegahawattege Nilanthi Padma Malani,  
No. 18/2, Delgahamulahena, Galapitamada.

**Respondent-Respondent- Respondent**

1. Tennekoon Mudiyansele Ranasinghe,  
No. D 18/1, Delgahamulahena, Galapitamada.
2. Sagarika Dilrukshi,  
No.D 18/4,Delgahamulahena, Galapitamada.
3. Meemana Aratchilage lanitha Priyashanthi,  
No. D 18/3, Delgahamulahena, Galapitamada.

**Respondent - Respondent - Respondents**

C.A. (PHC) No. 69/2012

P.H.C. Kegalle No.4398/Rev.

BEFORE : K.T. CHITRASIRI, J. &

MALINIE GUNARATNE, J.

COUNSEL : Chanaka Kulatunga for the Substituted-2<sup>nd</sup>  
party petitioner-appellant

Dr. S.F.A. Cooray for the 1<sup>st</sup> party respondent-  
respondent and 1<sup>st</sup>,2<sup>nd</sup>, 3<sup>rd</sup> intervenient-  
respondent-respondent

ARGUED AND

DECIDED ON : 16<sup>th</sup> July, 2014.

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**K.T. CHITRASIRI, J.**

Heard both Counsel in support of their respective cases. This is an appeal seeking to set aside the order dated 28.05.2012 of the learned Magistrate of Kegalle. The appellant also has sought, the reliefs prayed for in the application bearing No. 4398/Rev. filed in the High Court in Kegalle. Basically, this appeal is to have the orders dated 28.05.2012 and 29.06.2012 made by the learned Magistrate and the learned High Court Judge, set aside.

Information had been filed by the Ruwanwalla police in the Primary Court at Ruwanwalla under the provisions contained in part

VII of the Primary Court Procedure Act. (Vide at page (1) in the appeal brief). Thereafter, the parties have filed their affidavits explaining the manner in which the land in dispute had been possessed by the respective parties. Learned Magistrate having considered those matters contained in the affidavit and the other materials found in the case record had decided that the 1<sup>st</sup> party respondent and other three intervenient respondents are entitled to use the roadway to have it six feet in width, over the land of the 2<sup>nd</sup> party petitioner-appellant. (Vide at page 60 in the appeal brief). In that order the learned Magistrate having examined the evidence in the affidavits, has found that the 1<sup>st</sup> party respondent had used this roadway since the year 1995. Learned Counsel for the appellant also concedes that the 1<sup>st</sup> party respondent had been using this roadway for a long period of time without any disturbance been made, until information to Court was filed. However, he does not agree that there had been a six feet wide road even though the respondents were using it as a roadway for a long period time. At this stage both Counsel appearing for the parties submit that steps are being taken by the authorities to have this disputed roadway acquired by the Government in order to use it as a public road. It is also brought to the notice of Court that the learned High Court Judge has dismissed this application on the basis that there had been another revision application filed before the same Court on the same issue. Learned

Counsel for the appellant does not dispute the fact that there had been another revision application filed in the High Court to challenge the order of the learned Magistrate.

Having considered the matters referred to above, we do not see any error on the part of both the learned Magistrate and the learned High Court Judge when they decided that the 1st party respondent and the intervenient respondents are entitled to use the disputed area of land as a road way. Accordingly, this appeal is dismissed without costs.

*Appeal dismissed.*

JUDGE OF THE COURT OF APPEAL

**MALINIE GUNARATNE, J.**

I agree.

JUDGE OF THE COURT OF APPEAL

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