

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

CA (PHC) 75/99

1. Kapuge Don Somasiri Jayathilaka
Nahalwathura, Madalagama.

Complainant-Respondent-Appellant

2. Henry Haputhanthri
Waththehena, Nivithigala
(Now Deceased)

- 2A. Munmullage Sumanawathie
Waththehena, Nivithigala.

- 2B. Lalith Chaminda Haputhanthri
Waththehena, Nivithigala.

- 2C. Samanthi Kumari Haputhanthri
Waththehena, Nivithigala.

**Substituted-Complainant-
Respondent-Appellants**

Vs

1. E.P. Ranadeva
Dholoswala, Nivithigala.

2. Wathukarage Sunil Anandha
Mandadhola, Kolombagama.
3. Nugawelage Sumanasiri
Gammadda, Kolombagama.
4. Viyanthalage Dhayaratne
Mandadhola, Kolombagama.
5. U.A. Dharmapala
Mandadhola, Kolombagama.

**Respondent-Respondent-
Respondents**

6. Mahagamage Adiris
Mandadhola, Kolombagama
(Now Deceased)
- 6A. Mahagamage Amaradasa
Mandadhola, Kolombagama.

**6A Substituted-Respondent-
Respondent-Respondent**

7. K.P. Upali
Mandadhola, Kolombagama.
8. Katawalage Hemapala
Waththehena, Nivithigala.
9. Katawalage Dayarathna
Waththehena, Nivithigala.

**Respondent-Respondent-
Respondents**

10. Giligamage Gunarathna
Waththehena, Nivithigala.

11. Giligamage Gunapala
Waththehena, Nivithigala.

**Respondent-Petitioner-
Respondents**

12. Giligamage Peter
Waththehena, Nivithigala.
(Now Deceased)

12A. Pulawahampurage Somawathie
Waththehena, Nivithigala.

12B. Vipul Lasantha Kumara
Waththehena, Nivithigala.

12C. Chamila Priyadarshani
Waththehena, Nivithigala.

12D. Pathmini Chandrakanthi
Waththehena, Nivithigala.

12E. Champika Niroshini
Waththehena, Nivithigala.

**12A-12E Substituted-Respondent-
Petitioner-Respondents**

13. Hettihele Charlis
Waththehena, Nivithigala.

14. Hettihele Magilin
Waththehena, Nivithigala.

15. Moragahapalasse Jinadasa
Waththehena, Nivithigala.

**Respondent-Petitioner-
Respondents**

16. Giligamage Sirisena
Waththehena, Nivithigala.
(Now Deceased)

- 16A. Kolombugama Giligamage Mary Nona
Waththehena, Nivithigala.

- 16B. Kolombugama Giligamage Pieris
Waththehena, Nivithigala.

**16A-16B Substituted-Respondent-
Petitioner-Respondents**

17. Giligamage Martin
Waththehena, Nivithigala.
(Now Deceased)

- 17A. Rupika Padma
Waththehena, Nivithigala.

**17A Substituted-Respondent-
Petitioner-Respondent**

18. GiligamageUkkupina
Waththehena, Nivithigala.
(Now Deceased)

- 18A. Giligamage Somawathie
Waththehena, Nivithigala.

18B. Giligamage Jane
Waththehena, Nivithigala.

18C. Giligamage Jinadasa
Waththehena, Nivithigala.

**18A-18C Substituted-Respondent-
Petitioner-Respondents**

19. Giligamage Gunadasa
Nivithigala.

20. Nilawaththalage Nimalawathie
Waththehena, Nivithigala.

21. Thilawakkalage Rosalin
Waththehena, Nivithigala.

**Respondent-Petitioner-
Respondents**

BEFORE: A.W.A.SALAM, J (P/CA) &

W.M.M. MALINIE GUNARATNE; J

COUNSEL: Saliya Peiris with Varuna de Silva for the
Appellant.

Susil Panagoda with M/s Devika Hemanthi for
the Respondent.

WRITTEN SUBMISSIONS TENDERED ON: 20.05.2014

DECIDED ON: 22.07.2014

A W A Salam, J (P/C.A)

This is an appeal against the judgment dated 22nd April 1999 of the Provincial High Court holden at Ratnapura in the Sabaragamuwa Province. By the said judgment the learned High Court Judge set aside a determination made by the Magistrate under Section 68 (3) of the Primary Court Procedure Act No 44 of 1979 on the grounds that the disputed land has not been properly identified, notice in terms of Section 66 (4) of the said Act has not been exhibited on the land and there was no breach of the peace or likelihood of it.

The learned Counsel for the appellant has submitted that the learned High Court Judge erred in holding that the corpus had not been properly identified. It is to be observed that none of the parties raised the question of the non-identity of the corpus. On the contrary, the 1st respondent in paragraph 4 of his affidavit filed in the Primary Court admitted that the complainant resides on the corpus and further conceded the schedule which describes the metes and bounds of the corpus. Similarly, the 2nd respondent in paragraph 3 of his affidavit admitted the complainant's residence on the land in question and the corpus as set out with metes and bounds in the affidavit of the complainant. In the circumstances, it is difficult to understand as to how the

learned High Court Judge came to the conclusion that there has been a failure to identify the corpus.

Even though the learned High Court Judge has made a reference in his judgment to the notice not having been affixed on the land, it is to be noted from the report of the Fiscal that he had in fact exhibited the notice on a rubber tree standing on the corpus which is in extent of about 36 acres. Even if notices had not been affixed, it had not caused any prejudice to the respondents, as they have participated at the inquiry having filed the pleadings, as required under Chapter VII of the Primary Court Procedure Act.

As regards the finding of the learned High Court Judge that there had been no breach of the peace, it must be observed that several complaints had been made to the police with regard to the dispute between the main parties over the subject matter. As per complaint made on 29 April 1993 by the 2nd appellant, the 1st respondent and 25 others had entered the corpus after verbally threatening the appellants and evicted them from the corpus and had thereafter proceeded to tap rubber from the trees. The 1st appellant also has made a complaint to the police on 7 March 1993 in which he had stated inter alia that his watcher had come looking for him and informed him that the 1st respondent and few others

had entered the land and the house which was under construction. In the same complaint he had said that the 1st respondent had set fire to the house on the corpus and as a result of the fire the entire house got destroyed.

In the circumstances, it appears that the 3 grounds on which the learned High Court Judge had relied to set aside the determination of the learned Magistrate are unsustainable. On a perusal of the impugned judgment it is to be seen that the learned High Court Judge having set aside the determination made by the learned Magistrate had failed to enter any consequential directions. Therefore, if the judgment of the learned High Court Judge is allowed to remain, there will be no finality reached with regard to the dispute that was referred to the Magistrate's Court.

Admittedly, the petitioners have invoked the revisionary jurisdiction of the High Court almost after 5 months of the Magistrate's order. Explaining the delay the petitioners averred that they filed a motion to obtain a copy of the case record from the Magistrate's Court on the very day the order was delivered i.e on 24th June 1996 and they received the documents applied for only on 13 August 1996 and as a result there was a delay in obtaining legal advice. Even if it be so, yet the revision application in the High Court has been

filed on 20 November 1996. The learned Counsel for the appellant has pointed out that the motion of the respondents said to have been filed on the very same day the order has been delivered by the Magistrate, has been minuted on 10 July 1996. This clearly shows that the application for certified copies has been made on 10 July 1996 and not on the 24 June 1996. In any event to revise the order of the learned Magistrate dated 24 June 1996 the petitioners have filed their application in the High Court on 20 November 1996, nearly after 5 months. On a perusal of the petition of the petitioner's filed in the High Court the only explanation given as regards the delay is that they were able to obtain the documents from the Magistrate's Court as late as on 13 August 1996.

On the question of delay, the petitioners have failed to adduce any plausible explanation and above all the explanation with regard to the date on which they applied for certified copies appears to be incorrect. Hence, the explanation given by the petitioners as to the delay in invoking the revisionary jurisdiction of the High Court cannot be accepted. Therefore the petitioners in the High Court were guilty of laches in invoking the revisionary powers of the High Court. As such the judgment of the learned High Court Judge cannot be allowed to remain. In the result, this appeal is allowed and

the judgment of the learned High Court Judge is set aside and the revision application filed by the petitioners in the High Court is substituted with an order of dismissal. Consequently, the order of the learned Magistrate will now prevail. There shall be no costs.

President/Court of Appeal

W.M.M. Malinie Gunaratne, J

I agree

Judge of the Court of Appeal

TW/-