

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

Case No. CA(PHC) 63/2008  
H.CR/10/2007

M.M.A. Moomin  
No. 15, 8<sup>th</sup> Lane, Kankanikulam  
Street, Puttalam

**Petitioner**

Vs

S. Nazeer  
No. 13/1, 8<sup>th</sup> Lane, Kankanikulam  
Street, Puttalam

**Respondent**

AND

M.M.A. Moomin  
No. 15, 8<sup>th</sup> Lane, Kankanikulam  
Street, Puttalam

**Applicant-Petitioner**

Vs

S. Nazeer  
No. 13/1, 8<sup>th</sup> Lane, Kankanikulam  
Street, Puttalam

**Respondent-Respondent**

AND NOW

S. Nazeer

No. 13/1, 8<sup>th</sup> Lane, Kankanikulam

Street, Puttalam

**Respondent-Respondent-Appellant**

Vs

M.M.A. Moomin

No. 15, 8<sup>th</sup> Lane, Kankanikulam

Puttalam

**Applicant-Petitioner-Respondent**

BEFORE

A.W.A.SALAM J.,

SUNIL RAJAPAKSE J

Both parties absent and unrepresented

ARGUED ON: 29.11.2013:

DECIDED ON: 01.08.2014

**Sunil Rajapaksa J.,**

This appeal has been preferred against the judgment of the learned High Court Judge of Puttalam dated 2008.07.29 setting aside the determination of the learned Magistrate made in respect of a dispute regarding the right of way.

In this case the learned Primary Court Judge of Puttalam made an order on 17.10.2007 dismissing the application of the Respondent Applicant Petitioner

Respondent claiming right of way . Being aggrieved by the learned Primary Court Judge's order the Applicant Petitioner Respondent filed a Revision application in Puttalam High Court. The learned High Court Judge of Puttalam had reversed the order of the learned Primary Court Judge and directed the Registrar of the Magistrate's Court to restore the right of way to the Applicant Petitioner Respondent. This appeal has been preferred against the said judgment.

The main point argued by the learned Counsel for the Respondent Respondent Appellant was that the learned High Court Judge had failed to consider the scene observation of the learned Primary Court Judge. Further the Appellant's argument was that the Petitioner Respondent has not adduced any exceptional circumstances before the learned High Court Judge.

In this regard I wish to cite the following authority :

**In Devi Property Development (Pvt) Limited and another vs Lanka Medical (Pvt) Limited** C.A. 518/1 decided on 20.06.2001. It was held "*Revision is an extra ordinary jurisdiction vested in Court to be exercised under exceptional circumstances if no other remedies are available.*"

**In Kanakalingam vs Jeatheswaran and others** 2009 1 SLR 152 it was held "*The Primary Court not deciding an issue finally whatever the order that a Primary Court Judge shall make would be temporary nature*".

In this case I note in the High Court the Applicant Petitioner Respondent has not established any exceptional circumstances which constituted grave miscarriage of justice to revise the impugned order of the learned Primary Court Judge. The Petitioner Respondent has not specifically elaborated how the impugned order of the primary Court Judge is illegal and no alternative remedies. It is a well established principle that the party who has an alternative remedy can invoke revisionary jurisdiction of a appellate court only upon establishment of exceptional circumstances. The Applicant Petitioner Respondent had not established exceptional circumstances in the High Court.

I am of the view, the learned High Court Judge has not properly considered the above laid down principles.

Further I note that the learned High Court Judge has not given due consideration to the Magistrate's scene observation. The learned Magistrate had visited the disputed land for a inspection and recorded his observation. In his observation observes that there is no other gate or opening along the said road. Further the learned Primary court Judge has correctly observed the disputed passage is only used to enter into the house of the Appellant. Therefore my opinion is that the learned Primary Court Judge has correctly adjudicated the dispute.

I am of the view that the learned High Court judge's order dated 2008.07.29 is contrary to law and the facts in this case. Therefore the learned High Court Judge's order amounts to an error in law.

I have gone through the proceedings before the High Court and note that the Applicant Petitioner Respondent has not established an exceptional circumstances in the High Court. The learned High Court Judge has not properly considered this matter. In the circumstances the court holds that the learned High Court Judge is in error when he decided to set aside the judgment of the learned Primary Court Judge.

If the Appellant is dissatisfied with the decisions of the learned Magistrate he could have filed a court case in the District Court.

For the above reasons I set aside th judgment of the learned High Court Judge dated 2008.07.29 and affirm the order of the learned Primary Court Judge dated 17.10.2007.

Appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEA

Salam J.,

I agree.

JUDGE OF THE COURT OF APPEAL.