

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

C.A. (PHC) 173/2004

PHC Ratnapura Case No.H.C.R./R.A.121/2002

M.C. Ratnapura Case No.71314

H.K. Ranmali
Ihala Bopitiya
Idikatiya,
Palmadulla.

Petitioner

-Vs-

P. Premawathi
Ihala Bopitiya
Idikatiya,
Palmadulla.

Respondent

C.A. (PHC) 173/2004 - PHC Ratnapura Case No.H.C.R./R.A.121/2002
M.C. Ratnapura Case No.71314

BEFORE : K.T. CHITRASIRI, J. &

MALINIE GUNARATNE, J.

COUNSEL : Kushan Illangatillake for the Petitioner-Appellant.

Sandamal Rajapakshe for the 1st Party Respondent-
Respondent.

ARGUED &
DECIDED ON : 02.10.2014.

K.T. CHITRASIRI, J.

Heard both Counsel in support of their respective cases. This is an appeal seeking to set aside the order dated 29.07.2004 of the learned High Court Judge and also to have the orders dated 06.11.2001, 23.04.2002 and 01.10.2002 of the learned Magistrate of Ratnapura vacated. Basically, the contention of the appellant is to intervene as a party to the action filed in the Magistrate's Court of Ratnapura under Section 66 of the Primary Court Procedure Act No.44 of 1979. Both the High Court Judge and the Magistrate have refused to allow the application to intervene made by the appellant.

The application for intervention had been made by the affidavit dated 24.09.2002 and it was supported on 01.10.2002. (Vide at pages H16 to H18 in the appeal brief) Upon the application being supported on 01.10.2002, learned Magistrate has made order declining to allow the application for intervention since the final order had already been delivered in that case by then. It had been delivered on 23.04.2002. Therefore, it is clear that this application for intervention had been made in the month of October 2002 whereas the case had been concluded in the month of April 2002.

Section 66 (4) of the Primary Court Procedure Act requires the Primary Court Judge to cause a notice to be affixed on the land which is the subject matter of the dispute requiring any person interested to appear in Court on the date specified in such a notice. Having perused the record, it is evident that the Magistrate has complied with the direction found in that Sub Section (4) and has made order on 04.09.2001 to affix the notice as specified therein. The appellant has failed to respond to the said notice affixed on the disputed land.

Moreover, the application for intervention had been made even after the final order had been made by the learned Magistrate. Hence, it is clear that the learned Magistrate has correctly refused the application for intervention by the appellant since it had been made after the conclusion of the case. Learned High Court Judge too has considered this aspect and has made order rejecting the revision application filed to challenge the aforesaid order of the learned Magistrate.

We do not see any error on the part of the two Judges in refusing the application for intervention. For the aforesaid reasons, this appeal is dismissed with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

MALINIE GUNARATNE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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