

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

CA (PHC) No. 160/2003

PHC.RATNAPURA CASE NO.HCR/RA.13/97
PRIMARY COURT,KALAWANA CASE NO. 17695

W.A. Abeywardane

Appellant

Vs.

Somapala Withanage

Respondent

C.A.(PHC) No.160/2003

PHC.RATNAPURA CASE NO.HCR/RA.13/97
PRIMARY COURT,KALAWANA
CASE NO.17695

BEFORE : **K.T.CHITRASIRI,J**
H.N.J.PERERA,J
W.M.M.MALANIE GUNARATNE,J

COUNSEL : Chathura Galhena with Ms.Manoja Gunawardane for the
2nd Party Petitioner-Appellant

Rohan Shabandu P.C. with Indrajith Wettasinghe for
the 1st Party Respondent-Respondent

ARGUED &
DECIDED ON : 12.05.2015

K.T.CHITRASIRI,J

His Lordship the President of the Court of Appeal has nominated this Divisional Bench to hear and determine this appeal since there exist two decisions of this Court opposing to each other, on the question of law raised in the appeal filed in this case. The question of law so raised is the only question of law mentioned as a ground of appeal in the petition of appeal filed and it reads as follows:

“Does the Primary Court Judge has jurisdiction to make a mandatory order directing to perform a positive act in terms of the provisions contained in the Primary Courts’ Procedure Act No.44 of 1997”.

Learned President's Counsel for the respondent submits that no such mandatory order had been made by the learned Primary Court Judge in this instance.

We have looked at the impugned order dated 27.12.1996 of the learned Primary Court Judge and it reads thus:-

“ ඒ අනුව අඩි 5 ක් පළලට ආරවුල් මාර්ගයේ පරවශනා නිමිකම 1 වෙනි වගුවත්තරකරුව නිමි කරන අතර ඔහුගේ එකී පරවශනා නිමිකමට 2 වෙනි වගුවත්තරකරු හෝ ඔහුගේ සේවක නියෝජිතාදීන් වසින් ප්‍රචිත අධිකරණයක නියෝගයක් හෝ අවසාන තීන්දුවක් මගින් මස කිසිම අවහිරක් හෝ බාධාවක් නොකළ යුතු බවටත් වැඩිදුරටත් නියෝග කරමි.

(Vide at page H45 of the appeal brief)

The order referred to above clearly show that the learned Primary Court Judge has made an order in respect of a right of the 1st Party respondent-respondent. Therefore, it is an order made in terms of Section 69(1) of the Primary Courts' Procedure Act No.44 of 1979.

By looking at the manner in which the aforesaid order had been made, it is clear that no mandatory order as such had been made by the learned Primary Court Judge directing a party to perform a particular act.

In the circumstances, it is our view that the only question of law that had been raised in the petition of appeal cannot be sustained since no

mandatory order had been made in this instance. Therefore, this appeal shall stand dismissed.

In view of the order referred to above, both Counsel submit that it is not necessary for this Court to consider the question of law referred to above. Therefore, we are not making any order as to the jurisdiction of the Primary Court to make a mandatory order under the provisions of the Primary Courts' Procedure Act.

For the aforesaid reasons, this appeal is dismissed. No costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

H.N.J.PERERA, J

I agree

JUDGE OF THE COURT OF APPEAL

MALINIE GUNARATNE, J.

I agree

JUDGE OF THE COURT OF APPEAL