

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

In the matter of an Appeal in terms of Article 138 of the constitution read with Section 9 & 10 of the Provincial High Court (Special Provisions) Act No. 19 of 1990.

**CA(PHC) 125/2004  
PHC-MATARRA-179/2004**

Officer In Charge,  
Police Station,  
Mawarala.

**Plaintiff**

**Morawake Magistrate Court  
No:17605**

**Vs.**

Atapattu Madugodage Karunapala,  
Murugahawelawatta,  
Galatamba,  
Deyandara.

**1<sup>st</sup> Party**

Atapattu Madugodage Somapala,  
Galatamba, Deyandara.

**2<sup>nd</sup> Party**

**AND**

Atapattu Madugodage Somapala,

Galatamba,  
Deyandara.

**2<sup>nd</sup> Party – Petitioner**

**Vs.**

Atapattu Madugodage Karunapala,  
Murugahawelawatta,  
Galatamba,  
Deyandara.

**1<sup>st</sup> Party – Respondent**

Officer In Charge,  
Police Station,  
Mawarala.

**Plaintiff – Respondent**

**AND**

Atapattu Madugodage Somapala,  
Galatamba,  
Deyandara.

**2<sup>nd</sup> Party – Petitioner –  
Appellant**

**Vs.**

Atapattu Madugodage Karunapala,  
Murugahawelawatta,  
Galatamba,  
Deyandara.

1<sup>st</sup> Party - Respondent

Respondent  
Officer In Charge,  
Police Station,  
Mawarala.

Plaintiff - Respondent -

Respondent

**Before : W.M.M.Malinie Gunarathne, J**  
**: P.R.Walgama, J**

**Counsel : 2<sup>nd</sup> Party - Petitioner - Appellant is absent and  
unrepresented.**  
**: Shantha Karunadheera for the 1<sup>st</sup> Party Respondent.**

**Argued on : 28.04.2015**

**Decided on: 28.09.2015**

**CASE - NO - CA - (PHC) -125/ 2004 - JUDGMENT- 28.04.2015**

**P.R.Walgama, J**

The instant appeal lies sequent to the order of the Learned High Court Judge dated 22.06.2004 in the Revision Application bearing No. 179/2002.

The Second Party Petitioner (herein after sometimes called and referred to as the Petitioner) made an application invoking the revisionary jurisdiction of the Provincial High Court of Matara to have the order of the Learned Magistrate of Moreawake, in the case bearing No. 17605, vacated/set aside.

The facts germane to the instant appeal are as follows;

By the document marked P1 the police had filed an information in court under Section 66 (1)(a) of the Primary Court Act No. 44 of 1979, of a dispute in respect of a land, and as a result there is a breach of the peace is threatened or likely to occur. According to the said information the police observed that about 6 trees had been removed which were in the common boundary. Thereupon the court issued notice on the parties to appear in court, on 31.08.2001. In response to the said notice the parties made their appearance in court and filed the affidavit respectively. After perusing the affidavits and the documents marked there with the Learned Magistrate has made the said impugned order to maintain the common boundary as it was, before the alleged dispute arose, and resolve the boundary dispute through a competent court.

The Learned Primary Court Judge has in his said impugned order had adverted to the facts emerged from the affidavits of the parties. In that it is stated that the alleged dispute relates to a common boundary of the lands of the Petitioner and the

Respondent. It is apparent that the said dispute had arisen as the Respondent had removed the fence which was in the common boundary. It is position of the Petitioner that the said fence was existing for the last five years and on or about 24.08.2001 the Respondent had removed the said fence. It was the contention of the Respondent that the Petitioner was trying to encroach his land by erecting the said fence. The Learned Primary Court Judge has placed much reliance on the exhaustive report filed by the police, and was convinced of the fact that the Respondent has removed the fence that was existing for the last five years.

The Learned Primary Court Judge considering facts as stated above was of the view that the alleged dispute arose due to the act of removing the fence by the Respondent and has made order to the effect that the parties should maintain the said boundary as the common boundary, till the said dispute is resolved by a competent court.

Being aggrieved by the said order the 2<sup>nd</sup> party Respondent-Petitioner has made an application by way of a Revision against the determination of the Learned Primary Court Judge and moved inter alia to have the said order vacated or revised.

The Learned High Court Judge by his order dated 22.05.2004 has extensively analyzed the order of the Learned Primary Court Judge and was of the view that it does not attract the existence of exceptional circumstances which is a mandatory requirement for the

exercise of the Revisionary powers of the High Court. Hence in the said back drop the Learned High Court Judge has dismissed the Revision application accordingly.

Being aggrieved by the said order of dismissal, of the Revision application of the Petitioner- Appellant. has appealed to this Court to have the said impugned order of the Learned High Court Judge dated 22.06.2004 and the Learned Primary Judge dated 08.02.2002 vacated and set aside.

On the day this case was fixed for argument it was noted that the 2<sup>nd</sup> Party- Respondent- Petitioner- Appellant was absent and unrepresented. Hence this court heard only the submissions of the Counsel the 1<sup>st</sup> Party- Respondent - Respondent in respect of the instant appeal.

It was contended by the Counsel for the Respondent that Petitioner- Appellant by removing about six trees which was in the common boundary, the alleged dispute arose and the balance trees which were in the common boundary are in tact, thus it is established that said boundary should exist till a competent court decides the correct common boundary between the lands of the Appellant and the Respondent. Therefore it is abundantly clear that the matter to be resolved is only the common boundary and same has to be determined by a competent court.

Therefore in the above setting this Court see no reason to interfere with the finding of the Learned High Court Judge and the Learned Magistrate as stated above.

Thus in the above exposition of the facts stated above I am of the view the learned High Court Judge and the Learned Magistrate has identify the core issue in the correct perspective in holding that, the matter regarding the common boundary should be resolved by competent court having jurisdiction to do so.

Hence I hold that the appeal is devoid of merits and should stand dismissed.

Accordingly appeal is dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malinie Gunarathne, J

I agree.

**JUDGE OF THE COURT OF APPEAL**