

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

In the matter of an application in
terms of Article 138 and read with
Article 154 P (6) of the Constitution
of the Democratic Socialist Republic
of Sri Lanka.

Officer in Charge,
Minor Offences Complaints Unit,
Police Station,
Ratnapura.

Applicant

**Court of Appeal
(PHC) Case No. 62/2005
PHC Ratnapura 92/2002**

VS

1. Galthotage Sirineris,
Devalayagawa,
Ratnapura.
2. Bandula Kankanamlage Channa
Thushara Douglas,
No.110,
Badugabadawa Para,
Ratnapura.

Parties

3. D.M. Jayawardane,
No. 94,
Palitha Stores,
Badugabadawa Para,
Ratnapura.

Intervenient Party.

Bandula Kankanamlage Channa
Thushara Douglas,
No.110,
Badugabadawa Para,
Ratnapura.

2nd Party-Petitioner

VS.

Galthotage Sirineris,
Devalayagawa,
Ratnapura.

1st Party-Respondent

02. D.M. Jayawardane,
No.94,
Palitha Stores,
Badugabadawa Para,
Ratnapura.

Intervenient Party-Respondent

03. General Manager, Railways,
Colombo 10.

Respondent

And / other

Bandula Kankanamlage Channa
Thushara Douglas,
No. 110,
Badugabadawa Para,
Ratnapura.

2nd Party-Petitioner-Appellant

VS.

01. Galthotage Sirineris,
Devalayagawa,
Ratnapura.

1st Party-Respondent- Respondent

02. D.M. Jayawardane,
No.94,
Palitha Stores,
Badugabadawa Para,
Ratnapura.

**Intervenient Party-Respondent -
Respondent**

03. General Manager, Railways,
Colombo 10.

Respondent-Respondent

**BEFORE: W.M.M. Malinie Gunaratne, J. and
P.R. Walgama, J.**

COUNSEL: Appellant was absent and unrepresented

N. Unamboowe ,D.S.G.
for 3rd Respondent.

Argued on : 16.06.2015

Written submissions filed on : 07.09.2015

Decided on: 30.11.2015.

Malinie Gunaratne, J.

In this appeal the Appellant among other reliefs is seeking to set aside the Order of the learned High Court Judge of Ratnapura dated 08.12.2004.

The facts which led to the making of the said order by the High Court are as follows:

Pursuant to an information filed by Ratnapura Police in terms of Section 66 of the Primary Procedure Act, the learned Primary Court Judge of Ratnapura held an inquiry into the dispute between G. Sirineris (1st party Respondent-Respondent), Thushara Douglas (2nd Party Petitioner - Appellant) and D.M. Jayawardena (Intervenient 3rd Party Respondent - Respondent) in respect of a roadway and held that the 1st Respondent has the right to use the roadway and ordered the 2nd Party to remove all obstructions placed across the road.

Further he rejected the claim of the 2nd and 3rd Respondents in regard to the possession of the land.

Dissatisfied with that Order the 2nd Party - Petitioner-Appellant invoked the Revisionary jurisdiction of the High Court of Ratnapura, seeking to set aside the learned Magistrate's Order.

The learned High Court Judge having considered the submissions made by both parties affirmed the learned Magistrate's Order and dismissed the Petition. For the first time the Appellant had brought the General Manager of the Railway Department to the case as the 3rd Respondent.

The Appellant being aggrieved by the aforesaid Order preferred an appeal to this Court seeking to set aside the order made by the learned High Court Judge, dated 08.12.2004.

The case for the appellant was that he has been in possession of a land belonging to the Railway Department for more than 10 years and has planted Banana, and flowers. Sirineris (1st Respondent) has been using a roadway across the said land. To protect the plantation, with the approval received from the Railway Department he took steps to erect a fence. Some unknown people had removed the fence and the 3rd Respondent was excavating the side of the road to construct a drain obstructing the roadway. He made complaints to the police on 27.04.2002, 17.05.2002 and 22.05.2002 to the effect of the aforesaid incidents. In the meantime, Sirineris had made a complaint to the police on 09.11.2002 alleging that the appellant is obstructing the roadway by putting sand and bricks. The learned Primary Court Judge has proceeded to treat the dispute under Section 69(1) as to who was entitled to the right to use the disputed roadway. It requires the Court to determine the question as to which party is entitled to the disputed right preliminary to making an order under Section 69 (2) of the Act.

In this case, the Primary Court Judge was called upon to reach a decision on the affidavits filed. After considering the contents in those affidavits the Primary Court Judge held, that the 1st Respondent has the right to use the roadway and ordered to remove all obstructions placed across the road. The claim of the 2nd and 3rd Respondents in regard to the possession, was dismissed.

It is an admitted fact by all parties that the disputed roadway belongs to the Railway Department. However, the Appellant has claimed that he has been in possession of the land for more than 10 years, and the 3rd Respondent has claimed that he has been in possession for about 15 years.

Having considered the contents of the affidavits and the documents filed by the parties, the learned Magistrate has, rejected the claim made by the Appellant and the 3rd Respondent for the land as they were not able to produce a valid permit or written authority to possess the land. However, the learned Magistrate has held that the 1st Respondent has the right to use the disputed roadway and ordered the 2nd Respondent to remove all obstructions placed across the road. Undoubtedly, this order has been made by the learned Primary Court Judge in terms of the provisions of Section 69(1) and (2) of the Primary Court Procedure Act.

On perusal of the entirety of the judgment of the learned High Court Judge, it is apparent that the learned High Court Judge has taken into consideration the submissions made by all parties and has come to the conclusion that there is no basis to interfere with the Order made by the learned Primary Court Judge.

Hence, I do not see any error in which the learned High Court Judge has considered the facts and the way in which he has applied the law in this instance.

There is no reason to interfere with the judgment of the learned High Court Judge of Ratnapura. Accordingly the appeal is dismissed with costs.

It is relevant to note in the prayer of the Petition of Appeal, the Appellant has not sought to set aside the order made by the learned Primary Court Judge and therefore the said Order would prevail.

For the reasons stated above the appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed with costs.