IN THE COURT OF APPEAL OF THE DEMOCRATICE SOCIALIST REPUBLIC OF SRI – LANKA.

An application made under the provisions of sections 138 and 154 (g) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Officer In Charge,
Minor Complaints Unit,
Kegalle.

CA(PHC) 07/2006

Keglle MC No: 36660/04

Keglle PHC No: 2036/Rev.

Plaintiff

Vs.

1. W.D. Leelawathie,
   Kegalle,
   Karapalagala.

2. M.U. Wijeratne Menike alias W.P Wijeratne Menike,
   Karapalagala,
   Kegalle.

3. Ranasinghe Arachchige Punchi Banda,

Respondents

AND

1. M.U. Wijeratne Menike alias W.P Wijeratne Menike,
   Karapalagala,
   Kegalle.
2. Ranasinghe Arachchige Punchi Banda,

2nd & 3rd Respondents – Petitioners

Vs.

1. Officer In Charge,
   Minor Complaints Unit,
   Kegalle.

2. W.D. Leelawathie,
   Karapalagala,
   Beragala Road,
   Kegalle.

1st Respondent 2nd Respondent – Respondent

AND NOW BETWEEN

W.D. Leelawathie,
Karapalagala,
Beragala Road,
Kegalle.

1st Respondent 2nd Respondent – Appellant

Vs.

1. M.U. Wijeratne Menike alias W.P Wijeratne Menike,
   Karapalagala,
   Kegalle.

2. Ranasinghe Arachchige Punchi Banda,

2nd Respondent 3rd Respondent – Respondents

3. Officer In Charge,
   Minor Complaints Unit,
   Kegalle.

1st Plaintiff – Respondent – Respondent

Before : **W.M.M.Malinie Gunarathne, J**

: **P.R.Walgama, J**

Counsel : **Appellants was absent and unrepresented.**

: **Rohana Deshapriya, Chanakya Liyanage of Nipuna Gunasena for 2nd & 3rd party Petitioner – Respondents.**

Argued on : 16.07.2015

Decided on: 14.01.2016

CASE-NO- CA (PHC) 07/ 2006- JUDGMENT - 14.01.2016

P.R.Walgama, J

This appeal is directed against the order dated 06.12.2005 of the Learned High Court Judge of Kegalle in the Revision Application made by the 1st to 3rd Respondents, and to make order affirming the order of the Learned Magistrate dated 22.03.2004.

The facts need mention in brief to appreciate the issue involved in this appeal are as follows;

On 05.01.2004 the Officer in charge of the Kegalle Police filed an information report in terms of Section 66 of the Primary Court Act No. 44 of 1979 in respect of a land dispute which has threatened the breach of the peace or likely to occur the breach of the peace.

The said information was tendered to court in pursuant to a complaint made by the 2nd Party Respondent against the 1st Party Respondent for obstructing the road way used by the party of the 2nd Part Respondent.

The 2nd Party – Respondent made a statement to the Police, stating that the 1st Party – Respondent had obstructed his road way. The 1st Party – Respondent – Appellant has made a complaint on 18.11.2003 to the said effect and the 1st Party – Respondent has made a complaint of a assault by the 2nd Party – Respondent.

The Learned Magistrate in the above said impugned order has arrived at the conclusion that, as stated in the affidavits tendered by the parties, do not reveal a land dispute which has threatened the breach of the peace, and as such has held that, the circumstances do not warrant to make order in terms of Section 66 of the Primary Courts Act. But it is quite apparent from the complaint made by the 2nd Party-Respondent, that the 1st Party – Respondent –Appellant had obstructed his road way. In the above setting it is ostensible that there had been a land dispute which has culminated to a breach of the peace. Hence the materials on record as a whole, has established, that the Learned Magistrate necessarily should have made an order, deciding the dispute, which he has failed to do. Therefore this Court is of the view that the impugned order of the Learned Magistrate is unmeritorious and should be set aside.

Being aggrieved by the said impugned order, the 2nd Party-Respondents- Petitioners had made an application by way of

revision to the Provincial High Court of Kegalle to have the said order set aside or vacate.

The Respondents – Petitioners had assailed the said order on the basis that the Learned Magistrate has failed to consider and make an order in terms of Section 69 of the above Act, as the dispute relates to a road way, and there by made an erroneous order which is detrimental to the Petitioners.

The Learned High Court Judge in deciding the above issue was of the view that the 1st Party – Respondent – Appellant has obstructed the road way that was used by the Petitioners and therefore the Learned Magistrate should have made an appropriate order in terms of Section 69 of the above Act.

In considering the facts placed before the Learned High Court Judge, was convinced of the fact that the Petitioners had been using the alleged road way.

Being aggrieved by the said order of the Learned High Court Judge, the 1st Party – Respondent –Appellant has preferred the instant appeal seeking to set aside the said order, and to affirm the order of the Learned Magistrate.

Although the 1st Party – Respondent – Appellant has lodged this appeal, did not appear in Court on the date the case was fixed for Argument. But nevertheless has paid the brief fees, but not obtained the brief. Therefore this Court had the opportunity to appreciate the argument of the counsel for the 2nd and 3rd Party – Respondent – Petitioner – Respondents.

The counsel for the Petitioners – Respondents has contended in the written submissions that according to the Affidavits and the

other documents which are marked as V1 to V14 and the Inspection Report of the Police clearly indicate that the Respondents had been using the alleged road way.

The Respondents had also adverted Court to the fact that the 1st Party – Respondent – Appellant has made reference to the said road way which has been used by the Respondents.

As the disputed matter relates to a road way, the Counsel for the Respondents had taken this Court through the legal propositions adumbrated by the judicial pronouncement as stated herein below.

It was observed in the case of DAMMADHINNA SARATH PARANAGAMA .VS. KAMITHA ASWIN PARANAGAMA- CA-(PHC)- APN 117/2013, that there are two ways in existence of a such a road can be proved in the Primary Court, They are;

1. By adducing proof of the entitlement as is done in a Civil Court,
2. By offering proof that he is entitled to the right for the time being.

It was further held that "if you described a party as being entitled to enjoy a right but for the time being, it means that it will be like that for a period of time, but may change in the future" (emphasis added).

In the case of R. MALKANTHI SILVA .VS. L.G.R.N. PERERA-CA (PHC) 78/2008 – in recognising the cardinal principle laid down in the case of RAMALINGAM .VS. THANGARAJAH (1982) 2 - SLR – 693, and was of the view that any right claimed under

Section 69(1) which deals with servitude rights need not lead evidence to prove the same

In the above exposition of the facts and thee legal matrix, I am of the view that the Learned High Court Judge has arrived at the above determination in the correct perspective, hence the appeal should stand dismissed.

Appeal is dismissed accordingly.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL