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

C.A. PHC No. 43/06

H.C. Panadura 78/2004(Rev)

M.C.Panadura No.34667

The Officer in Charge

Police Station, Panadura

Complainant

Vs

1. W. Somapala
2. P.D. Perera
3. U. M. Wilbert

Party of the 1st Part.

W.Wickremasinghe

Party of the 2nd Part

1. W.A. Wimaladasa
2. W. Sumanawathie
3. W.M. Gunawathie

Intervenient Parties of the Party of the 1st Part

1. L.I. De Silva
2. A. Kularatne
3. H.S.S.Dewa Alwis
4. W.A. Jayasinghe
5. W.A. Kusumawathie
6. W.A. Sumithra

Intervenient Parties of the Party of the 2nd Part

1. G.D Perera
2. U.M. Wilbert
3. M.M.Wimaladasa

4. M.M.Gnawathie

2nd & 3rd Parties and 1st and 3rd Intervenient Parties of theParty of the 1st Part Petitioners

Vs

1. W. Somapala
   First (named) Party of the 1st part Resondent
2. W.A. W. Perera
   Party of the 2nd Part Respondent

3. L.I.De Alwis and 8 others

Intervenient Parties of the party of the 1st Part Respondent

AND NOW

W. Somapala of 41/1 Thuduwamulla Road, Mahaambalangoda

First (named) Party of the 1st Part

Respondent Appellant

Vs

1. G.D. Perera & 3 others
   2nd & 3rd parties and 1st & 3rd Intervenient parties of the Party of the 1st Part Petitioners Respondents

1. W. Sumanawathie Mallika

Intervenient Party of the 1st Part Respondent-Respondent

2. W. A. W. Perera

Party of the 2nd Part-Respondent Respondent

L.I.De Alwis and 5 others

Intervenient parties of the party of the 2nd Part respondent-Respondents

BEFORE : Deepali Wijesundera J.,

M. M. A Gaffoor J.,

COUNSEL: E.M.D.Upali with K.B.K. Umadevi for the 1st Part Respondent Appellant

Pubudu de Silva with S.H.U. Amarawansha for the 2nd & 3rd Parties and 1st & 3rd Intervenient Petitioners of the Party of the 1st Party Petitioner Respondents

ARGUED ON: 02.10.2015

DECIDED ON : 11.03.2016

Gaffoor J.,

This is an appeal from the Judgment of the learned High court Judge of Panadura dated 09.03.2006 arising from a Revision application filed in the High Court of Panadura from the rectifications effected by the learned Magistrate to his original order made under section 68(3) of the Primary Court Procedure Act.

The background facts relating to the instant appeal repeated from the appeal brief is as follows :

The appellant lodged a complaint to the Panadura Police station alleging that certain Wickramsinghe Perera removed and/or broken his concrete fence which was erected on his land. Having entertained his complaint the police recorded the statement of relevant persons by launching an inquiry on this matter and initiated proceedings under Section 66(1)(a) of the Primary Courts Procedure Act informing the court that there was a dispute affecting the land in dispute which was likely to lead to a breach of peace between the parties.

The learned Magistrate ordered notice to be affixed on the disputed land and called for an observation report as to the said land from the Panadura Police on 29.10.2003, the 1st to 3rd named Intervenient Parties of the Party of the first Part and the 1st and 3rd named Intervenient Parties to the Party of the 2nd Part and on 25.11.2003, the 4th to 6th named Intervenient Parties of the Party of the second Part Intervened in the said case.

The parties availed filing affidavits, counter affidavits, submissions and accordingly the learned Magistrate fixed the case for order and the same was delivered on 08.09.2004 holding the real dispute in this case ensued between

Welhenage Somapala and Wickremasinghe Perera (who were the appellant and the Party of the 2nd Part-Respondent-Respondent abovenamed respectively) and therefore directing the Party of the first Part be restored to possession and also prohibiting all disturbances to such possession.

An ambiguity seriously felt by the appellant in the said order in relation to the terms "Party of the first Part" and "Parties of the first Part as used in some places of the said order, the appellant who was affected by the said ambiguity made an application by way of motion dated 14.10.2004 seeking to ascertain the real meaning intended by the learned Magistrate in the said order. The learned Magistrate thereupon issued notice on all parties returnable on 02.11.2004 for consideration of the said application in the presence of all parties.

On 02.11.2004 the learned Magistrate took up the matter before all parties who were present in court and having found the use of the term "Parties of the first Part" for "Party of the first Part" in some places of the said order was *per in curiam,* forthwith rectified the term "Parties of the first Part" to read as "Party of the first Part" and explained it to all parties in open Court.

Being aggrieved by the said rectification effected by the learned Magistrate on 02.11.2004 to his original order dated 08.09.2004, the 2nd and 3rd Parties and 1st and 3rd Intervenient Parties of the Party of the 1st Part – Petitioners-Respondents made an application to the High Court of Panadura to have restored the original order made by the learned Magistrate dated 08.09.2004 to it former state as it was before effecting the said rectifications.

After service of the notice, the parties appeared in the High Court of Panadura filed their objections, counter affidavits and their written submissions respectively. Thereafter the learned High Court Judge of Panadura delivered her Judgment on 09.03.2006 holding that the rectifications effected by the learned Magistrate to the original order were contrary to law; and directing that the said rectifications be removed from the said original Order and further directing the said Order to be effective in the same manner as it before such rectifications.

Being aggrieved by the said Judgment of the learned High Court Judge of Panadura the Appellant has appealed to this court notwithstanding the factual situation obtaining in the original case the parties in the instant appeal have conceded that the core issue is the rectifications.

It would appear that the original order of the learned was not frustrated by the impugned rectification by merely inserting the correct parties. It is also admitted by the parties in the appeal that before the rectifications the learned Magistrate duly issued notice on all parties returnable on 02.11.2004 for the consideration of application for the said rectifications and thereafter the said rectifications were effected in the presence of all parties of the case. It is also elicited fact that all other persons of the first Part had nothing to do with real dispute between Welhenage Somapala and Wickremasinghe Perera.

The appellant averred in his written submissions that the rectifications effected by the learned Magistrate is a correction of typographical error whereas the respondent submitted that the rectifications are defects left by an over sight. However, it was submitted that there was a correction which was done by the learned Magistrate in his original case.

It is settled law that every court of justice in the course of its administration of justice has a bounden duty to correct its own order in the exercise of *ex mere moto* in case of procedural unfairness resulted in serious injustice or prejudice caused to the appellant by the court.

The learned Magistrate would discharge his functions in terms of justice and guiding principles of law and thereby his duty inferred from section 114 of the Evidence Ordinance and also in the case of Silinona vs Dayalal Silva (i) the court applied the maxim that an act of a court cannot prejudice a party (*Actus curiae neminem gravabit).* It is also assumed by this court that the learned Magistrate had acted rectifying his original order in the same footing. In the case of Billmoria vs Minister of Land & Land development (2) court is empowered to correct the errors committed by inadvertence, forgetfulness or oversight which is brought to notice of the court.

In the case of Gunasena vs Bandaratilake (3) where Wijetunga J, held that *"The authorities ..... clearly indicate that a court has inherent power to repair an injury caused to party by its own mistake. Once it is recognized that a court would not allow a party to suffer by reason of its own mistake, I must follow that corrective action should be taken as expeditiously as possible within the framework of the law to remedy the injury caused thereby. The modalities are best left to such court and would depend on the nature of the error."*

The Judgment of All Ceylon Commercial & Industrial Workers Union vs Ceylon Petroleum Corporation and another (4) the Supreme Court held that

court has inherent powers to correct its errors which are demonstrably and manifestly wrong and where it is necessary in the interest of justice. In the other case Esabella Perera Hamine vs Emalia Perera Hamine (5) the court held that "the courts are often faced with situations where they are obliged to act in *debite justitiae* to do that real and substantial justice for the administration of which alone the courts exist. A Judge will not fold his hands and allow rank injustice to be done just because no rule of procedure is available....."

The court also perused two cases namely Abeysekera vs Haramanis et el (6) and *Sootihamy vs Charles et el (7)* cited by the counsel for the Defendants in the written submissions will not apply to the facts of the instant appeal inasmuch as the situations arose in those cases and the present appeal are entirely different from each other.

The reasons set out by the learned High Court Judge in his Judgment to set aside the rectifications effected by the learned Magistrate appears to be neither supportive nor sustainable to enable the revisionary jurisdiction exercised by the High Court Judge.

For the reasons stated the court considers no error of law in the order for the rectifications effected by the learned Magistrate on 2.11.2014. As such the

learned High Court Judge has not properly considered this matter. In these circumstances I hold that the learned High Court Judge was in error when he decided to set aside the order of the rectifications effected by the learned Magistrate to his original order.

For the above reasons, we set aside the judgment of the learned High Court Judge dated 09.03.2006 and affirm the order of the learned Magistrate dated 02.11.2004.

Appeal is allowed without costs.

JUDGE OF THE COURT OF APPEAL

Wijesundera J.,

I agree.

JUDGE OF THE COURT OF APPEAL