

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

In the matter of an appeal made under
Article 154P (6) of the Constitution
read with Section 2 of the High Court
of Provinces (Special Provisions) Act
No.19 of 1990.

Dunuwita Liyange Chandrika
Nearby the School, Mahawila
Haburugala.

Petitioner

**CA (PHC) 50/2008
HC Balapitiya (Rev) 615/04
Magistrates Court of Elpitiya
Case No. 16920.**

VS.

D.Wijesinghe (Party in default)
Nearby the School, Mahawila,
Haburugala.

Kalumuni Himali (Intervening Party)
Nearby the School, Mahawila,
Haburugala.

Respondents

AND

Kalumuni Himali (Intervening Party)
Nearby the School, Mahawila,
Haburugala.

Respondent - Petitioner

VS.

Dunuwita Liyange Chandrika,
Nearby the School, Mahawila,
Haburugala.

Petitioner – Respondent

AND NOW BETWEEN

Kalumuni Himali (Intervening Party)
Nearby the School, Mahawila,
Haburugala.

Respondent-Petitioner-Appellant

VS.

Dunuwita Liyange Chandrika,
Nearby the School, Mahawila,
Haburugala.

Petitioner-Respondent-Respondent

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

COUNSEL : Appellant was absent and unrepresented.

W. Dayaratne, P.C. with R. Jayawardena
For Petitioner – Respondent – Respondent.

Argued on : 10.08.2015

Written submissions

filed on : 26.10.2015

Decided on : 19.01.2016

Malinie Gunaratne, J.

Persuant to an Affidavit filed by the Petitioner – Respondent – Respondent (hereinafter referred to as the Respondent) in the Magistrate's Court of Elpitiya in terms of Section 66 of the Primary Court Procedure Act, the learned Primary Court Judge held an inquiry into the dispute between Respondent and Respondent-Petitioner-Appellant (hereinafter referred to as the Appellant) in respect of a roadway.

On 03.09.2004 the learned Magistrate held, that the Respondent has a right to the disputed roadway and therefore she is entitled to use it.

Being aggrieved by the said Order, the Appellant had preferred a Revision Application to the High Court of Balapitiya. The learned High Court Judge after having heard the submissions of Counsel for the respective parties, by his Judgment dated 26.06.2008 dismissed the Revision Application.

The Appellant has filed this Appeal seeking to set aside the said Judgment of the learned High Court Judge dated 26.06.2008.

When this case was taken up for argument on 10.08.2015, the Appellant was absent and unrepresented although notices had been issued on her and the registered attorney on several occasions. As such the Court heard only the arguments of the Counsel for the Respondent.

The salient facts relating to the dispute between the two parties are briefly set out as follows:

The Respondent has made a complaint to the Police against the Appellant's husband for obstructing the use of a roadway that she had been using for the past 19 years.

The contention of the learned President's Counsel for the Respondent was, the learned Magistrate has clearly addressed his mind to the issue and has accepted the version of the Respondent and held in favour of her.

In an inquiry where the dispute relates to any right to any land other than right of possession of such land, the question for decision, according to Section 69(1), is who is entitled to the right which is the subject of the dispute. The ambit and the operation of the law is clearly and unambiguously set out in the case of *Ramalingam vs. Thangarajah* (1982) 2 SLR 693. It was held the word "entitle" here connotes the ownership of the right".

In the instant case the learned Magistrate's view was, that the Respondent has a right to use the roadway in dispute and ordered the recently planted cinnamon plantation be removed.

The learned President's Counsel submitted that the learned Magistrate has correctly decided that the Respondent has a right to use the roadway in dispute. As such there were no valid grounds to disturb the findings of the learned Magistrate and the learned High Court Judge has correctly dismissed the Revision Application filed by the Appellant.

On perusal of the judgment of the learned High Court Judge, it is apparent that the learned High Court Judge has taken into consideration the

affidavits and documents filed by both parties in the Magistrate's Court and had come to the aforesaid conclusion.

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

It is relevant to note, that the Appellant has not sought to set aside the Order made by the learned Magistrate.

For the above stated reasons, I see no basis to interfere with the Judgment made by the learned High Court Judge. Accordingly, I affirm the Judgment of the learned High Court Judge dated 26.06.2008 and dismiss the Appeal.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed.