

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

In the matter of an appeal in the High Court of Balapitiya in Revision Application No: 445/02 in terms of Article 154P (3) (b) of the constitution.

**Court of Appeal  
Case No:  
CA (PHC) 248/2003**

Pathirage Daya Amarasinghe,  
Talagahawatta,  
Karadeniya.

High Court of  
Balapitiya  
Revision Application  
No: 445/02  
M.C. Balapitiya  
Case No: 72931

**Petitioner**

***Vs.***

01. Alagiya Hakuru Sopalin,  
Magala North,  
Uragasmanhandiya.

02. Ilandari Deva Somasiri,  
Magala North,  
Uragasmanhandiya.

03. Hewa Hakuru Leelawathie,  
Kandagoda, Hipankanda,  
Navadagala.

**Respondents.**

***AND***

Pathirage Daya Amarasinghe,  
Talgaswatta, Karadeniya.

**Petitioner - Petitioner**

***Vs.***

01. Alagiya Hakuru Sopalin,  
Magala North,  
Uragasmanhandiya.

02. Ilandari Deva Somasiri,  
Magala North,  
Uragasmanhandiya.

03. Hewa Hakuru Leelawathie,  
Kandagoda, Hipankanda,  
Navadagala.

**Respondents – Respondents**

**AND**

01. Alagiya Hakuru Sopalin,  
Magala North,  
Uragasmanhandiya.

02. Ilandari Deva Somasiri,  
Magala North,  
Uragasmanhandiya.

03. Hewa Hakuru Leelawathie,  
Kandagoda, Hipankanda,  
Navadagala.

**Respondents – Respondents –  
Appellants**

**Vs.**

01. Pathirage Daya Amarasinghe,  
Talgaswatta, Karandeniya.

**Petitioner – Petitioner –  
Respondent**

**Before : P.R.Walgama, J**  
**: L.T.B. Dehideniya, J**

**Counsel : parties are absent and unrepresented.**

**Argued on: 16.03.2016**

**Decided on: 11.07.2016**

CASE – NO- CA- (PHC)- 248/2003- JUDGMENT- 11.07.2016

**P.R.Walgama, J**

When this matter was taken up for argument parties were absent and unrepresented, nevertheless Court concluded the case as the parties and their Registered Attorneys were duly informed of the date fixed for argument.

The Respondent – Appellants has lodged the instant appeal against the order of the Learned High Court Judge dated 21.10.2003. The Petitioner filed a plaint in terms of Section 66(1)(b) of the Primary Court Procedure Act, complaining of a forceful entry to the paddy land in issue. It was the position of the Petitioner that she was placed in possession of the said paddy land by an order of the District Court.

After an inquiry the Learned Magistrate delivered his order on 18<sup>th</sup> November 1997, and handed over the said paddy land to the Petitioner. Being aggrieved by the said order the Respondents invoked the revisionary jurisdiction of the Provincial High

Court of Balapitiya to have the said order of the Learned Magistrate set aside. Pursuant to the said application the Learned High Court Judge revised the order of the Learned Magistrate and ordered a fresh inquiry in to the above application of the Petitioner.

Thereupon a fresh inquiry was held and the Learned Magistrate by his order dated 22.04.2002 has observed thus;

That the Petitioner has not mentioned in the application that there is a breach of the peace or there is likely hood of a occurring of the breach of the peace. Therefore without establishing the fact that there is a breach of the peace or there is a likely hood of the same the Court cannot exercise its jurisdiction to adjudicate on the said matter. The said rationale was observed in the case of VELUPILLAI .VS. SIVANANDAN- 1993 1 SLR - 123 and in the case of PUNCHINONA .VS. PADUMASENA (1994) 2 SLR- 117.

Therefore the Learned Magistrate was of the view that the petitioner has failed to established to satisfy the said requirement, for the Magistrate to exercise the said jurisdiction.

In addition to the afore said the Learned Magistrate has observed that the alleged dispute relates to a dispute in respect of a paddy land and any

dispute arising in relation to a paddy land should be resolved according to the provisions laid down in the Agrarian Services Act and Agrarian Development Act. (as observed in the case of MANSOOR .VS. OIC AVISSAWELLA)

Hence in the above context the Petitioner's application has been rejected accordingly.

Being aggrieved by the said order the Petitioner has moved the High Court in revision to have the said order of the Learned Magistrate said aside or vacate. The Learned High Court Judge by her order dated 21.10.2003 has revised the order of the Learned Magistrate and had allowed the application of the Petitioner.

Being aggrieved by the said impugned order of the Learned High Court Judge the Respondent - Appellant has appealed to this Court to have the said order vacated.

At the very outset it is salient to note that the order of the Learned Magistrate dated 22.04.2002 was on the basis that there is no apparent information of a breach of the peace and the alleged dispute is in respect of a paddy land such dispute should be resolved in terms of Agrarian development Act.

Thus in the above context this Court is of the view that the Learned High Court Judge has made the impugned order without any proper basis, which is repugnant to the afore said statutory provisions.

In the teeth of the afore said this court is of the view that the impugned order of the Learned High Court Judge should be set aside forthwith and give effect to the order of Learned Magistrate dated 22.04. 2002.

Registrar is here by directed to send a copy of the Judgment to the Magistrate Court Balapitiya.

Accordingly appeal is allowed.

We order no costs.

**JUDGE OF THE COURT OF APPEAL**

L.T.B. Dehideniya, J

I agree,

**JUDGE OF THE COURT OF APPEAL**