

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

David Wanniarachchi,
Marapona South, Rathnapura.

Ambagahage Watte Ganga Addara
Gunarathne Menike,
Marapona South, Rathnapura.

**Court of Appeal Case No.
CA (PHC) 196/2007**

**High Court Rathnapura
Case No. RA 46/2007**

**Magistrate Court
Rathnapura Case No. 50597**

**2nd and 3rd Party Respondents-
Appellants**

Vs.

Jayaweera Gamaathiralalage
Brahmanawatte Linton Jaayaweera,
Marapona, Ma-Udella, Rathnapura.

1st Party Petitioner Respondents

Before : P.R. Wlgama J.
: L.T.B. Dehideniya J.

Counsel : 2nd and 3rd Party Respondents Appellants absent and
unrepresented.
R.M.D. Bandara with M, de Silva for the 1st Party
Petitioner Respondent.

Argued on : 13.05.2016

Decided on : 14.07.2016

L.T.B. Dehideniya J.

This is an appeal from an order of the Learned High Court Judge of Rathnapura. The 1st Party Petitioner Respondent (Respondent) made a complaint to the police stating that access road to the land belonged to him was obstructed by the 2nd and 3rd Party Respondent Appellants (the Appellants). After investigation, the police filed a report in the Magistrate Court under section 66 of the Primary Court Procedure Act. The Magistrate Court after inquiry determined that the Respondent is entitle to a foot path. Being aggrieved by the said order, the Respondent moved in revision to the Provincial High Court of Rathnapua. The Learned High Court Judge set aside the order of the learned Magistrate and held that the Respondent is entitle for a right of way of 9 feet wide. Being dissatisfied with the order of the High Court, the Appellants presented this appeal. Although the notice of this appeal was served on the Appellants they were absent and unrepresented. Only the Respondent appeared and participated at the argument.

The Learned High Court Judge has come to the finding that the Respondent was using the disputed road as a 9 feet wide road. The police officer who visited the road way has reported to Court that the entry point of the read is about 10 feet and the place obstructed is 9 feet wide. Further observed that there were tire marks in the road. The barbed wire used to obstruct the road was new and the obstruction was a recent one.

Under section 69 of the Primary Court Procedure Act, Court has to determine who is entitle to the right. Under section 75 disputes affecting land includes any dispute as to any right in the nature of a servitude affecting the land. It has been held in the case of Ramalingam v Thangaraja [1982] 2 Sri L R 693 at 699 that;

On the other hand, if the dispute is in regard 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 subject of dispute. The word "entitle" here connotes the ownership of the right. The Court has to determine which of the parties has acquired that right, or is entitled for the time being to exercise that right. In contradistinction to section 68, section 69 requires the Court to determine the question which party is entitled to the disputed right preliminary to making an order under section 69(2).

In the present case the Learned High Court Judge has come to the finding that the Respondent is entitle to a road way of 9 feet wide. The evidence, the police inquiry notes, leads to the finding that the Respondent was using the disputed right of way as a 9 feet wide road. I see no reason to interfere with the finding of the Learned High Court Judge.

Accordingly the appeal is dismissed.

Judge of the Court of Appeal

P.R.Walgama J.

I agree.

Judge of the Court of Appeal