

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

In the matter of an Appeal made under Article 154(3) (b) of the Constitution of Sri Lanka, read with Section 11 of High Court of the Province (Special Provisions) Act No: 19 of 1990.

C.A. PHC 132/2005

Elpitiya M.C.

Case No: 4535

OIC

Police Station,

Elpitiya.

Plaintiff

Vs.

1. Warahena Liyanage
Ariyarathna,
Polwatta, Batuwanhena,
Elpitiya.
2. Hiniduma Vithanage
Sangadasa Sisiria,
Batuwanhena, Elpitiya.
3. Weliwita Maharalalage Don
Chandrika Sisiria,
Batuwanhena, Elpitiya.

Respondents

AND

High Court of Balapitiya
Case No: Revision 546/03

Hiniduma Vithanage Sangadasa
Weliwita Maharalalage Don
Chandrika
Both reside
Sisiria,
Batuwanhena, Elpitiya.

**2nd & 3rd Respondent -
Petitioners**

Vs.

1. Warahena Liyanage
Ariyarathna,
Polwatta, Batuwanhena,
Elpitiya.

1st Respondent - Respondent
AND

Court of Appeal
Case No: Revision 546/03

Hiniduma Vithange Sangadasa,
Weliwita Maharalalage Don
Chandrika
Both reside
Sisiria,
Batuwanhena, Elpitiya.

**2nd & 3rd Respondent -
Petitioner - Appellants**

Vs.

Warahena Liyanage Ariyaratna,
Polwatta, Batuwanhena,
Elpitiya.

**1st Respondent - Respondent -
Respondent**

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

**Council : Dasun Nagasena for the appellant.
: Parties are pressed and respondent is
unrepresented.**

Argued on : 05.05.2016

Decided on : 12.08.2016

CASE- NO- CA (PHC)- 132 /2005- JUDGMENT- 12.08.2016

P.R. Walgama, J

The instant appeal arises against the backdrop of the following facts.

The officer in charge of the Elpitiya Police filed an information in the Magistrate Court of Elpitiya in terms of Section 66 of the Primary Court Procedure Act, pursuant to a complaint made by the 1st party Respondent, that the 2nd Party - Respondent had used his land to plant some banana trees. It was the position of the 2nd Party- Respondent that the brother of the

2nd Party -Respondent has purchase this land and had been in possession of the same.

The Learned Magistrate has also considered the facts placed before him, by the 1st party Respondent particularly the bodies of the his father, father's brother and wife's were burred in the disputed land.

The Learned Magistrate was also of the view the documents tendered by the 2nd Respondent marked as 2V1 to 2V9 and the testimony of the witnesses in court for the 2nd Party - Respondent do not fortify the case of the 2nd Party - Respondent and has been rejected.

On the other hand the Learned Magistrate was of the view that by the document marked 1V9, has established the fact that the 1st Party- Respondent was in possession of the subject land. Therefore by the said order of the Learned Magistrate, the 1st Party - Respondent was placed in possession accordingly.

Being aggrieved by the said order the 2nd Party - Respondent has urged the Provincial High Court by making an application in revision to revise the said order.

The Learned High Court Judge having considered the factual matrix in relation to this case was of the view that the Learned Magistrate has arrived at the correct

determination in the correct perspective, and was inclined to up hold the impugned order as stated before.

Being aggrieved by the said order of the Learned High Court Judge, the 2nd Party- Petitioner- Appellant has lodged the instant appeal to this court to have the said order set aside or vacate.

On the day this case was fixed for argument the parties were present but the Respondent was not represented by a counsel. Nevertheless the court allowed both parties to file written submissions before the date fixed for judgment. It is seen from the record that only the Appellants had tendered the written submissions.

It is common ground that prior to the instant dispute there had been land disputes between these two parties, and the said dispute has not been resolved at the Mediation Board.

When reviewed the impugned order of the Learned High Court Judge it is abundantly clear that the said order contained a review of the order of the Learned Magistrate, and the Learned High Court Judge was compelled to arrive at the conclusion that the determination of the Learned Magistrate is without an error.

In the said back drop this court see no reason to interfere with the said order of the Learned High

Court Judge and the order of the Learned Magistrate,
as stated above.

For the reasons expiated above this court will dismiss
the appeal subject to a costs fixed at Rs. 5000/.

Accordingly the appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J

I agree.

JUDGE OF THE COURT OF APPEAL