

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

<p><b>Court of appeal case no.</b> <b>CA/PHC/20/2014</b></p> <p><b>H.C. Galle case no.</b> <b>45/2014</b></p> <p><b>M.C.Baddegama case no.</b> <b>71651</b></p>	<p>Premadasa Ekanayake No.31/2, Gammadegoda, Nagoda</p> <p><b>2<sup>nd</sup> Respondent Respondent Appellant</b></p> <p><b>Vs.</b></p> <p>Walakada Gamage Jayathissa, Walagedarawatta, Gammadegoda, Nagoda.</p> <p><b>1<sup>st</sup> Respondent Respondent Respondent.</b></p> <p>Sriyani Ekanayake, Gammadegoda, Nagoda</p> <p><b>Intervenient Respondent Respondent</b></p> <p>Officer in Charge, Police station, Nagoda</p> <p><b>Complainant Respondent Respondent</b></p>
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**Before** : H.C.J.Madawla J.

: L.T.B. Dehideniya J.

**Counsel** : 2<sup>nd</sup> Respondent Respondent Appellant absent and  
unrepresented.

: Vishva De Livera Thennakoon for the 1<sup>st</sup> Respondent  
Respondent Respondent.

**Argued on** : .25.07.2016

**Written submissions filed on** 05.09.2016

**Decided on** : 09.09.2016

**L.T.B. Dehideniya J.**

This is an appeal from High Court of Galle. The 2<sup>nd</sup> Respondent Petitioner Appellant (Hereinafter sometime called and referred to as the Appellant) was personally present before this Court and was directed to collect the brief and case was set down for argument. Thereafter the Appellant did not come before the Court. He was issued with the notice of argument and his registered Attorney At Law was also informed but neither of them were present or took part in the argument. Accordingly the Court directed the Counsel for the 1<sup>st</sup> Respondent Respondent Respondent to proceed.

The facts are briefly as follows. On a complaint made by the 1<sup>st</sup> Respondent Respondent Respondent (Hereinafter sometime called and referred to as the 1<sup>st</sup> Respondent), the police filed a report under section 66 of the Primary Court Procedure Act in the Primary Court Baddegama. After having filed all necessary documents, the learned Primary Court Judge pronounced order determining that the 1<sup>st</sup> Respondent is in possession of the land in dispute. Being aggrieved by the said order, the Appellant moved in revision in the High Court of Galle. The learned High Court Judge dismissed the application. This appeal is from that dismissal.

The 1<sup>st</sup> Respondent's complaint is that the land marked lot 1 in extent of 23.51 perches depicted in the plan no. 278 prepared by W.S.Wijethilaake Licensed Surveyor for the partition case no. 14340 in the District Court of Galle, was in his possession for more than 25 years. The Appellant who was living in the adjoining land was disturbing his possession. The Appellants case is that he is in possession of the land called Thalguhawatta alias Walagedaea Watta in extent of about 40 perches. He never claimed the land described by the 1<sup>st</sup> Respondent.

The disputed land is lot no. 1 in plan no 278. The 1<sup>st</sup> Respondent made the complaint to the police for disturbing his possession in the said lot no 1. The surveyor report attached to the plan no.278 prepared for the partition case states that only the 1<sup>st</sup> Respondent claimed that block of land. The Appellant does not claim lot 1. Considering all the factors, the learned Primary Court Judge has come to the correct finding that the 1<sup>st</sup> Respondent is in possession of lot no. 1 of plan 278.

The Appellant moved in revision against the order of the learned Primary Court Judge in the High Court of Galle. The learned High Court Judge dismissed the revision application without issuing notice.

The learned High Court Judge has failed to give any reason for his decision. He may have considered the relevant facts and the law, but it is the duty of the Judge to record the reasons for his finding.

The Appellant in paragraph 12 of his petition to the High Court aver certain reasons for his application and in paragraph 13 he states that those reasons are special (සුවිශේෂී) and extraordinary (අසාමාන්‍ය) reasons and are adequate reasons to exercise the revisionary jurisdiction of this Court.

The first reason stated is that the learned Primary Court Judge has not identified the land. The learned Primary Court Judge has considered the police report and the relevant affidavits and identified the disputed land as the land described by the 1<sup>st</sup> Respondent. The identification of the land is a matter of evidence. The second reason is that the learned Primary Court Judge has not mentioned the section under which the order was made. The sections 68 and 69 of the Primary Court Procedure Act provide the necessary law for the judge to make the determination. It is not mandatory for the judge to mention the section in the order.

The third ground of complain is that the learned Primary Court Judge has acted on a plan made in 2001. The plan and the report are evidence of the case and the judge has decided to accept that evidence. It may be a ground for an appeal but certainly not as reason for a revision application. Revision is not to correct the errors but to maintain proper administration of justice.

The fourth ground stated by the Appellant is that the learned Primary Court Judge has relied on the police officer's observation which was taken without the Appellant's participation. He cannot complain on this because the police officer has requested the Appellant to be present in the disputed land and waited for about half an hour but he has not turned in. The police officer has entered a note on this and proceeded to hold the inquiry. Therefore this is also not an exceptional ground which warrants the exercise of the revisionary jurisdiction.

The next ground of the Appellant is that the learned Primary Court Judge has not decided who was in possession on the date of filing the first information. The judge has made a determination as to who was in possession and made order accordingly. The next ground is purely on evidence and the final two reasons given by the Appellant are uncertain and vague.

All the reasons or grounds given by the Appellant separately or collectively do not constitute exceptional circumstances and the learned High Court Judge's decision to dismiss the revision application is correct. Even though the learned High Court Judge has not given any reason for his order, and an order without reasons is not an order recognized by law, under the circumstances of this case we do not intend to interfere with the said order.

Accordingly we affirm the order of the learned Primary Court Judge dated 08.01.2014 and dismiss the revision application.

Judge of the Court of Appeal

**H.C.J.Madawala J.**

I agree.

Judge of the Court of Appeal