

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

In the matter of an appeal in terms of Rule 2(1) of the Court of Appeal from High Court Rules 1998 (as per extra ordinary Gazette notification bearing No 5496/64 dated 13/03/1998) read with Article 154(p) (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (PHC) 111/2013**  
**H.C. of Kurunegala**  
**Case No-HCR/82/2009(Revision)**  
**MC Pillassa Case No-63442/09/66**

Head Quarters Inspector of Police  
Police Station,  
Mawathagama

**Complaint**

Vs.

W.M Chandrawathie Podimanike  
Palle Inguruwaththa, Inguruwaththa.

**Party of the First Part**

R.M.Gamini Ekanayaka  
Palle Inguruwaththa, Inguruwaththa.

**Party of the Second Part**

- 1- H.M.Podimanika
  - 2- H.G.A.K. Hathnaagoda
  - 3- E.M.S.B.Ekanayaka
  - 4- H.G. Nimal Dharmadasa
- All of

- Palle Inguruwaththa, Inguruwaththa.  
5- L.W.R. Bisomenika  
Inguruwaththa, Kalugemuwa.  
6- K.P. Kusumawathie  
Inguruwaththa.  
7- H.M. Podimenika Herath  
Inguruwaththa.  
8- H.M.Ranmenika  
Kalugamuwa, Inguruwaththa.

**Intervient Parties of the First Part**

**And**

R.M. Gamini Ekanayaka  
Palle Inguruwaththa, Inguruwaththa.

**Party of the Second Part Petitioner**

Vs.

Head Quarter's Inspector of Police  
Police Station, Mawathagama.

**Complaint Respondent**

W.M.Chandrawathie Podimanike  
Palle Inguruwaththa, Inguruwaththa.

**Party of the First Part Respondent**

- 1- H.M. Podimenika
  - 2- H.G.A.K. Hathnaagoda
  - 3- E.M.S.B.Ekanayaka
  - 4- H.G. Nimal Dharmadasa
- All of

- Palle Inguruwaththa, Inguruwaththa.  
 5- L.W.R. Bisomenika  
 Inguruwaththa, Kalugemuwa.  
 6- K.P. Kusumawathie  
 Inguruwaththa.  
 7- H.M. Podimenika Herath  
 Inguruwaththa.  
 8- H.M.Ranmenika  
 Kalugamuwa, Inguruwaththa.

**Intervient Parties of the First Part Respondents**

**And Now**

R.M. Gamini Ekanayaka  
 Palle Inguruwaththa, Inguruwaththa.

**Party of the Second Part Petitioner Appellant**

Vs.

Head Quarter's Inspector of Police  
 Police Station, Mawathagama.

**Complaint Respondent Respondent**

W.M.Chandrawathie Podimanike  
 Palle Inguruwaththa, Inguruwaththa.

**Party of the First Part Respondent Respondent**

- 1- H.M. Podimenika
- 2- H.G.A.R. Hathnaagoda
- 3- E.M.S.B.Ekanayaka

4- H.G. Nimal Dharmadasa  
All of  
Palle Inguruwaththa, Inguruwaththa.

5- L.W.R. Bisomenika  
Inguruwaththa, Kalugemuwa.

6- K.P. Kusumawathie  
Inguruwaththa.

7- H.M. Podimenika Herath  
Inguruwaththa.

8- H.M.Ranmenika  
Kalugamuwa, Inguruwaththa.

**Intervient Parties of the First Part**  
**Respondents Respondents**

**Before : H.C.J. Madawala , J**  
**&**  
**L.T.B. Dehideniya, J**

**Counsel : Niranjan de Silva for the Second party Petitioner Appellant**  
**M.D.J. Bandara for the First party Respondent**

**Written Submissions on : 21 /09 /2016**

**Decided On : 22 /11 /2016**

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

When this appeal came up for argument before this court on 25/3/2015 the party of the first part Respondent Respondent raised a preliminary objections with regard to the maintainability of the instant appeal on the basis of the Appellant has forgone

his rights of appeal against the order of Learned High Court Judge of the Wayamba Province Holden in Kurunegala.

This is a revision application filed by the second party Petitioner Appellant to set aside the order dated 10/05/2013 of the Learned Provincial High Court Judge of Kurunegala in case No HCR 82/2009 and for relief as prayed for in the prayer of the petition. The parties were allowed to tender their respective written submissions in respect of the preliminary objections while fixing the matter for argument on 21/07/2015. When considering the maintainability of this appeal it was contended by the party of the first part Respondent Respondent that no right of appeal lies against the judgment of the Learned Magistrate of Pillessa.

On a perusal of the record we find that the Complaint Respondent Respondent above named filed a report on 27/04/2009 in the Magistrate's Court of Pilassa under the provisions of Section 66 (1) (a) of the Primary Courts Procedure Act No 44 of 1979 stating that there has been a road dispute between the party of the first part Respondent Respondent and the party of the second part Petitioner Appellant. As far as the report is concerned the dispute being the road way over the Appellant's land which is described in the schedule to the original affidavit of the Respondent. The subject of the dispute relating to the existence of the road way as claimed by the first part Respondent and intervenient Respondent's shown in the observation note contained in the said report. The party of the first part claimed to a 10 feet wide road way which the subject of the dispute on the basis of long standing usage of it. Upon filing of the said report, the counsel for the party of the first part sought leave from court to add names of the 1-8 persons as the intervenient parties to the party of the first part. Upon filing of their respective affidavits, the parties agreed to explore

possible settlement and contesting parties consented and agreed to dispose the matter in dispute upon site inspection by the court.

The Learned Magistrate after inspection made an order under section 69 of the Primary Court Procedure Act declaring that the party of the first part and intervenient parties of the first part are entitled to enjoy or use 2 feet wide road(foot path) in question over the party of second part Petitioner Appellant's land.

However being aggrieved by this order, the party of the second part Petitioner filed the revision application before the High Court of the Wayamba Province Holden in Kurunegala bearing No. HCR/82/2009. The Learned High Court Judge after hearing the revision application delivered his judgment by refusing the revision application on the grounds that no exceptional circumstances have been revealed to invoke the revisionary powers of the High Court. Being aggrieved by the said judgment of High Court the party of the second part Petitioner Appellant preferred the instant appeal before this court to set aside the judgment of the Learned High Court Judge and the consent order of the Learned Magistrate. Both parties have filed their written submissions in respect of the preliminary objections raised by the party of the First part Respondent Respondent. It was contended by the counsel of the First part Respondent Respondent and 1-8 intervenient parties of the First part Respondent Respondent that the Second part Petitioner has failed to tender relevant journal entry containing the case record of the Magistrate Court of Pillessa at the time of filing this revision application. It was submitted that the contesting parties have consented and agreed to accept whatever outcome of the decision of the Learned Magistrate after having agreed site inspection and contesting parties have signed the case record signifying their consent for the site inspection by court.

The relevant portion of the judgment of Learned Magistrate is reproduced as follows;

“ස්ථාන පරීක්ෂණයකින් පසුව අධිකරණය විසින් ලබා දෙන නියෝගය භාර ගැනීමට සූදානම් බව දන්වමින් 01 වන පාර්ශවය, 01 වන පාර්ශවයේ ඇතුළත් පාර්ශවයන් සහ 02 වන පාර්ශවය නඩු වාර්තාවට අත්සන් තබා ඇත.”

However the journal entry directing the signature of the parties has not been tendered to this court.

Accordingly we hold that the party of the Second part Petitioner has failed to comply with a rules Section 3(1) (a) and 3(1) (b) of Court of Appeal (Appellate Procedure) Rules 1990. As the journal entry is a vital document to this appeal.

In the case of **Shanmugavadivu Vs. Kulathilake, Shirani Bandaranayake J, 2003 1 SLR 215 pg** held that,

“ On numerous occasions the Supreme Court as well as the Court of Appeal have held that the compliance of the Supreme Court Rules and the Court of Appeal Rules is imperative. In a situation where an application was made to the Court of Appeal without the relevant documents being annexed to the petition and the affidavit, but has stated the reason for such inability and sought the leave of the court to furnish such documents on a later date, the court could have exercised its discretion and allowed the Petitioner to file the relevant documents on a later date. However on this occasion, as pointed out earlier, no such leave was sought by the Appellant and in the circumstances, the Court of Appeal could not have exercised its discretion

in terms of Rules 3(1) (a) and 3(1) (b) of the Court of Appeal (Appellant Procedure) Rules.”

When considering the objection raised there is no right of appeal against the judgment of the Learned Magistrate Court of Pillessa.

It has been held as follows,

**Babunhamy V. Andris Appu, Hutchinson C.J, 340 C.R. Galle 10008**

“Plaintiff and defendant agreed to abide by the decision of the court, arrived at after inspection, as to whether the plaintiff was entitled to a way of necessity over the defendant’s land or not. The commissioner after inspection entered judgment for plaintiff. Held that the defendant had no right to appeal against the judgment as he had agreed to abide by the decision of the court.”

**Mudiyanse V. Loku Banda, Porter J, 24 NLR 190 pg**

“Parties agreeing to Commissioner deciding case after inspection of land without evidence-Appeal-Appeal from an order as to costs from a court of requests.

Where parties agree to the Commissioner deciding a case without hearing any evidence, but simply on an inspection of the land in question, no appeal lies against the finding of the Commissioner.

No appeal lies from an order of the Commissioner as to costs.”

**Punchi Banda V. Noordeen, Akbar J, 30 NLR 481 & 482 pg**

“Where the parties to an action in the court of requests agreed to abide by the decision of the Commissioner after an inspection of the premises in dispute.



Held, that no appeal lay from the decision of the Commissioner.”

Accordingly we uphold the objections raised by the party of the First part Respondent Respondent as to the maintainability of the instant appeal. As there is no right of appeal against the judgment of the Magistrate Court of Pillessa. Further as regard the revision application made to the High Court Judge of Wayamba Province Holden in Kurunegala, we find that the High Court has erroneously looked on the merit of the revision application to see, whether the exceptional circumstances have been revealed or not which warrants exercise of revisionary powers by the High Court.

Accordingly we hold that the instant application of the Second part Petitioner Appellant cannot be maintained. We uphold the preliminary objections raised by the party of the First part Respondent Respondent and 1-8 intervenient part of the First part Respondent Respondent.

Accordingly we uphold the Preliminary objections referred to above and dismiss this appeal with cost of Rs.10,000/-.

**Judge of the Court of Appeal**

**L.T.D.Dehideniya, J**

**I agree.**

**Judge of the Court of Appeal**