

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

In the matter of an application for Revision under article 154 G(6) of the Constitution read with Section 5A of the High Court of the Provinces (Special Provisions) Act, No 19 of 1990 as amended with the rules applicable therein against the judgment of the High Court of the Provinces of Hambantota dated 04th June 2008 in case bearing number HCRA/11/2008.

CA (PHC) 53/2008

HC Hambantota case No-

HCRA/11/2008

Primary Court Thissamaharamaya

Case No-36317

Officer in Charge,
Police Station,
Thissamaharamaya.

Vs.

01. Upasena Ariyawansa Wijeweera
Munaweera
Dayananda Pilgrimage Rest,
Thissamaharamaya

Party of the First Part

02. Thuma Gamage Premasiri,
03. Urapola Liyanage Dingihamy,
04. Hewa Pathiramage Dilrukshi,

All three of,
Gunawardena Garden,
Aluthgoda,
Thissamaharamaya.

Party of the Second Part

And Then

Upasena Ariyawansa Wijeweera
Munaweera,
Dayananda Pilgrimage Rest,
Thissamaharamaya

Petitioner

01. Thuma Gamage Premasiri,
02. Urapola Liyanage Dingihamy,
03. Welle Kankanamge David,

All three of,
Gunawardena Garden,
Aluthgoda,
Thissamaharamaya.

Respondents

And Then

01. Thuma Gamage Premasiri,
02. Urapola Liyanage Dingihamy,
03. Hewa Pathiranage Dilrukshi,

All three of,
Gunawardena Garden,
Aluthgoda,
Thissamaharamaya.

Respondent-Petitioner

Vs.

Upasena Ariyawansa Wijeweera
Munaweera,
Dayananda Pilgrimage Rest,
Thissamaharamaya

Petitioner-Respondent

And Now

01. Thuma Gamage Premasiri,
02. Urapola Liyanage Dingihamy,
03. Hewa Pathiranage Dilrukshi,

All three of,
Gunawardena Garden,
Aluthgoda,
Thissamaharamaya.

**Respondent-Petitioner-
Appellant**

Vs.

Upasena Ariyawansa Wijeweera
Munaweera,
Dayananda Pilgrimage Rest,
Thissamaharamaya

**Petitioner-Respondent-
Respondent**

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

**Counsel : Kaushalya Nawararatne with Y.S. Thambovita and Gimhani
Jayaweera for the Respondent- Petitioner-Appellant
Respondent is absent and unrepresented.**

Written Submissions on : 05 /12 /2016

Decided On : 07 /04 /2017

H. C. J. Madawala , J

The Respondent-Petitioner-Appellants preferred this appeal to revise and to set aside the order of the Learned High Court Judge of Hambantota dated 4/6/2008 in case No. HCRA/11/2008 and for further to set aside the order dated 23/4/2008 in case No 36317 in the Primary Court of Thissamaharama and to acquit the Appellants from the conviction that has been made and for further relief as prayed for in the prayer of the petition.

The Respondent-Petitioner-Appellants is seeking to have an order made by the Learned High Court Judge of Hambantota delivered on 4/6/2008 wherein the Application of the Petitioner under No. HCRA 11/2008 which was dismissed on the alleged non-compliance of the Provisions of Rule 3(1) of the Appellate Court Procedure Rules of 1990 as amended.

The position of the Petitioner was that the said alleged basis on which the revision application of the Appellants was dismissed, was erroneous and palpably wrong and thus the Appellants are entitled in law to obtain the relief prayed from this court.

In the said revision application bearing No. HCRA/11/2008, the Appellants challenged the orders of the Learned Magistrate dated 12/03/2008 and 23/04/2008 wherein the Appellants were found guilty of an offence under section 73 of the Primary Courts Procedure Act No. 44 of 1979 as amended for contravention of an order made there under. The Appellants have been punished with 6 months rigorous imprisonment which has been suspended for a period of 5 years.

On 18/11/2016 the Respondent was absent and unrepresented and the Respondent-Petitioner-Appellant who was represented by the counsel was directed to file written submissions by the Respondent-Petitioner-Appellant was submitted to court on 8/12/2016 and judgment was reserved due on or 15/02/2017 and was postponed to date.

The Learned High Court Judge on 4/6/2008 in his order had stated that the Applicant-Respondent had not submitted the 16 documents which was to be tendered to court and hence contravened the provisions of section 3(1) of the Appellate Court Procedure Rules and has dismissed the application.

On a perusal of the record the Petitioner has submitted the documents marked 01, 02, 03, 04, 05, 06, 07, 07(1),07(2),

ටෙට7(3),ටෙට7(4),ටෙට7(5),ටෙට7(6),ටෙට7(7),ටෙට8,ටෙට8(1),ටෙට8(2),
ටෙට8(3),ටෙට8(4),ටෙට8(5)

It was a contention of the Respondent-Petitioner-Appellant that only the documents that is material to the actions has been submitted to this court.

Namely;

- (a) The very right of the Appellant to occupy the premises springing from the settlement marked P1(a);
- (b) The said settlement has been reached considering the rights of the tenant cultivator to have a place of dwelling in the paddy field cultivated by him/ her;
- (c) None of the aforesaid orders have ordered the demolition of the very house as opposed to any extensions being made;
- (d) The order of the Learned Magistrate to demolish the very house in which the Appellant lives is against the categorical statutorily protected rights of the Appellant.

It was submitted that an express reservation was made praying for the opportunity to call for the entire case record which would have removed any hindrance in looking in to all the documents placed on record.

However we find that the order of conviction and term of suspended sentence has already lapsed we do not think that we should interfere with the order of the Learned Magistrate. We also do not think that the Learned High Court Judge has erred in this matter and hence we dismiss this appeal without costs.

Judge of the Court of Appeal

L.T.B.Dehideniya, J

I agree.

Judge of the Court of Appeal