IN THE COURT OF APPEAL OF THE DEMOCRAIC SOCIALIST REPUBLIC OF SRI LANKA.

Court of Appeal case no. CA/PHC212/2014

H.C. Kuliyapitiya case no. 41/2013

M.C. Kuliyapitiya case no. 10022/66

1. R.D.Kusumawathy
2. M.A.M.Sugath Chaminda
3. R.D.Jayathilaka

   Baragedara, Ethungahakotuwa

Party of the 2nd Part Petitioners Appellants

Vs.

1. S.M.Asoka Wijethunga

   Baragedara, Ethungahakotuwa

Party of the 1st Part Respondent Respondent

4. D.D.Chandana Sisira Kumara
5. D.D.Chandrasekara

Party of the 2nd Part Petitioner Respondents

Before : H.C.J. Madawala J.

: L.T.B. Dehideniya J.

Counsel : Hejaaz Histhulla with A.C.Samilah instructed by Aruna Jayathilake for the 2nd Party Respondent Petitioner.

: S.C.B. Walgampaya PC with Upendra Walgampaya for the Party of the 1st Part Petitioner Respondent.

Argued on : 06.02.2017

Decided on : 01.06.2017

L.T.B. Dehideniya J.

This is an appeal from the High Court of Kurunegala.

The facts are briefly as follows. The Party of the First Part Respondents (hereinafter sometimes called and referred to as the Respondents) filed information in the Magistrate Court of Kuliyapitiya under section 66(1) (b) of the Primary Court Procedure Act, informing that there is a land dispute threatening the breach of the peace. The Respondents stated that the land in dispute was originally belonged to the third person of the Party of the Second Part Petitioner Appellants, Jayathilake, who was a deaf and dumb person. While he was living with the 1st person of the Party of the First Part Petitioner Appellant Kusumawathi, she has got two fraudulent deeds executed to transfer the land to her. Thereafter he was ill treated by the said Kusumawathi and Jayathilake had to come and live with the Respondents. Thereafter, partition action No. 10607/P was instituted in the District Court of Kuliyapitiya and the Court has declared the said two transfer deeds are null and void. After the said judgment of the District Court in the said partition action, the land was transferred to Respondents by the deed No. 10317. The Respondents state that they have possessed the land until they were disposed by the Party of the Second Part Petitioner Appellants (hereinafter sometimes called and referred to as the Appellants) in the early hours of 02.06.2012.

The Appellants stated that the land was in the possession of the said Jayathilake. He was living with the Respondents but he had to come to the Appellants due to the ill treatment of the Respondents and they have repaired the boutique room in the land and allowed the said Jayathilake to live there.

Both parties have tendered documents in support of their cases. After inquiry the learned Magistrate determined that the land was in the

possession of the Respondents and they were disposed within two months prior to the filing of the information and ordered to place them in possession.

Being aggrieved by the order of the learned Magistrate, the Appellants moved in revision in the Provincial High Court of Kurunegala without success. This appeal is from the said order.

The learned High Court Judge in the revision application has correctly held that it being a revision application, the Court has to consider whether the learned Judge of the Primary Court (the Magistrate) has followed the correct legal procedure, allowed all parties to present their cases, considered all the evidence and followed the rules of natural justice in coming to determination. He considered the order of the learned Magistrate and has come to the conclusion that the determination was made after considering the material available.

The revision is a discretionary remedy. It can be invoked where there is a miscarriage of justice; it cannot be invoked to correct the errors of the judgment.

Vanik Incorporation Ltd. V. Jayasekara [1997] 2 Sri L R 365

(1) Revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice.

Attorney-General, V. Podisingho 51 NLR 385

In my view such exceptional circumstances would be (a) where there has been a miscarriage of justice, (b) where a strong case for the interference of this Court has been made out by the petitioner, or (c) where the applicant was unaware of the order made by the Court of trial. These grounds are, of course, not intended to be exhaustive.

The learned High Court Judge has correctly considered the order of the learned Magistrate. The Magistrate has believed the Respondent's version of the dispute on good reasons. The trial judge has the authority to believe or disbelieve a witness on good reasons. He has considered the statements made to the police at the very first instance and the other available materials and has come to the finding that the Respondents were in possession and were dispossessed two months immediately preceding to the filing of the information. Findings based on evidence should not be disturbed in a revision application unless a miscarriage of justice has taken place due to the judge's wrongful appreciation the facts. In the instant case I do not see any wrongful appreciation of facts.

I do not see any reason to interfere with the findings of the learned High Court Judge.

Accordingly the appeal is dismissed subject to costs fixed at Rs. 10,000.00

(This judgment should apply to the case no. CA/PHC/APN/147/2015 with necessary alterations in the caption.)

Judge of the Court of Appeal

H.C.J. Madawala J.

I agree.

Judge of the Court of Appeal