

IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal against
judgment of Provincial High Court
exercising its revisionary jurisdiction.

C A (PHC) / 70 / 2012

High Court of Kegalle

Case No. 4249 / Rev

Magistrate's Court Ruwanwella

Case No. 17206

Udapola Dasanayakalage Reginold

Dasanayaka

Sumanasiri Building,

Dehiowita Road,

Deraniyagala,

PETITIONER - PETITIONER -

APPELLANT

-Vs-

1. Anhettigama Gamaralalage

Dharmawardhana

'Latha Sevana'

Anhettigama,

Deraniyagala.

2. Hingurahena Gamaralalage Amila

Wasantha Wijesiri,

Dodawaththa,

Nooriya.

RESPONDENT - RESPONDENT

- RESPONDENTS

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; H Ahamed with Sarasi Hishshanka for the Petitioner - Petitioner
- Appellant

Gamini Senanayake for the 1st Respondent – Respondent –
Respondent.

Decided on : 2017 - 09 - 06

JUDGMENT

P Padman Surasena J

Learned counsel for all the Parties when this case came up on 2017-06-27 before us, agreed to have this case disposed by way of written submissions. They agreed that this Court could pronounce the judgment

after considering the written submissions they had filed. Therefore, this judgment would be based on the material that have been adduced by parties in their pleadings and the contents of the written submissions filed by them.

The Petitioner – Petitioner - Appellant (hereinafter sometimes referred to as the Appellant) had filed an information in the Magistrate's Court of Kegalle under section 66 (1) (b) as a private application.

Learned Primary Court Judge having inquired into this complaint, by his order dated 2011-10-18, had held that the Appellant had failed to prove to the satisfaction of Court that he had been dispossessed from the building, which is the subject matter of the dispute.

Being aggrieved by the said order made by the learned Magistrate, the Appellant had made a revision application to the Provincial High Court of Sabaragamuwa Province holden at Kegalle urging the Provincial High Court to revise the order made by the learned Magistrate.

Perusal of the journal entries of the Provincial High Court record shows;

- i. that the said revision application was first supported in the High Court on 2011-11-15,
- ii. that the learned High Court Judge on that date had issued notices on the respondents returnable on 2012-01-31,

It is not clear in the hand written minute dated 2012-01-31 as to what the learned High Court Judge had done on 2012-01-31. There is no corresponding typed proceeding inserted in the record either. Thus, this Court or for that matter anybody else cannot ascertain what transpired in Court on that date. However the entry " 12.6.12 " appears to be the next date fixed on that date. The fact that it is the next date is confirmed by the fact that there is indeed a journal entry dated 2012-06-12.

On 2012-06-12, it appears that the case had come up as a calling case for objections to be filed. Although the hand written minute of the learned High Court Judge is not clear to understand what had happened on that date, the typed proceeding of that date shows that the Appellant had been

present in Court without an Attorney at law and that the learned High Court Judge had dismissed the case. There appear to be no reason for the said order of dismissal made by the learned Provincial High Court Judge. This is so because the fact that the Appellant had not been represented by an Attorney at law cannot be a justification in the present circumstances for such an order. There is no record that even the learned counsel for the Respondent had moved for a dismissal of the case. In any case it was a date given for the Respondent to file objections and nevertheless the Appellant had been present in person in court. Therefore, there was no real necessity for the Court to dismiss this case as it could still be proceeded with, in one of the following ways;

- i. by making a suitable order on any application by the Respondent regarding filing objections,
- ii. by fixing it for argument if the stage of filing objections is complete,

Thus, in the absence of any reason as to why it became necessary for the learned Provincial High Court Judge to dismiss this case, this Court is of the opinion that such an order is not justifiable.

Therefore, we decide to set aside the order of dismissal made by the learned High Court Judge on 2012-06-12 and remit the case back to the Provincial High Court directing the learned Provincial High Court Judge to proceed with the case.

Appeal is allowed.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL