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) / 147 / 2009

Provincial High Court of

Southern Province (Galle)

Case No. Rev 614 / 2007

Magistrate's Court Galle

Case No. 80064

1. Jayasekarage Bandulasena,
   No. 137,
   Beligaha Handiya,
   Galle.
2. Jayasekarage Buddhika Lal,

No. 137,

Beligaha Handiya,

Galle.

3. Magedara Gamage Kanthi,

No. 137,

Beligaha Handiya,

Galle.

4. Jasingpathiranage Nuwan

Chamara,

No. 137,

Beligaha Handiya,

Galle.

5. Wijeweera Lauris,

Silwage waththa,

Kithulampitiya,

Uluwitike,

Galle.

2ND PARTY RESPONDENT -

PETITIONER - APPELLANTS

-Vs-

1. Galla Kankanamge Chaminda

   Kushantha,

   No. 484,

   Kahaduwa waththa,

   Galle.

2. N W K Daya Chandrasekara,

   No. 482,

   Hirimbura waththa,

   Kahaduwa waththa,

   Galle.

1ST PARTY RESPONDENT -

RESPONDENT - RESPONDENTS

3. Officer in Charge,

   Police Station,

   Galle.

COMPLAINANT - RESPONDENT -

RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; J P Gamage for the 2nd Party Respondent - Petitioner - Appellants.

Sheron Senevirathna for the 1st Party Respondent - Respondent - Respondents.

Decided on : 2017 - 09 - 27

JUDGMENT

P Padman Surasena J

Learned counsel for both the Parties, when this case came up on 2017-01-23 and on 2017-07-05 before this Court, agreed to have this case disposed of, by way of written submissions, dispensing with their necessity of making oral submissions. They agreed that this Court could pronounce the judgment after considering the written submissions they had already

filled. Therefore, this judgment would be based on the material adduced by parties in their pleadings and the written submissions.

The Complainant- Respondent - Respondent (hereinafter sometimes referred to as the 3rd Respondent) had filed an information in the Primary Court of Galle under section 66 (1) complaining to the learned Primary Court Judge that there existed a breach of peace between two parties over a dispute relating to land.

The two rival parties named in the said information was Galla Kankanamge Chaminda Kushantha as the 1st party who is 1st party Respondent - Respondent - Respondent (hereinafter sometimes called and referred to as the 1st Respondent) and Jayasekarage Bandulasena, Jayasekarage Buddhika Lal, Magedara Gamage Kanthi, Jasingpathiranage Nuwan Chamara, as the 2nd party who are the 2nd party Respondent - Petitioner – Appellants (hereinafter sometimes called and referred to as the 1st - 4th Appellants or Appellants).

Perusal of the learned Magistrate's order shows that two new parties had got added to the case on 2007-01-05. The 5th Respondent - Petitioner – Appellant is amongst those two. (He would hereinafter sometimes be called and referred to as the 5th Appellant or Appellant).

Learned Magistrate having inquired into this complaint, had held by his order dated 2007-09-27, that the Appellants had failed to establish that they were residing at the relevant premises for a considerable time and thereby failed to establish that they are entitled to a right of way over the impugned property. Learned Magistrate, on this basis, had ordered that the 1st Respondent is entitled to the peaceful possession of the land in dispute.

Being aggrieved by the said order made by the learned Magistrate, the Appellants (hereinafter sometimes referred to as the Appellants) had made a revision application to the Provincial High Court of Southern Province holden in Galle urging the Provincial High Court to revise the order made by the learned Primary Court Judge.

The Provincial High Court of Galle after hearing parties, by its judgment dated 2009-06-11, had refused the said application for revision and had proceeded to dismiss it with costs affirming the order of the learned Primary Court Judge.

It is that judgment which the Appellant seeks to canvass in this appeal before this Court.

It is the observation of this Court that the major part of the written submission filed on behalf of the Appellant contains the facts to propose as to why the learned Primary Court Judge should have held in his favour.

It would be relevant to bear in mind that the appeal before this Court is an appeal against a judgment pronounced by the Provincial High Court in exercising its revisionary jurisdiction. Thus, the task before this Court is not to consider an appeal against the Primary Court order but to consider an appeal in which an order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction is sought be impugned.

It is relevant to observe that this Court in the case of Nandawathie and another V Mahindasena[1] also had taken the above view. It is noteworthy that this Court in that case[2] had stated that the right given to an aggrieved party to appeal to Court of Appeal in a case of this nature should not be taken as an appeal in the true sense but in fact an application to examine the correctness, legality or the propriety of the order made by the High Court Judge in the exercise of its revisionary powers.[3]

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[1] 2009 (2) Sr. L. R. 218.
[2] Ibid. at page. 238.
[3] Ibid. at page 238.

We are in full agreement with the above view and thus, would take great care not to treat this as an appeal lodged against the order of the Primary Court. Thus, we shall refrain from getting into the shoes of appellate Judges sitting to adjudicate an appeal lodged against an order of the Primary Court.

Further, one must not lose site of the fact that section 74 (2) of the Primary Courts Procedure Act has specifically taken away the right of appeal against any determination or order made under the provisions of its part VII. This means that no appeal could lie against the impugned Primary Court order. That is perhaps why the Appellants had made a revision application to the Provincial High Court.

The Provincial High Courts need to be mindful of this fact when they are called upon to exercise revisionary jurisdiction in respect of Primary Court orders of this kind. Such applications must be treated as only revision applications and not appeals. The Judges of the Provincial High Courts need to bear in mind that they would only defeat the purpose of section 74 (2) of the Primary Courts Procedure Act which has specifically been enacted by the legislature to take the right of appeal away from the

parties, if they indirectly assume appellate jurisdiction over this type of applications.

Although there is a right of appeal provided to this Court from an order of the Provincial High Court, this Court should not forget that it is within the above parameters that the Provincial High Court has pronounced the impugned order. Therefore the right of appeal provided by law to this Court would only empower this Court to evaluate the correctness of the exercise of the revisionary jurisdiction by the Provincial High Court. It cannot be converted to an appeal against a Primary Court Order.

In these circumstances, in the process of the adjudication of the instant appeal this Court would need to act within the above parameters. This Court would remind itself that it is not open for it to treat this case as a true appeal from an order made by the Primary Court. This is the view expressed by this Court in the case[4] cited above as well.

As has been stated before, in the instant case what the Provincial High Court was called upon to exercise was its revisionary jurisdiction. The caption of the revision application filed in the Provincial High Court states

[4] Ibid.

that it is under Article 154 P (3) (b) of the Constitution that the said application has been filed.

Article 154 (3) (b) states that notwithstanding anything in Article 138 and subject to any law, a Provincial High Court shall exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province; ....".

It is relevant to note that section 5 of the High Courts of provinces (Special provisions) Act No. 19 of 1990 has made, the provisions of written law applicable to appeals and revision applications made to Court of Appeal, applicable to such cases filed in the Provincial High Courts also.

Section 78 of the Primary Courts procedure Act No. 44 of 1979 states that the provisions in the Code of Criminal Procedure Act governing a like matter where the proceeding is criminal nature and the provisions of the Civil Procedure Code governing a like matter where the proceeding is civil nature shall with suitable adaptations as the justice of the case may require apply.

Thus, the provisions relating to revision, in chapter XXIX of the Code of Criminal Procedure Act No. 15 of 1979, as well as in chapter LVIII of the Civil Procedure Code have been made applicable to the exercise of revisionary jurisdiction by the Provincial High Courts in respect of this kind of orders made by the Primary Court Judges.

According to section 364 of the Code of Criminal Procedure Act, as well as section 753 of the Civil Procedure Code, the Court exercising revisionary jurisdiction, can call for and examine the record of any case for the purpose of satisfying itself as to the legality or propriety of any order passed therein or as to the regularity of the proceedings of such Court. Thus, three aspects which a Court could consider in revisionary proceedings have been specified in both the above sections. They are

i. legality of any order,
ii. propriety of any order and
iii. regularity of the proceedings of such Court.

This Court in the case of Attorney General V Ranasinghe and others[5] had referred to this criterion embodied in section 364 of the Code of Criminal Procedure Act in the following way;

"..... This power can be exercised for any of the following purposes;

1) to satisfy this Court as to the legality of any sentence or order passes by the High Court or Magistrate's Court,
2) to satisfy this Court as to the propriety of any sentence or order passed by such Court,
3) to satisfy this Court as to the regularity of the proceeding of such Court.

....."

In the instant case there is no complaint about the last aspect i.e. the regularity of the proceedings.

Having this in mind, it is the observation of this Court that the written submission of the Appellant does not set out any ground, which is at least suggestive of any illegality or any impropriety of the impugned order.

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[5] 1993 (2) Sri. L. R. 81.

Therefore it is clear that none of the grounds upon which the Provincial High Court could have intervened to exercise its revisionary jurisdiction, had been made out.

In addition, Perusal of the judgment of the learned Provincial High Court Judge also shows to the satisfaction of this Court that all the points agitated by the Appellant have substantially been dealt with by the learned Provincial High Court Judge. This Court is not inclined to re consider them again one by one. This is particularly so because of the failure on the part of the Appellant to put forward any basis as to why this Court should embark upon such a course of action. This Court is of the opinion that the learned Provincial High Court Judge has come to the correct conclusions in his judgment.

It would suffice to state here that the Supreme Court in the case of Ramalingam V Thangarajah[6] which interpreted section 69 (1) has held that the word "entitle" in that section connotes the ownership of the relevant right.

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[6] 1982 (2) Sri. L R 693.

It is the view of this Court that the Appellants have failed to prove to the satisfaction of Court that they are entitled to the impugned roadway.

Further, it would be relevant to reproduce the following passage from a judgment of this Court in the case of Punchi Nona V Padumasena and others[7].

" ... The jurisdiction conferred on a primary Court under section 66 is a special jurisdiction. It is a quasi-criminal jurisdiction. The primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land. The Court in exercising this jurisdiction is not involved in an investigation into title or the right to possession which is the function of a civil Court. He is required to take action of a preventive and provisional nature pending final adjudication of rights in a civil Court ... "

Thus, it is the view of this Court that there had been no basis for the Provincial High Court to interfere with the conclusion of the learned Primary Court Judge as there are ample reasons to satisfy itself with its

[7] 1994 (2) Sri. L R 117.

legality and propriety as required by section 364 of the Code of Criminal Procedure Act No. 15 of 1979.

Considering all the above material, this Court sees no merit in this appeal.

Therefore, this Court decides to dismiss this appeal. Further, this Court makes order that the Respondents are entitled to costs.

Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL