

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

In the matter of an Application for
revision of an order of the Provincial
High Court in the exercise of its
revisionary jurisdiction.

C A (PHC) APN / 91 / 2017

Provincial High Court of

Sabaragamuwa Province (Rathnapura)

Case No. RA 22 / 2015

Primary Court Rathnapura

Case No. 99072 (66)

1. R S W I S R R W M R Sanjeewa Nilantha
Angamma,
2. Angamma Wakkumburage Indrani,
3. Jayampathi Angamma,

All of,
No. 08,
Sri Pada Mawatha,
Rathnapura.

1ST PARTY RESPONDENT

PETITIONER – PETITIONERS

Vs

1. Hetti Kankanamalage Nandawathi,
2. Lesli Danthananarayanalage Indrani

Danthanarayana,

All of,

16/13 A,

Rathnajothi Mawatha,

Godigamuwa,

Rathnapura.

2ND PARTY RESPONDENT -

RESPONDENT - RESPONDENTS

The Officer in Charge,

Police Station,

Rathnapura.

INFORMANT - RESPONDENT -

RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Naveen Marapana for the 1st Party - Respondent - Petitioner -
Petitioners.

Chandana Premathillake for the 2nd Party Respondent -
Respondent - Respondents.

Supported on: 2017-07-21.

Decided on : 2017 - 10 - 10

ORDER**P Padman Surasena J**

The 1st Party Respondent - Petitioner – Petitioners (hereinafter sometimes referred to as the Petitioners) and the 2nd Party Respondent - Respondent - Respondents (hereinafter sometimes referred to as the Respondents) are two rival parties in the instant case which is a proceeding instituted under section 66 (1) (a) of the Primary Courts Procedure Act by the officer in Charge of Police Station Rathnapura.

Learned Primary Court Judge having inquired into the complaint, by his order dated 2015-03-26, had concluded that the Respondents are entitled to have the possession of the land which is the subject matter of the dispute.

Being aggrieved by the said order made by the learned Primary Court Judge, the Petitioners had filed an application for revision in the Provincial High Court of Sabaragamuwa Province holden in Rathnapura seeking a revision of the order of the Primary Court.

The Provincial High Court after hearing refused the said revision application.

Learned counsel for the Petitioner conceded at the outset that an appeal has also been filed in respect of the same matter i.e. against the said judgment of the Provincial High Court. It was his submission that the purpose of filing this revision application despite the pending appeal is to obtain the interim relief prayed for in the prayers of this petition.

The interim order prayed for by the Petitioner is an order to remove all the obstructions constructed by the Respondents on the disputed road way. It is common ground that the said constructions impugned in these proceedings had been put up after the delivery of the order of the Provincial High Court.¹ Thus, it is clear that this construction had not formed part of the subject matter of the dispute before the lower Courts.

In the case of Jayantha Gunasekara V Jayatissa Gunasekara and others² this Court had held that mere lodging in the Court of Appeal, an appeal against a judgment of the High Court in the exercise of its revisionary power in terms of article 154 P (3) (b) of the Constitution, does not

¹ Paragraph 24 of the petition.

² 2011 (1) Sri L R 284.

automatically stay the execution of the order of the High Court. A passage from that judgment which would be relevant here is as follows.

"... Obviously, to put off the execution process until the appeal is heard would tantamount to prolong the agony and to let the breach of peace to continue for a considerable length of time. This in my opinion cannot be the remedy the Parliament has clearly decided upon. Hence I am confident that the construction we are mindful of placing by this judgment would definitely suppress the mischief and subtle inventions and evasions for continuance of the mischief. ..."

This Court cannot find fault with the Respondents for putting up a wall to enjoy their rights vindicated by a Court process.

Since there is an appeal pending before this Court it is open for the parties to have their rights decided by this Court in that appeal.

Further, as pointed out by the learned counsel for the Respondents it is not possible for this Court to assume original jurisdiction to adjudicate a new matter in respect of which there is no pronouncement by the Primary Court.

In these circumstances this Court sees no basis to issue notices on the Respondents.

The revision application should stand dismissed.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL