

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) / 25 / 2012

Provincial High Court of

Sabaragamuwa Province (Embilipitiya)

Case No. RA 03 / 2012

Magistrate's Court Embilipitiya

Case No. 46300 / 66

1. Wickrema Arachchi
Abeywardhana Rupasinghe
(Rupasena),

Mahawalawita,

Thunkama.

2ND PARTY - PETITIONER -

APPELLANT

-Vs-

1. Officer in Charge,

Police Station,

Kuttigala.

COMPLAINANT - RESPONDENT -

RESPONDENT

2. Ranasinghe Kodithuwakku

Arachchige Jamis,

Palama Langa Gedera,

Akkara 30,

Thunkama.

1ST PARTY - RESPONDENT -**RESPONDENT**

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; R Sahabandu PC for the 2nd Party - Petitioner - Appellant.

Aravinda Athurupana for the 1st Party - Respondent -
Respondent.

Argued on : 2017-07-18

Decided on : 2017 - 10 - 26

JUDGMENT**P Padman Surasena J**

The Complainant- Respondent - Respondent (hereinafter sometimes referred to as the 1st Respondent) had filed an information in the Primary

Court of Embilipitiya under section 66 (1) of the Primary Courts Procedure Act No.44 of 1979 (hereinafter referred to as the Act), complaining to the learned Primary Court Judge about an existence of a breach of peace between two parties over a dispute relating to the land relevant to the dispute in this case.

1st party - Respondent - Respondent (hereinafter sometimes called and referred to as the Respondent) and the 2nd party - Petitioner - Appellant (hereinafter sometimes called and referred to as the Appellant) were named as the two rival parties in the said information.

Learned Magistrate having inquired into the said complaint, by his order dated 2011-11-29, had directed that the Respondent be restored in possession of the land in dispute. This was because the learned Primary Court Judge was satisfied that the Appellant had dispossessed the Respondent.

Learned Primary Court Judge, on this basis, had ordered that the Respondent be entitled to the peaceful possession of the land in dispute.

Being aggrieved by the said order of the learned Primary Court Judge, the Appellant had filed a revision application in the Provincial High Court of Sabaragamuwa Province holden in Embilipitiya, urging the Provincial High Court to revise the order made by the learned Primary Court Judge.

The Provincial High Court, by its order dated 2012-03-14, had refused to issue notices on the Respondents and proceeded to dismiss the said revision application.

It is the said order that the Appellant seeks to canvass in this appeal before this Court.

It would be relevant to bear in mind that the appeal before this Court is an appeal against an order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction. Thus, the task before this Court is not to consider an appeal against the Primary Court order but to consider whether the said refusal to issue notices on the Respondents by the Provincial High Court is justifiable or not.

Upon perusal of the order made by the learned Primary Court Judge, this Court is also of the view that there are ample reasons to satisfy itself with legality propriety and the regularity of the impugned proceedings. Thus, it is the view of this Court that there had been no basis for the Provincial High Court to issue notices on the Respondents.

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. The primary object of proceedings under that part is to prevent breach of peace amongst the parties disputing the claims for possession of lands. The Court when exercising this jurisdiction would take only a preventive action. The order that would be made is of a provisional nature pending final adjudication of rights in a civil Court.

This Court has perused the judgments of the learned Provincial High Court Judge as well as the judgment of the learned Primary Court Judge. It shows to the satisfaction of this Court that they have come to the correct conclusions in their judgments.

In these circumstances, this Court is unable to find any basis to interfere with the order made by the learned Provincial High Court.

Therefore, this Court decides to dismiss this appeal with costs.

Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL