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) 76 / 2010

Provincial High Court of

Sabaragamuwa Province (Kegalle)

Case No. Rev 3399

Primary Court Mawanella

Case No. 11884

Ekanayake Mudiyanselage Upali

Ekanayake,

No 22,

Hill Street,

Gampola.

1st RESPONDENT - PETITIONER - APPELLANT

-Vs-

1. The Officer In Charge,

   Police Station,

   Hemmathagama.

COMPLAINANT - RESPONDENT - RESPONDENT

2. Mohomed Smar Mohomed Rizan,

   F 67/1,

   Thalgaspitiya,

   Aranayake.

2nd RESPONDENT - RESPONDENT - RESPONDENT

Before: **K K Wickremasinghe J**

P. Padman Surasena J

Counsel; D D P Dassanayake for the 1st Respondent - Petitioner - Appellant.

Aruna Jayathilaka for the 2nd Respondent - Respondent - Respondent.

Decided on : 2017 - 11 - 14

JUDGMENT

P Padman Surasena J

Learned counsel for both the Parties, when this case came up on 2017-07-07 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 Complainant - Respondent) had filed an information in the Primary Court of Mawanella under section 66 (1) of the Primary Court Procedure Act No. 44 of 1979 complaining to the learned Primary Court Judge about a breach of peace between two parties over a dispute relating to a roadway.

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

Learned Magistrate having inquired into this complaint, had held by his order dated 2008-02-27, that the Appellant had failed to establish that he is entitled to a right of way over the land possessed by the Respondent. Learned Magistrate, had refused the Appellant's stance that he is entitled to the impugned right of way.

Being aggrieved by the said order of the learned Primary Court Judge, the Appellant had made a revision application to the Provincial High Court of

Sabaragamuwa Province holden in Kegalle urging the Provincial High Court to revise the order made by the learned Primary Court Judge.

The Provincial High Court after hearing parties, by its judgment dated 2010-07-28, 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 sequence of events which led this case to reach this court.

The submissions advanced by the learned counsel for the appellant as to why he should have been granted a right of way, are contained in paragraph 15 of his written submissions. However perusal of those arguments show that they are mere statements to the effect;

i. that the learned Provincial High Court judge has erred and/ or misdirected himself when he held that the Appellant has not received

the impugned right of way from the deed of transfer No 9199 dated 14th September 2007 attested by M. F. Hussain Notary Public.

ii. that the learned Provincial High Court judge has erred and/ or misdirected himself when he held that the Appellant has failed to produce documents sufficient to establish that he is a long time user of the impugned right of way.

iii. that the learned Provincial High Court judge has erred and/ or misdirected himself when he had decided to disregard the affidavit submitted by some other users who had claimed to have used the impugned roadway.

iv. that the learned Provincial High Court judge has erred and/ or misdirected himself when he had failed to appreciate the land locked nature of the Appellant's land.

v. that the learned Provincial High Court judge has erred and/ or misdirected himself when he had failed to address his mind to the observation notes of the Police.

However it is to be noted that the learned counsel for the Appellant has not attempted to show to the satisfaction of this court that the above statements are right and could be supported by evidence.

Although it is the position of the Appellant that the deed of transfer No. 9199 has granted the impugned right of way to the Appellant, the Appellant has failed to refer to the particular place of the said deed he relies upon. This is necessary particularly because there is a specific finding by the learned Primary Court Judge that no such right has been granted to the Appellant by the said deed.

This court in the case of CA (PHC) 147/2009[1] has stated the restricted nature of the scope of this type of Appeals in this court as well as that in the Provincial High Courts.

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.

This court observes that both the judgement of the learned Primary Court Judge and that of the learned Provincial High Court Judge do not show any

[1] Decided on 2017-09-27

illegality or impropriety. There is also no any irregularity of proceedings before both courts. Thus, it is the view of this court that there had been no ground before the Provincial High Court which would have warranted its intervention in this case using its discretionary revisionary powers.

In addition, Perusal of the judgment of the learned Primary Court Judge shows to the satisfaction of this Court that he has substantially dealt with all the points relevant to this case. This Court does not think that it should re consider them again one by one.

On the other hand, the Appellant has not adduced any basis for such a course of action. For the above reasons, this Court is of the opinion that it does not have any basis to interfere with the judgement of the learned Provincial High Court Judge who had decided to refuse the said revision application.

It would also be relevant to state here that the Supreme Court in the case of Ramalingam V Thangarajah[2] 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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[2] 1982 (2) Sri. L R 693.

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

Further, as has been done by this court in other judgements of this nature 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[3].

" ... 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

[3] 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