

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) 71 / 2004

Provincial High Court of

Sabaragamuwa Province (Ratnapura)

Case No. HC RA 184/97

Magistrate's Court Kalawana

Case No. 20314

P A William Singho,
Kodippilikanda,
Nawalakanda,
Kalawana.

APPLICANT - PETITIONER -

APPELLANT

-Vs-

1. Wilbet Kariyawasam,

Kodippilikanda,

Nawalakanda,

Kalawana.

RESPONDENT - RESPONDENT

- RESPONDENT

Before: K. K Wickremasinghe J

P. Padman Surasena J

Counsel; Aruna Jayathilaka for the Applicant Petitioner Appellant

Respondent - Respondent - Respondent is absent and unrepresented.

Decided on : 2017 - 11 - 06

JUDGMENT

P Padman Surasena J

Learned counsel for the Respondent – Respondent - Respondent (hereinafter sometimes referred to as the Respondent), when this case came up on 2017-08-03 before us, agreed to have this case disposed of, by way of written submissions. Therefore, this judgment would be based on the material so adduced.

The Applicant - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant) was absent when this Court took up this case for argument on 2017-08-03. No application was made on his behalf with regard to the progress of the case. Therefore, this Court decided not to postpone the argument.

It is in these circumstances, that this Court had proceeded to dispose this appeal by considering the merits of this appeal.

Applicant-Petitioner-Appellant had filed the information relevant to this case in the Magistrate's Court of Kalawana under section 66 (1) (b) of the Primary Court Procedure Act.

Learned Magistrate having inquired into the complaint contained in the said information, by his order dated 1997-10-10, had held that the Appellant has not proved 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 filed a revision application in the Provincial High Court of Sabaragamuwa Province holden in Ratnapura urging the Provincial High Court to revise the order of the learned Primary Court Judge.

The Provincial High Court after hearing parties, by its judgment dated 2004-02-06 had refused the said application for revision and proceeded to dismiss it. The Provincial High Court has taken the view that there are no exceptional circumstances to interfere with the learned Magistrate's order.

It is against that judgment that the Appellant has filed this appeal in this Court.

The judgment of the Supreme Court in the case of Ramalingam V Thangarajah¹ would be relevant to this proceedings. It is a judgment which had interpreted section 69 (1) of the Primary Courts Procedure Act No. 44 of 1979. It would be relevant and appropriate to quote the following passage from that judgment here. It is as follows;

“ On the other hand, if the dispute is in regard to any right to any land other than right of possession of such land, the question for decision, according to section 69 (1), is who is entitled to the right which is subject of dispute. The word “entitle” here connotes the ownership of the right. The Court has to determine which of the parties has acquired that right, or is entitled for the time being to exercise that right. In contradistinction to section 68, section 69 requires the Court to determine the question which party is entitled to the disputed right preliminary to making an order under section 69 (2).”

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

¹ 1982 (2) Sri. L R 693.

is exactly what the learned Primary Court Judge also had decided in his order.

In these circumstances and for the foregoing reasons this Court decides to dismiss this appeal as this Court sees no merit in it. The Respondent is entitled to the costs.

Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL