

**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) / 228 / 2006

High Court of Balapitiya

Case No. Rev 636 / 2005

Magistrate's Court Elpitiya

Case No. 22555

Indikadulla Kankanamge Siriyawathie

Kalugalahena,

Bambarawana

Maththaka.

**1<sup>st</sup> RESPONDENT - PETITIONER -**

**APPELLANT**

-Vs-

1. Kasthuri Arachchilage Rosalin,  
Panwila Hena,  
Bambarawana,

Maththaka.

**PETITIONER – RESPONDENT -**

**RESPONDENT**

2. Liyanagamage Jayathillake,

Panwilahena,

Bambarawana,

Maththaka.

**1(a) SUBSTITUTED**

**PETITIONER - RESPONDENT -**

**RESPONDENT**

3. H A K Amara Shantha,

4. H A K Chandrika Samanmalie

5. T H Ranjith Kumara

All of kalugalahena,

Bambarawana,

Maththaka.

**RESPONDENT- RESPONDENT -**

**RESPONDENTS**

**Before: K K Wickremasinghe J**

**P. Padman Surasena J**

Counsel; M D J Bandara for the 1<sup>st</sup> Respondent - Petitioner - Appellant.

Shayamal A Collure with Priyadarshani Weragoda for the Respondents.

Decided on : 2017 - 11 - 16

JUDGEMENT

**P Padman Surasena J**

Learned counsel for both the Parties, when this case came up on 2017-07-25 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 would file. Therefore, this judgment would be based on the material adduced by parties in their pleadings and their written submissions.

The Petitioner - Respondent - Respondent (hereinafter sometimes referred to as the 1<sup>st</sup> Respondent) has filed an information in the Primary Court of Elpitiya, complaining to the Primary Court about a dispute to a possession of a land.

Learned Primary Court Judge having inquired into this complaint, by his order dated 2005-01-28, had ordered that the 1<sup>st</sup> Respondent is entitled to the possession of the land in dispute.

Learned Primary Court Judge has come to this conclusion after considering the documents adduced before him.

Being aggrieved by the said order made by the learned Primary Court Judge of Elpitiya, the Appellant had made a revision application to the Provincial High Court of Southern Province holden at Balapitiya urging the High Court to revise the order made by the learned Primary Court Judge.

The Provincial High Court of Balapitiya after hearing parties, by its judgment dated 2006-11-23 had affirmed the order of the Primary Court and proceeded to dismiss the said revision application.

It is against that judgment of the Provincial High Court that the 1<sup>st</sup> Respondent - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant) has filed this appeal in this Court.

The Appellant had agreed to be content with filing written submissions to place his case before this Court. Therefore, it is his responsibility to explain in his written submissions as to why this Court should interfere with the judgment of the Provincial High Court.

However, perusal of his written submissions show that he has merely reproduced the factual positions that had already been agitated at the lower Courts.

This Court has perused the order of the learned Primary Court judge as well as the order of the Provincial High Court. This Court is of the view that there is no illegality or impropriety in the order of the Primary Court. This Court also cannot observe any irregularity of the proceedings before the Primary Court.

Further, this Court is unable to gather any exceptional circumstance or even any basis as to why the Provincial High Court should have exercised

its discretionary revisionary jurisdiction to interfere with the order of the Primary Court.

This Court in several previous judgements has highlighted the provisional nature of the orders made by the Primary Court under part VII of the Primary Courts Procedure Act No. 44 of 1979.

This Court has to be mindful that the order under appeal in this case is an order, which the Provincial High Court has pronounced when exercising its revisionary jurisdiction. This Court in the case of Jayasekarage Bandulasena and four others Vs Galla Kankanamge Chaminda and two others<sup>1</sup> had held that an appeal against Provincial High Court judgements in revision applications filed challenging orders made by Primary Courts under Part VII of the Primary Courts Procedure Act No. 44 of 1979 cannot be converted to an appeal against the order of the Primary Court.

As has been stressed by this Court in the case of Punchi Nona V Padumasena and others<sup>2</sup> the Primary Court is only required to take action

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<sup>1</sup> CA (PHC) 147/2009 CA Minutes dated 2017-09-27.

<sup>2</sup> 1994 (2) Sri. L R 117.

of a preventive and provisional nature pending final adjudication of rights in a civil Court.

This fact taken together with the other material adduced before court proves to the satisfaction of this Court that there is no merit in this appeal.

Thus, this Court decides to dismiss this application 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**