

IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

C A APN / MISC/ 06 / 2017

District Court of Balapitiya

Case No. 1782 / P

Ruwanpura Uppalawanna de Silva,

No. 6/4,

'Somi Sewana',

Kandegoda,

Ambalangoda.

PETITIONER

-Vs-

Kachchadura Ayesha,

479/3,

Bogahawatta,
Ambalangoda.

PETIONER - RESPONDENT

Wijemuni Hemananda de Silva
No. 5/493,
Bogahawatta,
Ambalangoda,

PLAINTIFF - RESPONDENT - RESPONDENT

1. Wathudura Hewa Wimalawathie

No. 489/A,
Dewata Road,
Bogahawatta,
Ambalangoda.

2. Wijemuni Sumanawathi,

Bogahawatta,
Ambalangoda.

3. Wijemuni Sirimawathi,
Bogahawatta,
Ambalangoda.
4. Wijemuni Sumanawathi,
Bogahawatta,
Ambalangoda.
5. H Premawathi,
Bogahawatta,
Ambalangoda.
6. Lalitha Ranjani Mulwansha,
Thuduwegoda,
Wathugedara.
7. Wijemuni Sirimawathi de Silva,
Bogahawatta,
Ambalangoda.
8. Don Merengnga Yasawathie,
Kandegoda,
Ambalangoda.
9. Thalpahewa Jinasiri de Silva,

Dewata Road,
Kandegoda,
Ambalangoda.

10. Laddu Dayananda Silva,

No. 32,
Dewata Road,
Kandegoda,
Ambalangoda.

11. Laddu Pemawathi,

No. 49,
Dewata Road,
Kandegoda,
Ambalangoda.

12. Waradana Leelawathi,

Berathuduwa,
Balapitiya.

13. Waradana Amarasena de Silva,

P R de Silva Mawatha,

Brahmanawatta,

Balapitiya.

14. Thuiyahandi Chandrawathi,

Kandegoda,

Ambalangoda.

15. Ellahandi Karunasiri de Silva,

766,

Wickrama Niwasa,

Galle Road,

Randombe.

16. Laddu Sheela de Silva,

No. 52,

Dewata Road,

Kandegoda,

Ambalangoda.

17. Arama Kankani Prema Jayanthi,

Bogahawatta,

Ambalangoda.

DEFENDANT - RESPONDENT -

RESPONDENTS

Before: P. Padman Surasena J (P/C A)

A L Shiran Gooneratne J

Counsel : Mahanama de Silva with R N M Dilrukshi

for the Petitioner.

J A J Udawatta with Anuradha N Ponnampereuma for the 3rd
and 7th Defendant - Respondent - Respondents

Supported on: 2018-03-05.

Decided on : 2017 - 07 - 02.

ORDER**P Padman Surasena J****CA /misc/06/2017**

The petitioner in this application has prayed inter alia for following relief;

- a) make order varying the judgment and interlocutory decree in the case No: 1782/P of the District Court of Balapitiya by excluding the lot 4 in final plan 13/06 from the corpus,
- b) or in the alternative to prayer (a) make order varying the judgment and interlocutory decree in the said case No: 1782/P of the District Court of Balapitiya to include an order for the sale of lot 4 in the said final plan 13/06 to the petitioner at the present market value of the said lot 4,
- c) make order staying further proceedings in the said case No: : 1782/P of the District Court of Balapitiya until the final determination of this application

Admittedly, the Petitioner has never been a party in any of the previous proceedings in the case pertaining to this application. Thus, it is correct to

identify the Petitioner as a total outsider to the proceedings he has chosen to challenge in the instant application. Therefore, at the outset, this Court must state here that it is not satisfied that the Petitioner has any locus standi to challenge the proceedings he has chosen to challenge in this application. This is so, particularly because the case pertaining to this application is a partition action between some other parties other than the Petitioner in the District Court of Balapitiya. This Court was kept informed that even the final decree of the said case has now been entered.

This Court notes that section 5 A of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006, has conferred the appellate and revisionary jurisdiction on the Provincial High Court established by Article 154 P of the Constitution in respect of judgments, decrees and orders delivered and made by any District Court or a Family Court within such Province and the Appellate jurisdiction for the correction of all errors in fact or in law, which shall be committed by any such District Court or Family court, as the case may be.

The said Act also has provided that the provisions of Sections 23 to 27 of the Judicature Act, No. 02 of 1978 and Sections 753 to 760 and sections 765 to 777 of the Civil Procedure Code (Chapter 101) and of any written

law applicable to the exercise of the jurisdiction referred to in subsection (1) by the Court of Appeal, shall be read and construed as including a reference to a High Court established by Article 145 P of the Constitution for a Province and any person aggrieved by any judgment, decree or order of a District Court or a Family Court, as the case may be, within a Province, may invoke the jurisdiction referred to in that subsection, in the High Court established for that Province.

Thus, it is clear that it is the forum referred to in the above provision that any aggrieved person must approach for appeals or for revision applications.

Learned Counsel for the Petitioner sought to argue that the jurisdiction to call for, inspect and examine any record of any Court of first Instance conferred on the Court of Appeal by Article 145 of the Constitution is a jurisdiction different to the revisionary jurisdiction of this Court. He submitted that as the reason as to why the instant application has been made under Article 145. He categorically stated that he does not seek to support this application under Article 138 of the Constitution.

Article 145 is as follows;

"...The Court of Appeal may, *ex mero motu* or on any application made, call for, inspect and examine any record of any Court of First Instance and in the exercise of its revisionary powers may make any order thereon as the interests of justice may require. ..."

This Court in the case of Vithana Kuruppu Arachchige Anura, Municipal Commissioner, Colombo Municipal Council Vs Burns Trading Company (Pvt) Ltd., and four others¹ took the view that Article 145 is an article which merely sets out yet another step this Court can take when it exercises revisionary jurisdiction vested in it under Article 138 and that any order that this Court may make when it invokes its power to call for, inspect and examine any record will necessarily be in the exercise of its revisionary jurisdiction.

It is Article 138 of the Constitution which confers revisionary jurisdiction on this Court. However, Article 138 requires this Court to exercise its revisionary jurisdiction subject to the provisions of the Constitution or of any law.

¹ C A (PHC) APN / 49 / 2017 decided on 2017 - 10 - 31.

The Supreme Court in the case of Weragama V Eksath Lanka Wathu Kamkaru Samithiya² stated as follows; "However, the jurisdiction of the Court of Appeal under Article 138 is not an entrenched jurisdiction, because Article 138 provides that it is subject to the provisions "of any law"; hence it was always constitutionally permissible for that jurisdiction to be reduced or transferred by ordinary law (of course, to a body entitled to exercise judicial power). "

That is exactly what the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006, has done through its sections. In these circumstances , since this Court cannot exercise revisionary jurisdiction over the subject matter pertaining to the instant case, even if this Court invokes its powers vested in it by Article 145 of the Constitution, this Court is denuded with jurisdiction to make any order thereon as such order has to be made by this Court only in the exercise of its revisionary jurisdiction as per Article 145 of the Constitution.

For the foregoing reasons, this Court decides to refuse to issue notices on the Respondents and dismiss this application without costs.

² 1984 (1) Sri. L.R. 293.

This revision application must therefore stand dismissed without costs.

PRESIDENT OF THE COURT OF APPEAL

A L Shiran Gooneratne J

I agree,

JUDGE OF THE COURT OF APPEAL