IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal against an order of the Provincial High Court in the exercise of its revisionary jurisdiction.

C A (PHC) 120 / 2005

Provincial High Court of

Sothern Province (Galle)

Case No. HCR RA 212 / 04

Magistrate Court Galle

Case No. 89455

1. Kahatiravelu Manickam,

   No 93,

   Colombo Road,

   Kaluwella,

   Galle.

1st RESPONDENT - 1st RESPONDENT – APPELLANT

(1st Appellant in CA (PHC) 164/2005 hereinafter referred to as the 1st Appellant)

2. Annamalai Muthappan Chattiar,
   No 43,
   Colombo Road,
   Kaluwella,
   Galle.
   (The Appellant in CA (PHC) 120/2005 hereinafter referred to as the 2nd Appellant)

3rd RESPONDENT - 2nd RESPONDENT - APPELLANT

3. Sinnaiah Ramanathan,
   No 71,
   Layban Road,
   Fort,

Galle.

4th RESPONDENT – 4TH RESPONDENT - APPELLANT

(2nd Appellant in CA (PHC) 164/2005 hereinafter referred to as the 3rd Appellant)

-Vs-

1. Alagu Pambayan Sethuraman,
   No 120,
   Colombo Road,
   Kaluwella,
   Galle.

2nd RESPONDENT - PETITIONER - RESPONDENT

(hereinafter referred to as the 1st Respondent or the Respondent)

2. Joseph Anthony Soris Fernando,

   No 39/1,

   Colombo Road,

   Galle.

   5th RESPONDENT - RESPONDENT - RESPONDENT

   (hereinafter referred to as the 2nd Respondent or the Respondent)

3. Ponnusamy Subramaniam,

   No 39/1,

   Colombo Road,

   Galle.

   6th RESPONDENT - RESPONDENT - RESPONDENT

   (hereinafter referred to as the 3rd Respondent or the Respondent)

4. Muthusamy Velusamy,

   No 10,

Osanagoda,

Galle.

7th RESPONDENT - RESPONDENT - RESPONDENT

(hereinafter referred to as the 4th Respondent or the Respondent)

5. Officer in Charge,

Police Station,

Galle.

COMPLAINANT - RESPONDENT - RESPONDENT

(hereinafter referred to as the Complanant - Respondent)

Before: P. Padman Surasena J (P/CA)

K K Wickremasinghe J

Counsel; Athula Perera with Nayomi N Kularatne for the 1st Respondent - Respondent - Appellant and the 4th Respondent - Respondent - Appellant.

K V S Gannesharajan with Sarah George and Deepika Yogarajah for the 3rd Respondent - Respondent - Appellant.

C V Vivekananda with P N Joseph and M D H Kanishka for the 2nd Respondent - Petitioner - Respondent and 5th and 6th Respondents - Respondents.

Argued on: 2017 - 09 - 06

Decided on : 2018 - 02 - 01

JUDGMENT

P Padman Surasena J (P/CA)

Learned counsel for both parties agreed that it would suffice for this court to pronounce one judgement in respect of both the cases namely C A (PHC) / 120/2005 and C A (PHC) 164/2005.

Therefore, this judgment must apply to both the above cases.

Officer in charge of the Police Station Galle has referred the instant dispute to the Primary Court of Galle in terms of Section 66 (1) (a) of the Primary Court Procedure Act No 44 of 1979 (hereinafter referred to as the Act).

After the inquiry learned Primary Court Judge by his order dated 2002 11-08 had directed that the Sri Kathira Welayutha Swami Kovil be entitled to the possession of the disputed premises.

The case was further taken to the Provincial High Court of Southern Province holden in Galle by way of an application for revision.

The Provincial High Court, after hearing, had allowed the said revision application on the basis that the learned Primary Court Judge had not attempted to settle the dispute, as has been required by section 66 (6) of the Act.

It is against that judgment of the Provincial High Court that this appeal has been lodged.

It would be convenient for this Court to make an entry to the evaluation of the submissions placed before it with the argument that the learned Provincial High Court Judge had erred when he decided to revise the order

of the Primary Court on the basis that the Primary Court had failed to make any attempt to settle the dispute between parties.

In addition to the above, learned counsel for the appellants also submitted that the Respondent (who was the petitioner in the revision application filed before the Provincial High Court) had not tendered the copies of journal entries of the Primary Court record. Thus, it was his submission that in any case there was no material before the Provincial High Court for the learned Provincial High Court Judge to come to such a conclusion.

Learned counsel for the Respondent has not controverted the complaint that he had not tendered copies of the relevant journal entries from the Primary Court record. Therefore, it is our observation that the view taken by the learned Provincial High Court Judge that no attempt had been made by the learned Primary Court Judge to settle the dispute between parties, is a view that is not supported by any material.

It was the submission of the learned counsel for the Appellant that the judgement of this Court in the case of Ali Vs Abdeen[1] which was relied upon by the Respondent, is a judgement delivered by one judge of this

[1] 2001 (1) Sri. L. R 413.

Court. He then drew the attention of this Court to the judgment by a two-judge bench of this Court in the case of Abdul Wahaab Mohamed Nizam Vs Subasinghe Nishshanka Justin Dias.[2]

It would be useful to produce here two quotations from the said judgment. The first of them would be the following passage from the judgment of His Lordship Justice Sisira De Abrew.[3] It is as follows;

"..... In the present case it appears to me that the appellant, who was silent about the issue of jurisdiction in the Primary Court, takes it up only after he lost the case. It cannot be said that failure on the part of the PCJ to comply with section 66(6) of the Act deprives him of the jurisdiction to hear the case. In my view if the parties do not suggest a settlement in a case of this nature, it is assumed that there is no settlement among the parties. In such a situation there is no obligation on the PCJ to act under section 66(6) of the Act. The cases under section 66 of the Act must be concluded expeditiously since peace among the parties is threatened. This was the intention of the legislature when the Act was enacted. If the Superior Courts of this country send back the case for rehearing after

[2] CA (PHC) 16/2007 CA minutes dated 2011-05-26.
[3] As he then was, (sitting as Judge of the Court of Appeal).

several years on the ground that the PCJ had not complied with section 66(6) of the Act, it would defeat the intention of the legislature and frustrate the purpose of the Act. For these reasons I am unable to agree with the view expressed by His Lordship in **Ali vs Abdeen** (supra). ...."

The second would be the following passage from the judgment of His Lordship Justice K T Chitrasiri[4] in the same case, which is as follows.

" .... Be that as it may, in **Ali V. Abdeen** (supra), Upali Gunawardane J had held that the Primary Court Judge was under a peremptory duty to encourage or to make every effort to facilitate dispute settlement before he begins to consider who had been in possession of the land in dispute. His Lordship was also of the view that the Primary Court Judge does not assume jurisdiction to inquire into the matter, if he fails to act under Section 66 (6) of the Act.

Section 66 of the Act deals with the way in which the applications are filed in the Primary Court and the procedure that should be followed thereafter. Furthermore, Section 66(2) clearly state: *"Where an information is filed in a*

[4] As he then was, (sitting as Judge of the Court of Appeal).

Primary Court under subsection 66(1), the Primary Court shall have and is hereby vested with jurisdiction to inquire into..."

Accordingly, it is unambiguous that the assuming of jurisdiction by the PCJ commences immediately after the filing of information under section 66(1) (a) or 66(1) (b) of the Act. Thus, it is clear that by the time the efforts of settlement referred to in section 66(6) are made, PCJ has already assumed the jurisdiction to proceed with the matter. Hence, it is incorrect to state that the PCJ does not assume jurisdiction at that point of time when the Court has already allowed the parties to file documents to establish their respective claims by then. ... "

Thus, from the above quotations it can be seen that the two judges who sat together in that bench had taken different approaches to the issue of failure to attempt by the Primary Court to settle the dispute between parties. However, the most important feature relevant to the instant case that could be gathered from the above judgment is the fact that both their Lord Ships had concurred that the revisionary Court must not set aside the order of Primary Court on the said ground. It is only the reasoning that they appear to have differed.

Thus, the precedent, which would prevail before this Court, is that a revisionary Court ought not to set aside an order of the Primary Court on the mere basis that Primary Court had failed to attempt to settle the dispute between the parties.

This Court sees no acceptable argument placed before it by the Respondent as to why this Court should not adopt that principle in this case.

The learned Provincial High Court Judge had relied on the judgment in the case of Ali V Abdeen.[5] He had also taken the view that the learned Primary Court Judge had failed to attempt to settle the dispute between the parties. However, the effect of such a conclusion according to the above judgment[6] would be the lack of jurisdiction for the Primary Court Judge to proceed to inquire into the matter. This means that Court could have made no positive order with regard to the entitlement of possession. It is because of the simple reason that Court under such circumstances lacks jurisdiction to inquire into such dispute.

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[5] Supra.
[6] Ali V Abdeen.

A Court needs to have jurisdiction to inquire into something. It is only after such an inquiry that Court could come to a conclusion. This follows that no conclusion could be reached when the Court lacks jurisdiction.

The learned Provincial High Court Judge had assumed jurisdiction to arrive at a conclusion that the Respondents are entitled to the possession of the impugned property while holding that the Primary Court has had no jurisdiction in respect of the same matter. This Court is of the view that it is a serious error, which is sufficient by itself to vitiate the whole judgment of the learned Provincial High Court Judge. Thus, we have no hesitation to set aside the said judgment of the learned Provincial High Court Judge.

Perusal of the proceedings before the Provincial High Court shows to the satisfaction of this Court that it was the learned counsel who had appeared for the Respondent[7] who had urged the learned Provincial High Court Judge to set aside the finding of the Primary Court on the basis that he had failed to attempt to settle the dispute. The Respondent at the same time had also urged the learned Provincial High Court Judge to grant the possession of the disputed property to him. This is a clear

[7] Petitioner in the Provincial High Court.

misrepresentation of law on the part of the learned counsel who had appeared for the Respondent in the Provincial High Court. It is basically this, which appear to have misled the learned Provincial High Court Judge. It is certainly not lawful for the Respondent to urge the Provincial High Court to grant him the possession of the impugned property while complaining that the Court lacked jurisdiction to inquire into the same dispute.

It would be prudent at this stage for this Court to examine briefly the role that the Provincial High Court should have played in the revision application filed before it.

In the case of Jayasekarage Bandulasena and four others Vs Galla Kankanamge Chaminda Kushantha and two others,[8] this Court highlighted the necessity to clearly identify the role of the Provincial High Court in an application to revise an order pronounced by the Primary Court. The task before the Provincial High Court is not to consider an appeal against the Primary Court order but to ascertain whether there was any ground upon

[8] C A (PHC) / 147 / 2009, Decided on : 2017 - 09 – 27.

which the Provincial High Court should have intervened exercising its revisionary jurisdiction.

The revisionary forum must be mindful of the fact that 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. It should also be mindful that it is the provisional nature of such orders, which is the reason for such a deprivation of any right of appeal.

Indeed this Court in the case of Punchi Nona V Padumasena and others[9] held as follows;

"... 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. ... "

Having the above in mind, this Court also has to be mindful about the scope in an application for revision. There are only three aspects, which a Court could consider in revisionary proceedings. They are;

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[9] 1994 (2) Sri. L R 117.

i. legality of any order,

ii. propriety of any order and

iii. regularity of the proceedings of such Court.

In the instant case, there is no complaint about the last aspect i.e. the regularity of the proceedings.

We have also perused the written submissions filed by the learned counsel for the Respondent. It is our observation that the said written submission contains factual positions, which do not warrant reconsideration by this Court. It does not set out any acceptable ground as to why this Court should conclude that the order of the Primary Court is illegal or at least improper.

Perusal of the order made by the learned Primary Court Judge in this case also does not reveal any such basis as to the necessity of intervention by a revisionary Court.

Once the Primary Court has made an order, it is for any interested party to have any of his remaining rights vindicated by a competent Court.

Indeed it is to be observed that His Lordship Justice Chitrasiri in the case of Abdul Wahaab Mohamed Nizam Vs Subasinghe Nishshanka Justin Dias,[10] had stated as follows;

" ... The appellant without having regard to the objects of enacting this law referred to above, had chosen to invoke revisionary jurisdiction of the High Court without seeking redress from the District Court to assert his proprietary rights. Such a cause of action by the appellant may lead to negate the very purpose of having this piece of legislation particularly when a rehearing is ordered at this stage as urged by the learned counsel for the appellant. ... "

In these circumstances, this Court is of the opinion that no intervention by the Provincial High Court has been necessary as the learned Primary Court Judge had correctly identified and applied the law to the set of facts of the instant case.

[10] CA (PHC) 16/2007 CA minutes dated 2011-05-26.

Hence this Court decides to set aside the judgment dated 2004 - 11 - 30 of the Provincial High Court and proceed to affirm the judgment dated 2002 - 11 - 08 of the Primary Court.

As has been stated at the inception of this judgment, in view of the agreement by the parties to abide by one judgment from this Court in respect of both the cases above mentioned, this judgment must apply to both the said cases namely C A (PHC) / 120/2005 and C A (PHC) 164/2005.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL