

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) / 14 / 2015

Provincial High Court of

Sabaragamuwa Province (Ratnapura)

Case No. HC / RA / 17 / 2014

Primary Court of Ratnapura

Case No. 92336

Jayaweera Gamathiralalage

Brahmana Watte Ratnasiri

Jayaweera,

Marapana South,

Marapana.

1ST PARTY - PETITIONER -

APPELLANT

-Vs-

1. Gamakonnage Sisira Karunathilake,
Gurugewatta,
Mawudella,
Dela.

2ND PARTY - RESPONDENT -

RESPONDENT

2. Jayaweera Gamathiralalage
Brahmana Watte Nimal Jayaweera,
3. Jayaweera Gamathiralalage
Brahmana Watte Dharmasiri
Jayaweera,

3

4. Jayaweera Gamathiralalage

Brahmana Watte Tikiri Bandara

Jayaweera.

INTERVENIENT PARTY -

RESPONDENT - RESPONDENTS

5. Officer in Charge,

Miscellaneous Complaints Division;

Police Station,

Ratnapura.

APPLICANT - RESPONDENT -

RESPONDENT

Before: P. Padman Surasena (P/CA)

K K Wickremasinghe J

Counsel; Jacob Joseph with Nandasiri Galoluwa for the 1st Party Petitioner
- Appellant.

Nimal Jayasinghe with Pasan Gunasena for the 2nd Intervient
Party - Respondent - Respondent.

Argued on : 2017 - 11 - 02

Decided on : 2018 - 02 - 16

JUDGMENT

P Padman Surasena J (P/CA)

The Officer in Charge of Ratnapura Police Station had filed the information relevant to this case in the Primary Court under section 66 (1) (a) of the Primary Courts Procedure Act No. 44 of 1979 (hereinafter referred to as the Act).

Learned Primary Court Judge having inquired into this information, by his order dated 2014-03-03, had held that the Respondents are not entitled to use 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 2015-02-12 had refused the said application for revision and proceeded to dismiss it.

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

Perusal of the contents of written submissions filed on behalf of the Appellant shows that he mainly relies on the observations recorded by Police to claim a right for the disputed way. In addition to the said Police observations, the Appellant also appear to rely on the the fact that a backhoe had been taken along that path.

However, at the outset this Court has to observe that the Supreme Court in the case of Ramalingam V Thangarajah¹ interpreting section 69 of the Act has stated 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,

¹ 1982 (2) Sri. L R 693.

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).

Turning back to the facts of the instant case, this Court is of the view that even if the Police observations show the existence of a road, that fact does not conclusively establish any rights for others to use that roadway.

Further, it is to be observed that backhoe could best be described as a heavy machine meant to be used in lands rather than a vehicle meant to be used on road for transportation. In that sense, it is not a vehicle as such. Therefore taking a backhoe to a land cannot by itself establish any right of way for the person who had taken such machine.

In that context this Court cannot find fault with the learned Primary Court Judge when he had stated that the Appellant had not established that he is entitled to the right of access upon the land of the Respondent, by prescriptive right or by a deed or by a judicial decision.

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.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL