

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) / 19 / 2013

Provincial High Court of

Western Province (Kalutara)

Case No. 53 / 2011 Rev.

Primary Court Mathugama

Case No. P/67320/10

1. Duwage Gnanaweera,
Ketapala,
Kawththuduwa.

2ND PARTY - PETITIONER -

APPELLANT

-Vs-

1. Nanayakkara Wasam Godakanda
Arachchige Chandradasa,
Karampethara,
Kawththuduwa.

1ST PARTY - RESPONDENT -

RESPONDENT

2. A Chamara,
Karampethara,
Kawththuduwa.
3. A Kulatunga,
Bopanawatta,
Kawththuduwa.
4. D Gartis,
Karampethara,
Kawththuduwa.

5. D Cyril,
Karampethara,
Kawththuduwa.
6. U Dayaratna,
Gorakaduwa,
Bopitiya,
Yatadola.
7. W Sirisena,
Henagama,
Mathugama.
8. W D P Samantha Samarasekara,
Bopitiya
9. R Chaminda Nishantha,
Karampethara,
Kawththuduwa.
10. Dhammika Muthumenike,
Maragahahena,
Kawththuduwa.
11. R Asitha Bopitiya,

PARTIES ADDED TO THE 1ST

PARTY

12. Officer in Charge,
Police Station,
Mathugama.
13. Hon. Attorney General.

RESPONDENTS

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

K K Wickremasinghe J

Counsel; Eshanthi Mendis for the 2nd Party - Petitioner - Appellant.

Asitha C Samarasekara for the 1st Party - Respondent -
Respondent.

Argued on : 2017 - 11 - 10

Decided on : 2018 - 03 - 13

JUDGMENT**P Padman Surasena J**

The Officer in Charge of Mathugama Police Station had filed the information relevant to this case in the Primary Court under section 66 (1) (a) of the Primary Court Procedure Act No. 44 of 1979 (hereinafter referred to as the Act). The 1st Party - Respondent - Respondent (hereinafter sometimes referred to as the 1st Respondent) and the 2nd Party - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant) has been named as the rival parties in the said information.

The said information has alleged that the Appellant had obstructed the road regularly used by the 1st Respondent.

Learned Primary Court Judge having inquired into the complaint contained in the said information, by his order dated 2011-10-16 , had held that the 1st Respondent is entitled to the impugned right of way.

Being aggrieved by the said order of the learned Primary Court Judge, the Appellant had made a revision application in the Provincial High Court of

Western Province holden in Kalutara 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 2013-03-28 had refused the said application for revision and proceeded to dismiss it. The Provincial High Court has taken the view that there is no basis to interfere with the learned Magistrate's order.

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

Perusal of the written submission filed by the Appellant shows that it is no more than a reproduction of the arguments advanced on his behalf in the Primary Court. They are arguments based on factual positions. It does not set out any ground, which is at least suggestive of any illegality or any impropriety of the impugned order. Therefore, this Court is not inclined to re consider them again one by one.

In the instant case, the Appellant does not complain about any irregularity of proceedings.

According to section 74 of the Act an order of the Primary Court Judge under part VII of the Act shall not prejudice any right or interest in any land which any person may establish in a civil suit.

This Court in the case of Jayasekarage Bandulasena and others V Galla Kankanamge Chaminda Kushantha and others¹ held that the right of appeal provided by law to this Court in cases of this nature would only empower this Court to evaluate the correctness of the exercise of the revisionary jurisdiction by the Provincial High Court. This Court also held in that case that such an appeal could not be converted to an appeal against a Primary Court Order.

This Court observes that in the instant case also it is the revisionary jurisdiction, which the Provincial High Court was called upon to exercise.

Further, it would be relevant to reproduce the following passage from a judgment of this Court in the case of Punchi Nona V Padumasena and others².

¹ C A (PHC) / 147 / 2009 decided on 2017-09-27.

² 1994 (2) Sri. L R 117.

“ ... The jurisdiction conferred on a primary Court under section 66 is a special jurisdiction. It is a quasi-criminal jurisdiction. The primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land. 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 ... ”

Thus, it is the view of this Court that there had been no basis for the Provincial High Court to interfere with the conclusion of the learned Primary Court Judge, as there had been no basis to satisfy itself that the order made by the learned Primary Court Judge is either illegal or improper as required by section 364 of the Code of Criminal Procedure Act No. 15 of 1979.

It is the view of this Court that the Appellant has failed to prove to the satisfaction of Court that there is any merit in this appeal.

In these circumstances and for the foregoing reasons this Court decides to dismiss this appeal without costs.

Appeal is dismissed without costs.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL