

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) 64 / 2011

Provincial High Court of

Sabaragamuwa Province (Embilipitiya)

Case No. RA 5/2010

Primary Court Embilipitiya

Case No. 18841/2009

1. Jonikku Hewage Seetha,
Kosnathota,
Walakada,
Godakawela.

2. Jonikku Hewage Piyasena,

Kosnathota,

Kapuheenthenna,

Godakawela.

3. Jonikku Hewage Nandasena,

Kosnathota,

Walakada,

Godakawela.

4. Harissa Gama Ethige Chandani

Kosnathota,

Godakawela.

5. Jonikku Hewage Dharmasena,

(Deceased)

Kosnathota,

Godakawela.

5A. Kanthi Manjanayaka,

Kosnathota,

Godakawela.

2ND PARTY - PETITIONER -

APPELLANT

-Vs-

1. Weerasuriya Mohottalalage Punchi
Menike,
Walakada,
Godakawela.
2. Weerasuriya Mohottalalage Rammenike,
Walakada,
Gogakawela.
3. Waralekumbure Kapuralalage
Leelarathna,
Walakada,
Godakawela.
4. Weerasuriya Mohottalalage
Rambandara,

Walakada,

Godakawela.

5. Wralekumbure Kapuralalage

Gunasingha

Walakada,

Godakawela.

6. Weerasuriya Mohottalalage

Karunarathna,

Walakada,

Godakawela.

7. Weerasuriya Mohottalalage Heen

Appuhami,

Walakada,

Godakawela.

8. Weerasuriya Mohottalalage Wijerathna

Bandara,

Ambawila,

Pallebedda.

1ST PARTY - RESPONDENT -

RESPONDENTS

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

K K Wickremasinghe J

Counsel; M P J Bandara for the 2nd Party - Petitioner - Appellant

Sandamal Rajapaksha with Zhisara Edirithilake for the 1st Party –

Respondent - Respondents.

Decided on : 2018 - 03 - 16

JUDGMENT

P Padman Surasena J

Learned counsel for the 2nd Party - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant) and the learned counsel for the 1st Party - Respondent - Respondent (hereinafter sometimes referred to as the Respondents), when this case came up on 2017-08-01 before us, agreed to have this case disposed of, by way of written submissions. Therefore, this judgment would be based on the material so adduced.

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

Learned Primary Court Judge having inquired into the complaint contained in the said information, by his order dated 2009-10-14, had held that the Respondents are entitled to 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 Embilipitiya 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 2011-03-31 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.

This Court observes that it is because the parties have consented that the learned Primary Court Judge had proceeded to inspect the relevant roadway. Therefore, it is now not open for the Appellant to complain that the learned Primary Court Judge did not have the benefit of hearing the oral evidence.

Perusal of the learned Primary Court Judges order shows that the learned Primary Court Judge with the concurrence of the parties had decided to inspect the relevant roadway, as the parties had disputed the point the said road ends. It appears that he learned Primary Court Judge was able to resolve this issue subsequent to the said inspection.

This Court considered the material adduced by the parties, the order of the learned Primary Court Judge dated 2013-06-19 and the judgment dated 2016-05-11 of the learned Provincial High Court Judge.

This Court too agrees with the conclusion of the Provincial High Court that the learned Primary Court Judge's order is correct.

One has to be mindful that in the instant case, what the Provincial High Court was called upon to exercise was its revisionary jurisdiction.

As has been held by this Court in the case of Jayasekarage Bandulasena and others Vs Galla Kankanamge Chaminda and others¹, revisionary jurisdiction can be exercised to satisfy the revisionary Court as to the legality of any order, to satisfy itself as to the propriety of any order or to satisfy itself as to the regularity of the proceeding before the lower Court.

Perusal of the written submissions filed by the Appellant shows that its content is nothing more than the reproduction of the factual positions canvassed before the Primary Court. While it is not required for this Court to re consider the factual positions one by one again, this Court is compelled to observe that the said written submission of the Appellant does not demonstrate any illegality, irregularity or any impropriety of the impugned order. Therefore, it is clear that the Provincial High Court has

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

had no ground to interfere with the order of the learned Primary Court Judge in the exercise of its revisionary jurisdiction.

The provisional nature of the orders made by Primary Court under part VII of the Act was highlighted by this Court in the case of Punchi Nona V Padumasena and others² in following terms.

“ ... 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 ... ”

It is the view of this Court that the Appellants have failed to satisfy this Court that there is any merit in this appeal.

² 1994 (2) Sri. L R 117.

This Court has no basis to deviate from the finding by the learned Primary Court Judge that the Respondents are entitled to use the impugned roadway.

In these circumstances and for the foregoing reasons this Court decides to dismiss this appeal. The Respondents are 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