

**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) 60 / 2010

Provincial High Court of

Central Province (Kandy)

Case No. 57/2006

Primary Court Kandy

Case No. 64509

Ganthile Herath Mudiyansele

Ariyaratna,

No. 154,  
Kurundu Waththa,  
Palle Bokalawela,  
Ambathenna.

**1<sup>st</sup> RESPONDENT - PETITIONER -  
APPELLANT**

-Vs-

1. Udakumbura Rajamanthrige Jayathissa,  
Kelumpaya,  
Uda Bokalawela,  
Ambathenna.
2. Udakumbura Rajamanthrige Senaka  
Rajamanthri,  
Uda Bokalawela,  
Ambathenna.

**2<sup>ND</sup> AND 3<sup>RD</sup> RESPONDENT -**  
**RESPONDENT - RESPONDENTS**

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

**K K Wickremasinghe J**

Counsel; W D Weeraratna for the 1<sup>st</sup> Respondent - Petitioner -  
Appellant.

Laknath Senevirathna for the 2<sup>nd</sup> and 3<sup>rd</sup> - Respondent -  
Respondents.

Decided on : 2018 - 03 - 21

JUDGMENT**P Padman Surasena J**

Learned counsel for the 1<sup>st</sup> Party - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant) and the learned counsel for the 2<sup>nd</sup> Party - Respondent - Respondent (hereinafter sometimes referred to as the 2<sup>nd</sup> Respondent), when this case came up on 2017-07-04 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 Katugasthota has referred the instant dispute to the Primary Court of Kandy in terms of Section 66 (1) (a) of the Primary Court Procedure Act No 44 of 1979 (hereinafter referred to as the Act).

In the report filed by the Police, two rival parties have been named.

The Appellant (Ariyaratna) has been named as the 1<sup>st</sup> Party and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have been named as the 2<sup>nd</sup> Party.

The 3<sup>rd</sup> Party - Respondent - Respondent, (hereinafter sometimes referred to as the 2<sup>nd</sup> Respondent), 4<sup>th</sup> Party - 3<sup>rd</sup> Respondent - Respondent (hereinafter sometimes referred to as the 4<sup>th</sup> Respondent), 5th Party – 4<sup>th</sup> Respondent - Respondent, (hereinafter sometimes referred to as the 5<sup>th</sup>

Respondent), 6<sup>th</sup> Party – 5<sup>th</sup> Respondent - Respondent (hereinafter sometimes referred to as the 6<sup>th</sup> Respondent) have also got themselves added as parties after the notice was affixed on the land.

After the inquiry learned Primary Court Judge has pronounced his order dated 2006 - 04 - 25.

Being aggrieved by the learned Magistrate's order the 1<sup>st</sup> Respondent had filed a revision application in the Provincial High Court of Central Province holden in Kandy.

The Provincial High Court after hearing by its judgment dated 2010-07-02, had refused the said revision application on the basis that the findings entered into by the learned Primary Court Judge is correct.

It is against that judgment of the Provincial High Court that the Appellant has appealed to this Court.

This Court observes that the learned Primary Court Judge had inspected the relevant lands with the concurrence of the parties. Both parties have expressed their willingness to abide by the learned Primary Court Judge's order after the inspection.

Learned Provincial High Court Judge has also referred to this fact in his judgment.

One of the main contentions of the Appellant is that the learned Primary Court Judge did not have the benefit of hearing oral evidence.

However, section 72 of the act has clearly specified the scope of the inquiry to be conducted by a Primary Court Judge under part VII of the Act. It appears that section 72 discourages the Primary Court to adduce oral evidence as a matter of course. The said section is as follows.

**Section 72**

*A determination and order under this part shall be made after examination and consideration of -*

- a) the information filed and the affidavits and documents furnished;*
- b) such other evidence on any matter arising on the affidavits and documents furnished as the Court may permit to be lead on that matter; and*
- c) such oral or written submissions as may be permitted by the Judge of the Primary Court in his discretion.*

In the case of Ananda Sarath Paranagama Vs Dammadhinna Sarath Paranagama and others<sup>1</sup> His Lordship Justice A. W. A. Salaam stated as follows, "it is now trite law that in an inquiry under chapter VII of the Act, adducing evidence by way of affidavits and documents is the rule and oral testimony is an exception to be permitted only at the discretion of judge. The discretion is hardly exercised to permit oral testimony and generally not granted as a matter of course..."

This Court also observes that it is because the parties have consented that the learned Primary Court Judge had proceeded to inspect the relevant corpus. 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. This Court sees no merit in the said argument.

In the instant case, what the Provincial High Court was called upon to exercise was its revisionary jurisdiction.

This Court observes that the written submission of the Appellant does not set out any ground, which is at least suggestive of any illegality or any impropriety of the impugned order. As has been mentioned above the

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<sup>1</sup> CA (PHC) APN 117/2013 decided on 2014-08-07.

procedure that has been followed by the learned Primary Court Judge is not irregular. Therefore, it is clear that none of the grounds upon which the Provincial High Court could have intervened to exercise its revisionary jurisdiction, has been made out.

Therefore, it is inevitable that the learned Provincial high Court Judge has refused the revision application filed by the Appellant.

Hence, this Court decides to affirm the judgment dated 2010-07-02 of the learned Provincial High Court Judge and dismiss this appeal without costs.

Appeal dismissed without costs.

**PRESIDENT OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**