

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) 248 / 2006

Provincial High Court of

Sabaragamuwa Province (Kegalle)

Case No. 2101/Rev

Primary Court Mawanella

Case No. 84276

Nuhuman Mohomed Aniz,

750,

Kandy Road,

Hingula.

2ND PARTY - PETITIONER -

APPELLANT

-Vs-

1. Officer in Charge,

Police Station,

Mawanella.

COMPLANANT - RESPONDENT -

RESPONDENT

2. Mohomed Hanifa Sahabdeen

816,

Kandy Road,

Hingula.

1ST PARTY - RESPONDENT -

RESPONDENT

3. Mohomed Hani Mohomed Mohideen
alias Salahudeen,
No. 648,
Kandy Road,
Hingula.

INTERVENIENT PARTY -

RESPONDENT - RESPONDENT

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

K K Wickremasinghe J

Counsel; Hemathillaka Madukandage for the 2nd Party - Petitioner -
Appellant.

Sunil Abeyrathna with T Gunathilaka for the 1st Party -
Respondent - Respondent and the Intervenant Party -
Respondent - Respondent.

Decided on : 2018 - 03 - 29

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 2nd Respondent), and the Intervenant Party - Respondent - Respondent (hereinafter sometimes referred to as the 3rd Respondent), when this case came up on 2017-07-11 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 Mawanella has referred the instant dispute to the Primary Court of Kegalle 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, 1st Party - Petitioner - Appellant (Mohomed Nuhuman Mohomed Aniz) (hereinafter sometimes referred to as the Appellant) has been named as the 1st Party and the 2nd Party - Petitioner - Respondent (Mohomed Hanifa Sahabdeen) (hereinafter sometimes referred to as the 2nd Respondent) has been named as the 2nd Party.

The Intervenant Party - Respondent - Respondent, (hereinafter sometimes referred to as the 3rd Respondent), has also got himself added as a party subsequently.

After the inquiry learned Primary Court Judge by his order dated 2004 - 07-21 had directed that the fence erected by the Appellant be removed.

Being aggrieved by the learned Magistrate's order the Appellant had filed a revision application in the Provincial High Court of Sabaragamuwa Province holden in Kegalle.

The Provincial High Court after hearing, by its judgment dated 2006-12-06, had refused the said revision application on the basis that the findings 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.

The Appellant has not controverted the fact that he had erected a fence to separate the relevant washroom. He has also admitted that the said washroom was constructed by the 2nd Respondent and it was the 2nd Respondent who had been using it. The police observations have clearly revealed that the impugned fence had been erected afresh. It was due to

the intervention of police that even a three feet wide access path had been given to the 2nd Respondent to enable him to use the relevant washroom.

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. This Court also observes that the procedure that has been followed by the learned Primary Court Judge is not irregular. Therefore, it is clear that there had been no ground upon which the Provincial High Court could have intervened to exercise its revisionary jurisdiction, in this case.

Thus, the refusal of the Appellant's revision application by the learned Provincial High Court Judge is inevitable.

In these circumstances, this Court is of the opinion that the learned Primary Court Judge had correctly identified and applied the law to the set of facts of this case. Thus, the learned Provincial high Court Judge has correctly refused the revision application filed by the Appellant.

Hence, this Court decides to affirm both the judgment dated 2004-07-21 of the Primary Court and the judgment dated 2006-12-06 of the Provincial High Court and proceed to 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