

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an Appeal in terms of
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

Officer in Charge,
Police Station,
Weerangula.

Complainant

C.A. Case No: CA (PHC) 95/2007

P.H.C. Gampaha Revision Application
No: HC 34/2006(Rev)

M.C. Attanagalle Case No: 10610/66

Vs.

Uduwara Arachchi Appuhamilage
Upali Amarasinghe

1st Party Respondent

Liyana Arachchige Gunathilake

2nd Party Respondent

1. Varagoda Kankanamlage Ranjani
2. Senarathna Mudiyansele Rupa
Senarathne
3. Wickramage Samson
Wickramasinghe

2nd Party Respondent

Intervient

AND BETWEEN

1. Senarathna Mudiyansele Rupa
Senarathne

2. Wickramage Samson
Wickramasinghe

2nd Party Respondent Intervent-
Petitioners

Vs.

Uduwara Arachchi Appuhamilage
Upali Amarasinghe

1st Party Respondent-
Respondent

Liyana Arachchige Gunathilake

2nd Party Respondent-
Respondent

Varagoda Kankanamlage Ranjani

2nd Party Respondent
Intervent-Respondent

AND NOW BETWEEN

1. Senarathna Mudiyansele Rupa
Senarathne

2. Wickramage Samson
Wickramasinghe

2nd Party Respondent
Intervent-Petitioners-
Appellants

Vs.

Uduwara Arachchi Appuhamilage
Upali Amarasinghe

1st Party Respondent-
Respondent-Respondent

Liyana Arachchige Gunathilake
2nd Party Respondent-
Respondent-Respondent

Varagoda Kankanamlage Ranjani
2nd Party Respondent
Intervenient-Respondent-
Respondent

BEFORE : K. K. Wickremasinghe, J.
Janak De Silva, J.

COUNSEL : AAL Sunil Cooray with AAL Nilanga
Perera for the 2nd party Respondent-
Intervenient Petitioner-Appellants
Prashantha Lal de Alwis, PC with AAL
Chamara Wannisekara for the Respondents

ARGUED ON : 07.05.2018

WRITTEN SUBMISSIONS : The 2nd Party Respondent-Intervenient
Petitioner-Appellants – On 23.07.2018
The 1st Party Respondents-Respondents –
On 24.07.2018

DECIDED ON : 03.08.2018

K.K. WICKREMASINGHE, J.

This Appeal is filed by the 2nd Party Respondent-Intervenient Petitioner-Appellants seeking to set aside the order of the Learned High Court Judge of Western Province holden in Gampaha in Case No. 34/2006(Rev) dated 16.08.2007 and

seeking to set aside the order of the Learned Magistrate of Attanagalle in Case No. 10610/66 dated 21.07.2006.

Facts of the Case:

The OIC, Weeragula had filed the information under section 66 of the Primary Courts Procedure Act No. 44 of 1979 following a complaint made to the Police Station, Weeragula by the 1st Party Respondent-Respondent-Respondent (hereinafter referred to as the 1st Party Respondent). The said information under section 66 (1)(a) was filed regarding a dispute related to a land between the 1st party Respondent and the 2nd party Respondent that was arisen on or about 13.02.2006.

On 22.04.2006, a site inspection was held by the SSP, Gampaha with few other police officers of Weeragula police. In the said inspection report, the SSP had noted that there had existed a wire fence which later had been removed leaving behind the holes from which the several fence posts had been removed. The SSP had ordered to reconstruct the fence. Thereafter the 1st Party Respondent had made a complaint to the Police Head Quarters against the SSP for being bias to the other party.

The OIC had attempted to withdraw the case on 28.04.2006 when the case was called for notice and the Learned Magistrate of Attanagalle had refused the application for withdrawal. After considering the affidavits, counter affidavits and written submissions filed by the parties, the Learned Magistrate delivered the order on 21.07.2006. In the said order the Learned Magistrate had ordered to remove the fence that was put up on order of the SSP, on 22.04.2006.

Being aggrieved by the order of the Learned Magistrate, the Appellants had filed a revision application in the High Court of Gampaha. On 16.08.2007, the Learned High Court Judge of Gampaha had dismissed the revision application.

Being aggrieved by the said dismissal, the Appellants have filed an appeal in this court seeking to set aside the order of the Learned Magistrate of Attanagalle and the order of the Learned High Court Judge of Gampaha.

The Learned President's Counsel for the Respondents submitted that the Appellants have not filed a full copy of the Magistrate Court Proceedings in this court. He further submitted that even though the Appellants had promised to file a certified copy of the entire case record, they had failed to do so, and therefore the application has to be dismissed *in limine*.

Upon perusal of the certified case record submitted, we find that the proceedings of the Magistrate court and/or the journal entries have not been attached.

Rule 3(1) (a) of the Court of Appeal (Appellate Procedure) Rules 1990 requires the Petitioner to tender all the documents material to an application and in an event a Petitioner fails to comply with such provisions, the Court may *ex mero motu* or at the instance of any party, dismiss such application.

In the case of **Dahanayake and others v Sri Lanka Insurance Corporation Ltd. and others (2005) 1 Sri L.R. 67**, it was held that,

“If there is no full and truthful disclosure of material facts, the Court would not go into the merits of the application but will dismiss it without further examination...”

In the case of **Lokugalappaththige Cyril & Others v Attorney General [S.C (Spl.) L.A. No. 272/2013]** it was held that,

“In a brief manner a fair and full disclosure of all material facts would be essential and should be pleaded in applications to Superior Courts by parties aggrieved of orders and judgments of the lower courts. In the same manner a “plain and concise statements of all facts and material” would be mandatory for special leave to Appeal Applications to the Supreme Court...”

Since this is an appeal against the order of the revision application No. 34/2006 (Rev), we are inclined to consider whether this objection was raised by the Respondents at the stage of High Court. Accordingly we find that this objection was raised by the Respondents in their statement of objections filed in the High Court (At page 39 and 40 of the brief). The Respondents had further averred in said objections that the certified copies of the Petition and the Affidavit did not have a valid seal of a commissioner for oaths. We find that some of the material documents certified as “true copy” only have the phrase “Attorney at Law” in the seal and a signature. However a name of the Attorney at Law who certified the copies was not mentioned in said seal.

In the case of **Nadugala Vidhana Pathirana Piyadasa v Attorney General [CA (PHC) APN 65/2017]**, it was held that,

“This Court in the case of the Attorney General vs Ranjith Weerawickrama Charles [CA (PHC) APN 74/2016 decided on 2017-10-09] considered the same question that arose in that case. Having considered the relevant aspects pertaining to this issue, this Court underlined the importance of tendering to Court, authentic copies of impugned documents, which must bear an authoritative and responsible signature. This is not only just to certify such copies but also to take the responsibility for the authenticity of

such documents. In that case this Court held that a photocopy of proceedings certified by an Attorney-At-Law as a 'true copy' cannot be considered as a certified copy within the meaning of rule 03 (1) (a) of the Court of Appeal (Appellate procedure) Rules 1990."

It is pertinent to note that the Learned High Court Judge of Gampaha has stated in the order that the Appellants had not submitted the entire case record of the Magistrate Court case, to the High Court as promised by the paragraph 19 of the revision application.

“තවද ඔවුන් කියා සිටින්නේ, පෙත්සම්කරුවන් තම පෙත්සමේ 19 වෙනි ඡේදයේ කියා ඇති ආකාරයට 1 වෙනි පාර්ශව වග උත්තරකරු විරෝධතා දක්වන අවස්ථාව වන විටත් සහතික පිටපතක් මෙම අධිකරණයට ලබා දී නැති බවයි...” (At page 35 of the brief/ page 11 of the High Court order)

It is an established principle that a party who has no alternative remedy can invoke revisionary jurisdiction of Court of Appeal only upon establishment of exceptional circumstances.

In the case of **Rustom v. Hapangama (1978-79) 2 SLLR 225**, it was stated that,

“the trend of authority clearly indicates that where the revisionary powers of the Court of Appeal are invoked the practice has been that these powers will be exercised if there is an alternative remedy available only if the existence of special circumstances are urged necessitating the indulgence of this court to exercise these powers in revision. If the existence of special circumstances does not exist then this court will not exercise its powers in revision.”

The Learned High Court Judge of Gampaha had considered the case of **B.M.D. Jayantha Fernando v. W.J.F. Fernando** [CA 103/86-decided on 22.10.1997], where, Hector Yapa,J held that,

“...in the present case the order that was made by the Primary Court Judge was an interim order, so that any person dissatisfied with the said order could have sought relief in the District Court...Therefore when a dissatisfied party has an alternative remedy, this court will not exercise its revisionary powers unless such party can show the existence of exceptional circumstances...”

The Learned High Court Judge had further directed the parties to settle the dispute regarding the land filing a partition case.

In the case of **A.S. Paranagama v D.S. Paranagama and others** [CA (PHC) APN 117/2013], it was held that,

“The term 'revision' means the examination of a decision with a view to correction. The material points that may arise for consideration in a revision application inter alia are whether a subordinate Court has exercised jurisdiction which is not vested in it in law or whether it has failed to exercise such jurisdiction which is so vested or has acted in the exercise of the jurisdiction illegally or in excess of jurisdiction or with material irregularity. In other words, strictly speaking a revision application calls for the correction of errors concerning illegalities and patent irregularities which are of such magnitude that call for the discretionary powers of Court to correct them.

Hence, it is the duty of a High Court and the Court of Appeal vested with the revisionary jurisdiction under the Constitution, to ensure that the

revisionary powers of such Courts are not invoked as a matter of course, at the expense of a successful party in the original Court having to needlessly wait for the fruits of his victory to be reaped..."

In the case of **M.M.P. Fernando v S.M. Podimanike and others [CA (PHC) APN 113/2010]**, it was held that,

*"It is well established principle that a party who has no alternative remedy can invoke revisionary jurisdiction of Court of Appeal only upon establishment of exceptional circumstances...Further I would also like to consider a judgment of Justice Udalgama in **Devi Property Development (Pvt) Ltd., and another vs Lanka Medical (Pvt) Ltd., C.A.518/01 decided on 20.06.2001**. His Lordship in the said judgment observed thus: "Revision is an extraordinary jurisdiction vested in court to be exercised under exceptional circumstances, if no other remedies are available. Revision is not available until and unless other remedies available to the Petitioner are exhausted..."*

The Learned Magistrate of Attanagalle, in the order dated 21.07.2006, had stated as follows;

"...දිසා අධිකරණයක නඩු පවරා ඔප්පු මත ඇති අයිතිවාසිකම් තීරණය කරන තෙක් දැනට භුක්ති විඳින ආකාරයට භුක්ති විඳීමට නියම කරමි..."

Accordingly we find that the Learned Magistrate had acted well within the provisions of the Primary Courts Procedure Act and the Learned High Court Judge had correctly affirmed the said order.

Considering that the Appellants have failed to tender a copy of the entire case record to the High Court which in fact is a violation of Court of Appeal rules, we are of the view that this appeal should have been dismissed *in limine*.

Anyway we considered the merits of the case and find that the Appellants had failed to establish exceptional circumstances to the satisfaction of the High Court and therefore the Learned High Court Judge of Gampaha had correctly dismissed the revision application.

Appeal is hereby dismissed with costs.

JUDGE OF THE COURT OF APPEAL

Janak De Silva, J.

I agree,

JUDGE OF THE COURT OF APPEAL

Cases referred to:

- 1) Dahanayake and others v. Sri Lanka Insurance Corporation Ltd. and others (2005) 1 Sri L.R. 67
- 2) Lokugalappaththige Cyril & Others v. Attorney General [S.C (Spl.) L.A. No. 272/2013]
- 3) Nadugala Vidhana Pathiranaage Piyadasa v. Attorney General [CA (PHC) APN 65/2017]
- 4) Rustom v. Hapangama (1978-79) 2 SLLR 225
- 5) A.S. Paranagama v. D.S. Paranagama and others [CA (PHC) APN 117/2013]
- 6) M.M.P. Fernando v. S.M. Podimanike and others [CA (PHC) APN 113/2010]