

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) / 249 / 2003

Provincial High Court of

Sabaragamuwa Province (Kegalle)

Case No. Rev 1508

Primary Court Kegalle

Case No.18769/2002

Panawala Ralalge Wijethillake,

Pitihuma,

Kegalle.

2ND PARTY RESPONDENT -

PETITIONER - APPELLANT

-Vs-

1. Officer in Charge,

Police Station,

Kegalle.

COMPLAINANT - RESPONDENT -

RESPONDENT

2. Meril Jayasinghe,

No. 251,

Bandaranayake Mawatha,

Kegalle.

3. Halawatha Mudiyanseelage Thejan

Devi Ananda

No. 292,

Bandaranayake Mawatha,

Kegalle.

1ST PARTY RESPONDENT -

RESPONDENT - RESPONDENTS

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

K K Wickremasinghe J

Counsel; Dr. Sunil Cooray for the 2nd Party Respondent - Petitioner -
Appellants.

Sunil Abeyrathna with Thashira Gunathillake for the 1st Party
Respondent - Respondent - Respondents.

Argued on: 2017-07-14

Decided on : 2018 - 08 - 08

JUDGMENT

P Padman Surasena J

The Complainant- Respondent - Respondent (hereinafter sometimes referred to as the 1st Respondent) had filed an information in the Primary Court of Kegalle under section 66 (1) informing the learned Primary Court Judge about an existence of a breach of peace between two parties over a dispute relating to a land.

Hewagama Mudalige Don Meril Joseph Jayasinghe who is the 1st party Respondent - Respondent - Respondent (hereinafter sometimes called and referred to as the 2nd Respondent) was named as the 1st Party in the said information.

Panawala Ralalge Wijethillake and Halawatha Mudiyanseelage Thejandevi Ananda Wijesinghe (hereinafter sometimes respectively called and referred to as the 2nd and 3rd Respondents) were named as the 2nd party.

Learned Primary Court Judge, having inquired into this complaint, by his order dated 2002-06-06, had held that the 2nd Respondent is entitled to the peaceful possession of the land in dispute.

Being aggrieved by the said order of the learned Primary Court Judge, the 2nd Party Respondent - Petitioner - Appellant (hereinafter sometimes called and referred to as the Appellants) had filed a revision application in the

Provincial High Court of Sabaragamuwa Province holden in Kegalle urging the Provincial High Court to revise the order made by the learned Primary Court Judge.

The Provincial High Court of Kegalle after hearing parties, by its judgment dated 2003-09-17, had sent the case back to the learned Primary Court Judge directing him to identify and decide the exact portion of the alleged encroachment.

It is that judgment which the Appellant seeks to canvass in this appeal before this Court.

The dispute relevant to this case had arisen when the Appellant had constructed a boundary wall along the boundary of his land to separate his property from the properties of his immediate neighbors who are the 2nd and 3rd Respondents.

It is to be noted that the learned Primary Court Judge had also proceeded to inspect the sight before making the impugned order.

Learned Primary Court Judge having considered the material adduced before him had held by his order dated 2002-06-06 that the Appellant had

encroached upon the lands of his neighbors when constructing his boundary wall. Learned Primary Court Judge had directed that the 2nd Respondent is entitled to possess the said portion of land encroached by the Appellant. Learned Primary Court Judge had directed that all obstructions pertaining to the said right of possession of the 2nd Respondent be removed.

Upon a revision application filed by the Appellant, learned Provincial High Court Judge had directed the learned Primary Court Judge to ascertain and determine the exact portion of the land, which the Appellant had encroached before carrying out his order.

It is the view of this Court that it would be in the best interest of all the parties to ascertain with certainty the portion of the encroached land.

It is the observation of this Court that the major part of the written submission filed on behalf of the Appellant contains the facts to propose as to why the learned Primary Court Judge should have held in his favour.

It would be relevant to bear in mind that the appeal before this Court is an appeal against a judgment pronounced by the Provincial High Court in exercising its revisionary jurisdiction. Thus, the task before this Court is not

to consider an appeal against the Primary Court order but to consider an appeal in which an order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction is sought be impugned.

It is relevant to observe that this Court in the case of Nandawathie and another V Mahindasena¹ also had taken the above view. It is noteworthy that this Court in that case² had stated that the right given to an aggrieved party to appeal to Court of Appeal in a case of this nature should not be taken as an appeal in the true sense but in fact an application to examine the correctness, legality or the propriety of the order made by the High Court Judge in the exercise of its revisionary powers.³

This Court in the case of Punchi Nona V Padumasena and others⁴ considered the nature of the jurisdiction conferred on the Primary Courts and proceeded to hold as follows.

" ... 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

¹ 2009 (2) Sr. L. R. 218.

² Ibid. at page. 238.

³ Ibid. at page 238.

⁴ 1994 (2) Sri. L R 117.

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 ... "

In the above 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