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

Mohemed Abdulla Ahamed Mohideen

124, High Level Road,

Pahathagama,Hanwella.

1st Party Respondent-Petitioner-Appellant

Case No.CA (PHC) 166/2012

H.C. Avissawella Case No. HCA 17/2012 (Rev) **Vs.**

M.C. Avissawella Case No.47993/12

Ranminipura Dewage Sudath Rohitha

Vishwakula

D 42/1, Kumburadeniya, Danowita.

2nd Party Respondent-Respondent-Respondent

Hettiarachchige Shirley Perera

105, Barnes Place,Colombo 07

Intervenient-Respondent-Respondent-Respondent

Officer-in-Charge,

Police Station,

Hanwella.

Complainant-Respondent-Respondent

The Hon. Attorney General,

Attorney General's Department,

Colombo 12.

Respondent

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

M.S.A. Shaheed with A.M. Hussain for 1st Party Respondent-Petitioner-Appellant

Malaka Herath for 2nd Party Respondent-Respondent-Respondent and Intervenient-Respondent-Respondent-Respondent

Written Submissions tendered on:

1st Party Respondent-Petitioner-Appellant on 12.06.2017, 16.03.2018 and 02.11.2018

2nd Party Respondent-Respondent-Respondent and Intervenient-Respondent-Respondent-Respondent on 27.06.2017, 01.11.2018

Argued on: 22.02.2018

Decided on: 11.01.2019

Janak De Silva J.

This is an appeal against the order of the learned High Court judge of the Western Province holden in Avissawella dated 12.12.2012.

The Complainant-Respondent-Respondent filed information in the Magistrates Court of Avissawella in terms of section 66(1)(a) of the Primary Courts Procedure Act on 2012.06.18. As the information disclosed a dispute affecting land between the 1st Party Respondent – Petitioner – Appellant (Appellant) and the 2nd Party Respondent– Respondent – Respondent (2nd Party Respondent) that threatened or was likely to lead to a breach of peace, the learned Primary Court judge directed that a notice be affixed to the disputed corpus inviting any parties interested to appear in court on the date mentioned in the notice and file affidavits setting out their claims.

Thereafter, the Intervenient Respondent – Respondent – Respondent (Intervenient Respondent) intervened on the date mentioned by filing an affidavit and documents setting out his claim. The learned Primary Court judge – having perused the affidavits, counter affidavits and written submissions of the aforementioned parties – came to the conclusion that this was a dispute relating to the possession of a part of a land. The learned Primary Court judge also reasoned that the dispute must be dealt with in terms of section 68(1) of the Primary Courts Procedure Act as no party had alleged that they had been dispossessed from the land within two months prior to the filing of information. (Vide pages 50 – 51 of the Appeal Brief) Accordingly, having identified the disputed corpus, the learned Primary Court judge came to the conclusion that the Intervenient Respondent had been in constructive possession of the land in dispute through the 2nd Party Respondent on the date of the filing of information. The Intervenient Respondent was therefore placed in possession of the disputed corpus.

Being aggrieved by the said order of the learned Primary Court judge, the Appellants filed a revision application before the High Court of Avissawella seeking *inter alia* to set aside the learned Primary Court judge's order and a declaration to the effect that the Appellant was entitled to possession of the disputed corpus. When this matter was supported for notice and interim relief (staying the execution of the order of the learned Primary Court judge) before the learned High Court judge of Avissawella on 2012.11.29, the counsel appearing for the Intervenient Respondent raised two points of law against the maintainability of the revision petition. (Vide pages 25 – 26 of the Appeal Brief).

It was submitted that,

(a) the caption of the revision petition failed to explicitly disclose the legal provision under which the revision petition was being presented to the High Court

(b) the body of petition did not specify the exceptional circumstances which necessitated the High Court to exercise its revisionary jurisdiction

The learned High Court judge accepted both these contentions and dismissed the revision application in the first instance without issuing notice by order dated 2012.12.12. (Vide pages 30 – 33 of the Appeal Brief). Hence this appeal.

Defective Caption

The learned High Court Judge held that the revision application must be dismissed as the Appellant had failed to specify the relevant statutory provision under which the revision application was made.

There is no dispute that in terms of Article 154P (3)(b) of the Constitution a High Court of a Province has revisionary jurisdiction in respect of orders entered by Primary Courts within the Province. In *Vanik Incorporation Ltd. vs. L.D. Silva and others* [(2001) 1 Sri.L.R. 110] S.N. Silva C.J. held that the appeal to the Supreme Court, though erroneously made under section 5(2) of the High Court of the Provinces (Special Provisions) Act. No. 10 of 1996. is referable to section 37 of the Arbitration. Act. No. 11 of 1995 in terms of which an appeal lies to the Supreme Court on a question of law, with leave and hence the mistaken reference in the caption shall not result in the rejection of the appeal. Accordingly, I hold that the learned High Court Judge erred in holding that the application should be dismissed as the Appellant had failed to specify the relevant statutory provision under which the revision application was made.

Exceptional Circumstances

The other ground on which the learned High Court Judge refused notice was that the Appellant had failed to establish exceptional circumstances warranting the exercise of revisionary powers.

The Appellant cited *Jayatilake v. Ratnayake* [(2007) 1 Sri.L.R. 299] where it was held by Ranjth Silva J. that in a revision application when there is no alternative remedy available, the appellant need not show exceptional circumstances but has to show illegality or some procedural impropriety in the impugned order.

Section 74(2) of the Primary Courts Procedure Act prohibits an appeal against any determination or order made under Part VII of the said Act. Accordingly, the Appellant could not have appealed to the High Court.

However, in *Dharmaratne and another v. Palm Paradise Cabanas Ltd. and others* [(2003) 3 Sri.L.R. 24 at 30] Amaratunga J. held:

> "Existence of exceptional circumstances is the process by which the court selects the cases in respect of which the extraordinary method of rectification should be adopted, **if such a selection process is not there revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in the garb of a Revision Application or to make an appeal in situations where the legislature has not given a right of appeal.**" (emphasis added)

Accordingly, the learned High Court Judge was correct in requiring exceptional circumstances in deciding whether to exercise revisionary powers.

It is trite law that presence of exceptional circumstances by itself would not be sufficient if there is no express pleading to that effect in the Petition whenever an application is made invoking the revisionary jurisdiction of the Court of Appeal [*Siripala v. Lanerolle and another* (2012) 1 Sri.L.R. 105].

The Appellant has failed to specifically plead in the petition to the High Court any grounds forming exceptional circumstances. In any event, having carefully considered the judgment of the learned Magistrate, I am of the view that no exceptional circumstances exist which warranted the High Court to exercise its revisionary powers.

For the foregoing reasons and subject to my findings on the purported defective caption, I see no reason to interfere with the order of the learned High Court judge of the Western Province holden in Avissawella dated 12.12.2012.

Appeal is dismissed with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal