

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

Officer in Charge
Police Headquarters,
Gampaha.

Plaintiff

Case No: CA(PHC) 74/2014

H.C. Gampaha Case No: 32/2011/REV

M.C. Gampaha Case No: 78555/PCA

Vs.

1. Hakurugala Gamlathge Anura
Ranasinghe
2. Jamburegoda Athula Gamage
Both of No.160, Yakkala Road,
Gampaha.

First Party

1. Namaratne Bamuarachchilage
Shirantha
No. 191, Owitiwatta,
Nittambuwa.
2. Wijekon Weebadda Ralalage Upali
Wijekon
No. 263, Colombo Road,
Kegalle.

Second Party

1. Hapurugala Gamlathge Anura
Ranasinghe
No. 142, Pelawatta,
Nedun Vihara Road,
Kiriella.

2. Prema Mallawarachchi
No. 160, Yakkala Road,
Gampaha.

First Party Intervenient

1. Rajakaruna Sennanayake Panditha
Herath Wasala Kuruppu Mudiyanse
Ralahamige Sri Jayantha Ajith
Marapana

2. Dissanayake Mudiyanseelage Sisira
Leelananda Dissanayake
Alubogalla, Kendagolla,
Badulla.

3. Hewa Dewage Bastian
No. 91, Somawathie,
Aluthpura, Mahindapura, Senuwara.

Second Party Intervenient

Then Between

In the matter of a Revisionary Application under and in terms of Section 154P (3) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with the Provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

1. Hakurugala Gamlathge Anura
Ranasinghe
2. Jamburegoda Athula Gamage
Both of No.160, Yakkala Road,
Gampaha.

First Party Petitioners

Vs.

Officer in Charge
Police Headquarters,
Gampaha.

Plaintiff-Respondent

1. Namaratne Bamuarachchilage
Shirantha
No. 191, Owitiwatta,
Nittambuwa.
2. Wijekon Weebadda Ralalage Upali
Wijekon
No. 263, Colombo Road,
Kegalle.

Second Party Respondents

1. Hapurugala Gamalathge Anura
Ranasinghe
No. 142, Pelawatta,
Nedun Vihara Road,
Kiriella.

2. Prema Mallawarachchi
No. 160, Yakkala Road,
Gampaha.

First Intervenient Party

Respondents

1. Rajakaruna Sennanayake Panditha
Herath Wasala Kuruppu Mudiyanse
Ralahamige Sri Jayantha Ajith
Marapana

2. Dissanayake Mudiyanseelage Sisira
Leelananda Dissanayake
Alubogalla, Kendagolla,
Badulla.

3. Hewa Dewage Bastian
No. 91, Somawathie,
Aluthpura, Mahindapura, Senuwara.

Second Intervenient Party

Respondents

AND NOW BETWEEN

In the matter of an Appeal under and in terms of Article 154 (6) of the Constitution read with Article 138 thereof.

1. Hakurugala Gamlathge Anura
Ranasinghe
2. Jamburegoda Athula Gamage
Both of No.160, Yakkala Road,
Gampaha.

First Party Petitioners-Appellants

Vs.

Officer in Charge
Police Headquarters,
Gampaha.

Plaintiff-Respondent-Respondent

1. Namaratne Bamuarachchilage
Shirantha

No. 191, Owitiwatta,

Nittambuwa.
2. Wijekon Weebadda Ralalage Upali
Wijekon

No. 263, Colombo Road,

Kegalle.

Second Party Respondents-Respondents

1. Hapurugala Gamalathge Anura
Ranasinghe
No. 142, Pelawatta,
Nedun Vihara Road,
Kiriella.

First Intervenient Party

Respondent-Respondent

2. Jamburugoda Gamage Sreemathie
Mangalika
No. 134/11, Jaya Mawatha,
Kadawatha.

Substituted First Intervenient Party

Resp-ondent-Respondent

1. Rajakaruna Sennanayake Panditha
Herath Wasala Kuruppu Mudiyanse
Ralahamige Sri Jayantha Ajith
Marapana
2. Dissanayake Mudiyanseelage Sisira
Leelananda Dissanayake
Alubogalla, Kendagolla,
Badulla.
3. Hewa Dewage Bastian
No. 91, Somawathie,
Aluthpura, Mahindapura, Senuwara.

Second Intervenient Party

Respondents-Respondents

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Srimal Seneviratne for First Party Petitioners-Appellants

S.A.D.S. Suraweera for the Second Party Respondents-Respondents

Written Submissions tendered on:

First Party Petitioner Appellants on 03.09.2018

Second Party Respondents-Respondents on 25.10.2018

Decided on: 04.04.2019

Janak De Silva J.

This is an appeal against the order of the learned High Court Judge of the Western Province holden in Gampaha dated 07.07.2014.

It arises from proceedings filed in Magistrates Court of Gampaha under Part VII of the Primary Courts Procedure Act (Act). The learned Magistrate after due inquiry held that the Second Party Respondents-Respondents (Respondents) are entitled to the possession of the land in dispute. The First Party Petitioners-Appellants (Appellants) moved by way of revision to the High Court which was dismissed. Hence this appeal.

The learned Magistrate concluded that the Appellants were in possession of the land in dispute on the date information was filed in Court. However, he concluded that the Appellants had obtained possession by dispossessing the Respondents within a period of two months prior to the date of institution of proceedings. It is on this basis that he made order that the Respondents are entitled to the possession of the land in dispute. The appellants are seeking to assail this finding.

It must be borne in mind that this Court is examining the order made by the learned High Court Judge in the exercise of its revisionary jurisdiction. The learned High Court Judge must examine whether there are exceptional circumstances to interfere with the order made by the learned Magistrate. In the instant case, the learned High Court Judge has concluded that the Appellants have failed to establish exceptional circumstances. It is this conclusion that Court must examine.

The learned counsel for the Appellants firstly submitted that the learned Magistrate erred in proceeding to examine whether the Appellants had dispossessed the Respondents after concluding that the Appellants were in fact in possession of the land in dispute on the date information was filed.

I have no hesitation in rejecting this submission. The duty of a Magistrate in an inquiry under Part VII of the Act was succinctly stated by Sharvananda J. (as he was then) in *Ramalingam v. Thangarajah* [(1982) 2 Sri.L.R. 693 at 698] as follows:

“In an inquiry into a dispute as to the possession of any land, where a breach of peace is threatened or is likely under Part VII, of the Primary Courts Procedure Act, the main point for decision is the actual possession of the land *on the date of the filing of the information* under section 66; but, where forcible dispossession took *place within two months before the date on which the said information was filed* the main point is actual possession prior to that alleged date of dispossession. Section 68 is only concerned with the determination as to who was in possession of the land or the part on the date of the filing of the information under section 66. It directs the Judge to declare that the person who was in such possession was entitled to possession of the land or part thereof Section 68(3) becomes applicable only if the Judge can come to a definite finding that some other party had been forcibly dispossessed within a period of two months next proceeding the date on which the information was filed under section 66.”

In the instant case the learned Magistrate has correctly proceeded to examine whether the Appellants obtained possession after dispossessing the Respondents within a period of two months prior to the institution of proceedings.

The learned counsel for the Appellants next contended that the learned Magistrate has failed to properly evaluate the evidence resulting in the erroneous finding that the Appellants had dispossessed the Respondents within a period of two months previous to the institution of proceedings. He submitted that the learned High Court Judge erred in failing to accept this position.

In particular he submitted that the learned Magistrate failed to take due cognisance of important items of evidence in favour of the Appellants such as the fact that the Appellants had employed a security guard to guard the land in dispute and the evidence of the brother of the security guard hired by the Appellants to the effect that his brother had colluded with the Respondents to deprive the Appellants possession of the land in dispute. In response the learned counsel for the Respondent submitted that there was ample evidence to prove that the Appellants and were not in possession of the land in dispute such as evidence of the Appellants renting out premises, the time gap between the alleged dispossession of the Appellants and the failure of the Appellants to complain to the Police without delay.

In addressing these submissions, it is important to bear in mind that the learned High Court Judge was exercising revisionary jurisdiction. The scope of such revisionary jurisdiction has been succinctly explained by Ranjith Silva J. in *R.P. Nandawathie and another vs. K. Mahindasena* [CA(PHC) 242/2006; C.A.M. 03.11.2009] as follows:

“Therefore, in an application for revision there is no question of a rehearing or the re-evaluation of evidence in order to arrive at a decision. In an application for revision the task of the High Court is to decide, not whether, the decision is right or wrong but simply whether the decision is legal or illegal. Revision applications could be disposed of easily and quickly unlike appeals, where the parties are allowed to re-agitate the entire matter. It is for this reason that the legislature has in its wisdom devised this stratagem to prevent inordinate and undue delay. Parties should not be allowed to achieve indirectly by resorting to devious or indirect methods, the very thing that the legislature directly intended to deprive them of. When an order of a Primary Court Judge made under this

chapter is challenged by way of revision in the High Court the High Court Judge can examine only the legality of that order and not the correctness of that order.”

It is also to be borne in mind that this Court is called upon to exercise appellate jurisdiction over the judgment of the learned High Court Judge and the scope of that jurisdiction was aptly described by Ranjith Silva J. in *R.P. Nandawathie and another vs. K. Mahindasena* (supra) as follows:

“Is the Court of Appeal vested with the power to re-hear or allow the parties to re-agitate the main case by reading and evaluating the evidence led in the case in the Primary Court or is it that the Court of Appeal is restricted in its scope and really have the power only to examine the propriety or the legality of the order made by the learned High Court judge in the exercise of its revisionary jurisdiction. I hold that it is the only sensible interpretation or the logical interpretation that could be given otherwise the Court of Appeal in the exercise of its appellate jurisdiction may be performing a function the legislature, primarily and strictly intended to avoid. For the reasons I have adumbrated I am of the opinion that this particular right of appeal in the circumstances 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 learned High Court Judge in the exercise of its revisionary powers. The Court of Appeal should not, under the guise of an appeal attempt to re-hear or re-evaluate the evidence led in the main case and decide on the facts which are entirely and exclusively matters falling within the domain of the jurisdiction of the Primary Court Judge.”

I am in respectful agreement with the legal principles enunciated above. The learned counsel for the Appellants is effectively seeking a re-evaluation of the evidence in the lower court.

I hold that this Court cannot in appeal seek to re-evaluate the evidence before the learned Magistrate. The learned High Court Judge having correctly identified the legal principles guiding the exercise of his revisionary jurisdiction held that the Appellants have failed to establish exceptional circumstances. As pointed out by Amaratunga J. in *Dharmaratne and another v. Palm Paradise Cabanas Ltd. and others* [(2003) 3 Sri.L.R. 24 at 30] 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.

Accordingly, the learned High Court Judge was correct in concluding that the Appellants had failed to establish exceptional circumstances warranting the exercise of revisionary jurisdiction.

For the foregoing reasons, I see no reason to interfere with the order of the learned High Court Judge of the Western Province holden in Gampaha dated 07.07.2014.

Appeal is dismissed with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal