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

Therese Dilanthi Jayasuriya

No.24/4, Kirimandala Mawatha,

Nawala.

Petitioner

Case No: CA(PHC) 235/2005

P.H.C. North Western Province

Case No: HC/R/16/03

M.C. Puttalam Case No: 83963/P

Vs.

A Peter Piyadasa Silva

Sirisiliwatte,

Marichchikattuwa,

Mangala Eliya.

Respondent

AND BETWEEN

In the matter of revision against the determination order by the Puttalam Magistrate's Court in the case numbered 83963/P – seeking relief under Article 154(P) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Therese Dilanthi Jayasuriya

No.24/4, Kirimandala Mawatha,

Nawala.

Petitioner-Petitioner

Vs.

A. Peter Piyadasa Silva (Deceased)

Sirisiliwatte,

Marichchikattuwa,

Mangala Eliya.

Respondent-Respondent

AND NOW BETWEEN

In the Court of Appeal of the Democratic Socialist Republic of Sri Lanka

A Peter Piyadasa Silva

Sirisiliwatte,

Marichchikattuwa,

Mangala Eliya.

Respondent-Respondent-Appellant

Arumadura Amitha Ruwansiri De Silva

97, Marichchikattuwa South,

Mangala Eliya.

Substituted Respondent-Respondent-Appellant

Vs.

Therese Dilanthi Jayasuriya

No.24/4, Kirimandala Mawatha,

Nawala.

Petitioner-Petitioner-Respondent

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Sandun Nagahawatta with Savithri Fernando for the Substituted Respondent-Respondent-Appellant

R.M.D. Bandara with Lilanthi De Silva for the Petitioner-Petitioner-Respondent

Written Submissions tendered on:

Substituted Respondent-Respondent-Appellant on 12.09.2018

Petitioner-Petitioner-Respondent on 29.08.2018

Argued on: 05.12.2018

Decided on: 24.05.2019

Janak De Silva J.

This is an appeal against the judgment of the learned High Court Judge of the North Western Province holden in Puttlam dated 15.09.2015.

The Petitioner-Petitioner-Respondent (Respondent) instituted proceedings under section 66(1)(b) of the Primary Courts Procedure Act (Act) in the Magistrate's Court of Puttlam on 25.03.2002 against the Respondent-Respondent-Appellant (Appellant) claiming that the Appellant had forcibly encroached and built a house on the land marked Lots 1 to 7 of Plan 6985. After inquiry the learned Magistrate concluded that there was an earlier proceeding in M.C. Puttlam 10375/97/P where the learned Magistrate made order in relation to the same corpus and as such the instant proceedings cannot be maintained.

The Respondent filed a revision application in the High Court of the North Western Province holden in Puttlam where the learned High Court Judge set aside the order of the learned Magistrate dated 04.06.2003 and directed a fresh inquiry. Hence this appeal.

The learned counsel for the Respondent raised the following preliminary objections to this appeal:

(a) In terms of Article 138 of the Constitution the impugned order is not an appealable order and the Appellant has no locus standii to appeal

(b) The petition is not properly constituted and bad in law as much as the Appellant has not invoked the jurisdiction of this Court citing the relevant provisions of the law in the caption.

The Respondent relying on *Mendis v. Dublin De Silva and two others* [(1990) 2 Sri.L.R. 249] contends that the Appellant has no locus standii to appeal against the impugned order as he is not an aggrieved party. In *Mendis v. Dublin De Silva and two others* (supra) the Supreme Court held that an aggrieved party within the meaning of Article 128(1) of the Constitution is a party who has suffered a legal grievance, a party against whom a decision has been pronounced which wrongly deprived him of something or wrongly affected his title to something. Assuming the meaning of "aggrieved party " in Article 128 and "person aggrieved" in Article 154P(6) is the

same, I am of the view that the Appellant is a person aggrieved by the judgment of learned High Court Judge of the North Western Province holden in Puttlam dated 15.09.2015 as it results in him having to face a fresh inquiry before the learned Magistrate when in terms of the earlier order the proceedings concluded. Accordingly, I overrule the first preliminary objection of the Respondent.

It is true that the Appellant has not specified in the caption the relevant provisions of law in terms of which the jurisdiction of court is invoked. However, there is no dispute that in terms of Articles 154P (6) read with 138 of the Constitution this Court has appellate jurisdiction in respect of orders made by the High Court acting in revision. 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. Hence, I overrule the second preliminary objection raised by the Respondent.

A long line of authorities insist that revision is a discretionary remedy and will be exercised only in exceptional circumstances [*Fernando v. Fernando* (72 N.L.R. 549), *Rustom v. Hapangama & Co.* (1978-79) 2 Sri.L.R. 2 Sri.L.R. 225, *Caderamanpulle v. Ceylon Paper Sacks Ltd. (Case No. 2)* (2001) 3 Sri.L.R. 112, *Senaratne and Another v. Wijelatha* (2005) 3 Sri.L.R. 76].

The learned counsel for the Appellant submits that since the petition filed in the High Court does not specifically state that there are exceptional circumstances it was liable to be dismissed in limine and that the learned High Court Judge erred in failing to do so. He relied on *Elangakoon v. Officer-in-Charge, Police Station, Eppawala and another* [(2007) 1 Sri.L.R. 398] where the headnote states that it is abundantly clear that the Petitioner has not specifically or expressly pleaded such exceptional circumstances in the body of the petition other than the substantial questions of law. The headnote is misleading. Sarath De Abrew J. (at page 408) after noting that *Biso Meniea v. Ranbanda and others* [CA 95/98; C.A.M. 09.01.2002] and *Urban Development Authority v. Ceylon Entertainments Ltd. and Another* [CA 1319/2001; C.A.M. 05.04.2002] applied a rigid test to this issue in holding that in order to justify the exercise of revisionary jurisdiction of the Court of Appeal either the petition or affidavit must reveal a specific plea as to the

existence of special circumstances went on to observe with approval that in *Dharmaratne and Another v. Palm Paradise Cabanas Ltd. and Others* [(2003) 3 Sri.L.R. 24] this Court adopted a much less rigid approach in holding that the Petitioner in a revision application should plead or establish exceptional circumstances warranting the exercise of revisionary powers.

In *Welikakala Withanage Shantha Sri Jayalal and Another v. Kusumawathie Pigera and Others* [CA(PHC)APN 69/2009; C.A.M. 23.07.2013] Salam J. held (at page 5-6):

> "It does not mean, that the petitioner who invokes the revisionary powers of the court should in his petition state in so many words that "exceptional grounds exist" to invoke the revisionary jurisdiction in addition to pleading the grounds on which the revision is sought...
>
> It is actually for the court find out whether the circumstances enumerated in the petition constitute exceptional circumstances."

I am in respectful agreement with the position articulated and hold that it is not necessary in a revision application for the Petitioner to specifically state in so many words that "exceptional grounds exist". The Court can examine whether the circumstances pleaded in a petition and affidavit filed in a revision application constitutes exceptional circumstances. Therefore, I reject the submission of the Appellant.

I will now consider whether the grounds urged by the Respondent amounts to exceptional circumstances. Whether there are exceptional circumstances depends on the facts of each case. However, Sarath De Abrew J. in *Elangakoon v. Officer-in-Charge, Police Station, Eppawala and another* (supra) stated (at page 408) that exceptional circumstances could broadly be categorized under three limbs as follows:

(a) Circumstances exceptional in fact bound to lead to a miscarriage of justice
(b) Circumstances exceptional in law, such as an error or illegality on the face of the record bound to lead to a failure of justice.
(c) Circumstances exceptional in both fact and law, which would be a mixture of both (a) and (b) above, having the same result.

In an application of this nature it is incumbent on the Magistrate to ascertain the identity of the corpus as section 66(1) of the Act becomes applicable only if there is a dispute between parties affecting land. A Magistrate should evaluate the evidence if there is a dispute regarding identity of the land. [*David Appuhamy v. Yassassi Thero* (1987) 1 Sri.L.R. 253].

In the instant matter the learned Magistrate did not make a specific finding as to the identity of the corpus. Instead he erroneously concluded that there was an earlier proceeding in M.C. Puttlam 10375/97/P where the learned Magistrate made order in relation to the same corpus and as such the instant proceedings cannot be maintained. However, M.C. Puttlam 10375/97/P was in relation to an encroachment to Lot 8 in plan no. 6985 whereas the present matter M.C. Puttlam 83963/P is in relation to an encroachment to Lots 1 to 7 in plan no. 6985. Clearly the learned Magistrate fell into grave error which in my view comes within the category of exceptional circumstances identified in (c) above. The learned High Court Judge correctly exercised revisionary powers and set aside the order of the learned Magistrate dated 04.06.2003 and directed a fresh inquiry.

For the foregoing reasons, I see no reason to interfere with the judgment of the learned High Court Judge of the North Western Province holden in Puttlam dated 15.09.2015.

Appeal is dismissed with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal