

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

Aluthgamage Piyaseeli,  
‘Kellegedara’,  
Mulgirigala,  
Weeraketiya.  
Wanigasingha Arachchige Pradeep  
Rohana,  
‘Lakshila’,  
Puhulhena Road,  
Mulgirigala.  
2<sup>nd</sup> and 3<sup>rd</sup> Respondents-Petitioners-  
Appellants

**CA CASE NO: CA (PHC) 193/2013  
HC TANGALLE CASE NO: 1/2013/REV  
MC WALASMULLA CASE NO: 23621**

Vs.

Albert Wanigapura,  
Beheth Salawa,  
Kiwulara,  
Ihala Beligalla,  
Beliatta.  
And 11 Others  
Respondents-Respondents-  
Respondents

Before: K.K. Wickramasinghe, J.  
Mahinda Samayawardhena, J.

Counsel: Chandrasiri Wanigapura for the 2<sup>nd</sup> and 3<sup>rd</sup>  
Respondents-Appellants.  
(No written submissions have been filed on behalf  
of the Appellants.)  
Priyantha Deniyaya for the Respondents-  
Respondents.

Decided on: 18.07.2019

Mahinda Samayawardhena, J.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents-Petitioners-Appellants have filed this appeal against the Judgment of the High Court dated 28.10.2013 whereby the order of the Magistrate's Court dated 18.12.2012 was affirmed.

The police instituted proceedings in the Magistrate's Court under section 66(1)(a) of the Primary Courts' Procedure Act making the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents parties upon a road dispute. Several other parties later intervened supporting the case of the 1<sup>st</sup> Respondent. It was the position of the 1<sup>st</sup> Respondent that the disputed road, which has been using for a long time was closed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents recently. This was established by a spate of documents, mostly affidavits

tendered by respectable people of the area. There had been two police observation reports, and the first one is favourable to the 1<sup>st</sup> Respondent and the second one to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. The learned Magistrate has, in the facts and circumstances of the case, accepted the first one as the one which portrays the true situation.

The main complaint of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is that there is an alternative road from the northern boundary of the 1<sup>st</sup> Respondent's land. However there is no evidence that the 1<sup>st</sup> Respondent and the intervenient Respondents had been using that road before the alleged obstruction of the disputed road.

The argument of the learned counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents that there was no threat to the breach of peace and therefore the Magistrate's Court had no jurisdiction cannot be acceptable when the proceedings are initiated by the police as opposed to an individual. When proceedings are instituted by the police threat to the breach of the peace is presumed. *Vide Punchedi Nona v. Padumasena [1994] 2 Sri LR 117.*

What the learned Magistrate has ordered is a provisional one until the rights of the parties are decided by the District Court. If the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents think that there is an alternative road although less convenient, they can file a civil case in the District Court to vindicate their rights.

I see no reason to interfere with the Judgment of the High Court, which affirmed the order of the Magistrate's Court.

Appeal is dismissed without costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal