

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

Officer in Charge

Police Station,

Raththota.

Complainant

Case No: CA(PHC) 143/2014

P.H.C Kandy Case No: 80/2012(Rev)

M.C. Matale Case No: 98893(66)

Vs.

Dasanayake Mudiyansele

Dissanayake Banda

No. 09, Gurubebila, Metihakka.

1st Party Respondent

1. Dasanayake Mudiyansele
Karunawathie Menike
2. Hindagoda Mudiyansele Gedara
Gunaratna Bandara Hindagoda
Both of Araliya Mal Sevana,
Cloda Road, Gurubebila,
Metihakka.

2nd Party Respondents

Hindagoda Mudiyansele Gedara
Karunaratne Banda
Gurubebila,
Metihakka.

Intervenient Party

AND

1. Dasanayake Mudiyansele
Karunawathie Menike
2. Hindagoda Mudiyansele Gedara
Gunaratna Bandara Hindagoda
Both of Araliya Mal Sevana,
Cloda Road, Gurubebila,
Metihakka.

2nd Party Respondents-Petitioners

Hindagoda Mudiyansele Gedara
Karunaratne Banda
Gurubebila,
Metihakka.

Intervenient Party Petitioner

Vs.

Officer in Charge

Police Station,

Raththota.

Complainant-Respondent

Dasanayake Mudiyansele

Dissanayake Banda

No. 09, Gurubebila, Metihakka.

1st Party Respondent-Respondent

AND NOW BETWEEN

1. Dasanayake Mudiyansele
Karunawathie Menike
2. Hindagoda Mudiyansele Gedara
Gunaratna Bandara Hindagoda
Both of Araliya Mal Sevana,
Cloda Road, Gurubebila,
Metihakka.

**2nd Party Respondents-
Petitioners-Appellants**

Hindagoda Mudiyansele Gedara

Karunaratne Banda

Gurubebila,

Metihakka.

**Intervient Party Petitioner-
Appellant**

Vs.

Officer in Charge

Police Station,

Raththota.

**Complainant-Respondent-
Respondent**

Dasanayake Mudiyansele

Dissanayake Banda

No. 09, Gurubebila, Metihakka.

**1st Party Respondent-
Respondent-Respondent**

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

L.M.C.D. Bandara for 2nd Party Respondents-Petitioners-Appellants

Mohan Weerakoon P.C. with Sunari Tennakoon for 1st Party Respondent-Respondent-Respondent

Written Submissions tendered on:

Neither party filed written submissions.

Decided on: 05.09.2019

Janak De Silva J.

This is an appeal against the judgment of the learned High Court Judge of the Central Province holden in Kandy dated 09.10.2014.

This matter arises from proceedings instituted under section 66(1)(a) of the Primary Court Procedure Act (Act). The first report filed by the Rattota Police indicates that there is a dispute between the parties over a right of way.

The 1st Party-Respondent-Respondent-Respondent (1st Respondent) complained to the Police that the 2nd Party-Respondents-Petitioners-Appellants (Appellants) had obstructed the right of way used by him to access Kumbaloluwa road. The Appellants denied this and contended that the 1st Respondent has another road to access the main road.

After hearing parties, the learned Magistrate held that the Appellants had in fact obstructed the road used by the 1st Respondent and directed the Appellants not to interfere with his right of way. The learned Magistrate placed much emphasis on the inquiry notes and sketch prepared by the P.C. 22824 Gamini.

The Appellants made an application in revision to the High Court which was dismissed. Hence this appeal.

In this regard it is important to bear in mind the principle that the right of appeal granted under Article 154P(3)(b) of the Constitution is a right to challenge the judgment of the High Court exercising revisionary powers and not to impugn the Primary Court judge's order by way of an appeal [*Jayantha Gunasekera v. Jayatissa Gunasekera and others* (2011) 1 Sri.L.R. 284 at 295]. The appeal in the strict sense is not one against the determination of the judge of the Primary Court but against the judgment of the High Court exercising revisionary powers [Ibid. page 296].

Section 69(2) of the Act enables the Primary Court judge to make order declaring that any person specified therein shall be entitled to any such right in or respecting the land or in any part of the land as may be specified in the order until such person is deprived of such right by virtue of an order or decree of a competent court and prohibit all disturbance or interference with the exercise of such right by such party other than under the authority of an order or decree as aforesaid.

In *Ramalingam v. Thangarajah* [(1982) 2 Sri.L.R. 693 at 699] Sharvananda J. (as he was then) stated as follows:

“On the other hand, if the dispute is in regard to any right to any land other than right of possession of such land, the question for decision, according to section 69(1), is who is entitled to the right which is subject of dispute. The word "entitle" here connotes the ownership of the right. The Court has to determine which of the parties has acquired that right or is entitled for the time being to exercise that right. In contradistinction to section 68, section 69 requires the Court to determine the question which party is entitled to the disputed right preliminary to making an order under section 69(2).” (emphasis added)

It is trite law that 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 [Amaratunga J. in *Dharmaratne and another v. Palm Paradise Cabanas Ltd. and others*[(2003) 3 Sri.L.R. 24 at 30].

The learned High Court Judge held that the Appellants failed to adduce any exceptional circumstances which warranted the intervention of the High Court. I am in agreement with this conclusion of the learned High Court Judge. The learned Magistrate has evaluated the evidence correctly and held that the 1st Respondent has established his entitlement to the disputed right of way. There is no error in the Court placing much importance on the police investigation notes and sketch when there is no allegation that the Police acted partially.

For the foregoing reasons, the appeal is dismissed with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal