

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

In the matter of an appeal against the Order made on
27.10.2016 by the Saouthern Provincial High Court
holden in Tangalle in High Court/revision Case No.
04/2015.

Officer in Charge,
Police Station,
Katuwana.

CA (PHC) No: **138/2016**

HC Tangalle Case No. HCRA
04/2015

MC Walasmulla Case No:
24027

Complainant

Vs.

1. Weerappulige Ashoka Weerasinghe,
Indumina, Watthehena, Karametiya,
Kirama.
2. Wijamunige Charlis
Godalhena, Karametiya,
Kirama.

Parties

AND

Wijamunige Charlis
Godalhena, Karametiya,
Kirama.

2nd Party-Petitioner

Vs.

Weerappulige Ashoka Weerasinghe,
Indumina, Watthehena, Karametiya,
Kirama.

1st Party-Respondent

AND NOW

Wijamunige Charlis (Deceased)
Godalhena, Karametiya,
Kirama.

2nd Party-Petitioner-Appellant

Vs.

1. Ilandarige Yasawathie,
Godalhena, Karametiya,
Kirama.
2. Gaman Kithsiri Kulasinghe,
No. 205/8/H/3, Galabada Isuru Mawatha,
Rathna Mawatha, Dulanmahara,
Piliyandala.
3. Sandhaya Kumudini Kulasinghe,
No. 85, Cemetery Road, Depanama,
Pannipitiya.
4. Selton Rathnasiri Kulasinghe,
No.174/1/A/9, School Lane,
Ekamuthu Mawatha, Halpita,
Polgasowita.
5. Anura Pathmasiri Kulasinghe,
Godalhena, Karametiya,
Kirama.
6. Dilshi Chathurani Kulasinghe,
“Sithumini”, Temple Road,
Walasmulla.
7. Rasika Darshani Kulasinghe,
No. 95/2/D, Court Road,
Homagama.
8. Sandhaya Rohini Kulasinghe,
No. 23/1, Uda Peekwella Road,
Matara.

Substituted 2nd Party-Petitioner-Appellants

Vs.

Weerappulige Ashoka Weerasinghe,
Indumina, Watthehena, Karametiya,
Kirama.

1st Party-Respondent-Respondent

Before: **Prasantha De Silva, J.**
K.K.A.V. Swarnadhipathi, J.

Counsel: Kapila Liyanagamage with Ananda Perera for the 2nd Party-Petitioner-Appellant.
Rasika Dissanayake with Chandrasiri Wanigapura for the 1st Party-Respondent-Respondent.

Written Submissions 23.03.2021 and 21.02.2022 by the 1st Party-Respondent-Respondent
tendered on: Appellant.
25.03.2021 by the 2nd Party-Petitioner-Appellant.

Argued on: 22.11.2021

Decided on: 03.03.2022

Prasantha De Silva, J.

Judgment

Officer-in-Charge of the Police Station-Katuwana, being the Complainant, filed an information in terms of Section 66 of the Primary Courts' Procedure Act in case bearing No. 24027 in the Magistrate's Court of Walasmulla against the 1st Party-Respondent-Respondent and the 2nd Party-Petitioner-Appellant.

The learned Magistrate acting as the Primary Court Judge having inquired the dispute between the aforesaid parties had delivered the order dated 21.01.2013 in favour of the 1st Party-Respondent-Respondent [hereinafter sometimes referred to as the Respondent] on the basis that the Respondent had been in possession of the land in dispute at the relevant period of time.

Being aggrieved by the said order, the 2nd Party-Petitioner-Appellant had invoked the revisionary jurisdiction of the Provincial High Court of Tangalle in case bearing No. 03/2013, seeking to revise or set aside the said impugned order.

Apparently, the learned High Court Judge by his order dated 21.03.2013 sent the case back to the Magistrate's Court of Walasmulla to re-hear the matter and to make an appropriate order by taking into consideration all the evidence and documentation produced by either party.

Upon the matter being sent back to the Magistrate's Court of Walasmulla, the learned Magistrate who acted as the Primary Court Judge after taking into consideration all the evidence, delivered the order dated 20.02.2015 in favour of the Respondent, on the premise that the Respondent was in possession of the disputed land two months prior to the date of filing of the information in terms of Section 68 (1) of the Primary Courts' Procedure Act.

Being dissatisfied with the said order, the Appellant had preferred a revision application bearing No. HCRA 04/2015 to the Provincial High Court of Tangalle, seeking to revise or set aside the said order dated 20.02.2015.

Consequently, the learned High Court Judge of Tangalle after hearing both parties, affirmed the order dated 20.02.2015, by the learned Magistrate of Walasmulla and dismissed the said revision application by order dated 27.10.2016 with costs fixed at Rs. 10,500/-.

Against the said order dated 27.10.2016 of the Provincial High Court of Tangalle, the Appellant has preferred this appeal to the Court of Appeal.

When this matter was taken up for argument, on behalf of the 1st Party-Respondent-Respondent, a preliminary objection was raised as to the maintainability of the instant appeal on the basis that the appeal made against the order dated 27.10.2016 made by the learned High Court Judge of the Provincial High Court of Tangalle in revision application bearing No. 4/2015 is not a final order. It was the position taken up by the Respondent that the impugned order dated 27.10.2016 is an interlocutory order, thus no appeal lies against the same.

It appears that when the Appellants preferred the revision application bearing No. 4/2015 to the Provincial High Court of Tangalle against the order dated 20.02.2015 by the learned Magistrate of Walasmulla, they had failed to tender the duly certified copies of the documents of the Magistrate

Court of Walasmulla, and thereby failed to comply with Rule 3 (1) (b) of the Court of Appeal (Appellate Procedure) Rules 1990.

Accordingly, the Respondent had raised a preliminary objection in the High Court of Tangalle with regard to the maintainability of the said revision application.

The learned High Court Judge of Provincial High Court of Tangalle had taken up the matter for hearing on the said preliminary objection and had dismissed the revision application of the Appellants.

It is against the said order of dismissal that the instant revision application was preferred by the Appellants. Consequently, the Respondent has taken up a preliminary objection in this Court where the application was dismissed on a preliminary objection without looking at the merits of the case, such order would not constitute finality and the impugned order is not a final order.

In view of the findings of *S.R. Chettiar and others v. S.N. Chettiar [2011] 2 SLR 70*, it is clear that the revision application was dismissed on the preliminary objection where the Appellants had failed to comply with Rule 3 (1) (b) of the Court of Appeal (Appellate Procedure) Rules 1990 is not a final order.

It was emphasized by *Dr. Ruwan Fernando J.* in *Ella Addara Gedera Dasanayake Vs. J M. C. Priyadarshani [CA PHC 200/2016]*,

“An order of the High Court amounts to a “final order” only if the order puts to all end of the suit and if after the order, the suit is still alive, i.e., in which the right is still to be determined, it will not be a “final order”. The order under appeal, whichever way it is given does not stand finally dispose of the rights of the parties in dispute or ending the dispute, but the order leaves the rights of the parties to be determined by the Courts in the ordinary way”.

In the said case, it was denied that no appeal would lie to the Court of Appeal under Article 154P (b) of the Constitution from any order refusing notice by the Provincial High Court in the exercise of its revisionary jurisdiction under Article 154P (3) (b) of the Constitution.

It is seen that, in the instant revision application, notice issued on the Respondent and after raising a preliminary objection Court allowed the Respondent to file objections and permitted the parties to file written submissions to decide the said preliminary objection.

Therefore, it is clear that since the learned High Court Judge issued notice on the Respondent and had taken up the said preliminary objection, it is apparent that the said case *Ella Addara Gedera Dasanayake Vs. J M. C. Priyadarshani [supra]* is not applicable to the instant case.

Furthermore, the learned High Court Judge has dealt with the issue of exceptional circumstances and held that the Appellants had failed to disclose any exceptional circumstances and also failed at least to plead in their revision application that exceptional circumstances exist for them to invoke the revisionary jurisdiction of the Provincial High Court of Tangalle.

Moreover, it is seen in the Judgment of the learned High Court Judge of Tangalle dated 27.10.2016, the learned High Court Judge held that Primary Court Judge has identified the corpus relating to the dispute which conferred the jurisdiction of the Primary Court in terms of Section 66 of the Primary Courts' Procedure Act No. 66 of 1979.

The learned High Court Judge held that the learned Primary Court Judge has come to the correct findings of fact and Law on the affidavits and the documents placed before him. Hence, the learned High Court Judge held that there is no exceptional circumstance that exists to revise the order of the learned Primary Court Judge dated 20.02.2015.

Therefore, it is clear that the learned High Court Judge has not only dealt with the preliminary objection in respect of Rule 3 (1) (a) of the Court of Appeal (Appellate Procedure) Rules 1990 but also considered the merits of the case and decided that no exceptional circumstances exist to shock the conscience of the Court.

It is noteworthy, that the order made by the learned High Court Judge affirming the order of the learned Primary Court Judge finally disposing the rights of the parties in dispute, seems an order which puts an end to the suit, thus the impugned order is a final order.

Hence, I hold that there is a right of appeal against the order of the learned High Court Judge dated 27.10.2016.

Therefore, we reject the preliminary objection raised on behalf of the Respondent and decide to list this appeal for hearing.

JUDGE OF THE COURT OF APPEAL

K.K.A.V.Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL