IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

In the matter of an Appeal under Article 154G (3)(B) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5 of 'High Court of Provinces (Special Provisions) Act No. 19 of 1990 and to have the Order dated 16.06 2016 by Hon. Judge of Hambantota High Court Case No. HCRA 01/2014 dismissed.

CA (PHC) 56/2016

MC Hambantota 13999

PHC Hambantota HCRA 01/2014

Thuppahige Kamal Chandraratne
'Tharanga' Ruhunu Ridiyagama,
Ambalanthota,

Respondent-Petitioner-Appellant

Vs.

1. Abeysekara Liyanapatbendige Dayanthi,
   Karagasara,Ruhunu Ridiyagama,
   Ambalathota

2. Juan Hennedige Ariyasena,
   Karagasara, Ruhunu Ridiyagama,
   Ambalathota (Deceased)

2(a). Abeysekara Liyanapatabendige Dayanthi,
   Karagsara, Ruhunu Ridiyagama,
   Ambalathota

Petitioner-Respondent-Respondent

AND

Thuppahige Chandrasena,
Thuppahige Shriya Kanthi,
'Tharanga' Ruhunu Ridhiyagama,
Ambalathota

Intervenient-Respondent-Respondents

Before:	**Prasantha De Silva, J.** **K.K.A.V. Swarnadhipathi, J.**
Counsel:	Dinesh De Silva AAL for the Respondent-Petitioner-Appellant P.D.K Priyadarshini AAL for the 2nd Respondent.
Written Submissions Tendered on:	Both parties agreed to dispose this Appeal by way of Written Submissions. 05.01.2022 by the Respondent-Petitioner-Appellant 03.03.2022 by the 1st Petitioner-Respondent-Respondent and 2(a) Substituted Petitioner-Respondent-Respondent
Decided on:	16. 03.2022

Prasantha De Silva, J.

Judgment

The Petitioners namely Abeysekara Liyanapatabendige Dayanthi and Juwana Hennedige Ariyasena had filed an information in terms of Section 66(1) (b) of the Primary Courts' Procedure Act No. 44 of 1979 in the Primary Court of Hambantota on 01.08.2013, against the 1st Respondent, namely Thuppahige Kamal Chandraratne.

The learned Primary Court Judge having taken up all necessary steps stipulated in Part VII of the Primary Courts' Procedure Act, had allowed Thuppahige Chandrasena and Thuppahige Sriya Kanthi to intervene as Respondents. Thereafter, the parties filed their respective affidavits, counter affidavits and written submissions. Afterwards, the learned Primary Court Judge delivered the Order on 09.01.2012 in favour of the Petitioners.

Being aggrieved by the said Order, the Respondent-Petitioner invoked the revisionary jurisdiction of the Provincial High Court of Hambantota seeking to revise or set aside the Order of the learned Primary Court Judge dated 09.01.2014.

It appears that before this matter was taken up for argument, 2nd Petitioner-Respondent had passed away and Court had allowed to substitute the 1st Petitioner as 2ඇ Substituted Petitioner-Respondent.

At the hearing, both parties made oral submissions and after the conclusion of the inquiry, the learned High Court Judge delivered the Order on 11.06.2010, affirming the Order of the learned Primary Court Judge on the basis that the learned Primary Court Judge has identified the corpus and that in terms of Section 69(2) of the Primary Courts' Procedure Act, the Petitioner-Respondent- Respondent is entitled. Being aggrieved by the said Order, the Respondent-Petitioner-Appellant has preferred this Appeal seeking to nullify the Order made by the learned High Court Judge.

The Court draws the attention to the Judgment of ***Bandulasena and Others Vs. Galla Kankanamge Chaminda Kushantha and others (CA PHC No. 147/2005 - CA Minutes 27.09.2017)*** delivered by this Court, which emphasized that;

> "It would be relevant to bear in mind that the appeal before this Court is an appeal against a Judgement pronounced by the Provincial High Court in exercising its revisionary jurisdiction. Thus, the task before Court is not to consider an appeal against the Primary Court Order, but to consider an appeal in which an Order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction is sought to be impugned".

It is interesting to note the case ***Nandawathi Vs. Mahindasena [2009] 2 SLR 218 at 238***, which held;

1. When an Order of a Primary Court Judge is challenged by way of revision in the High Court, the High Court can examine only the legality of that Order and not the correctness of the Order.
2. On appeal to the Court of Appeal, the Court of Appeal should not under the guise of the appeal attempt to re-hear or re-value the evidence led and decide on the facts which are entirely and exclusively falling within the domain of the jurisdiction the Primary Court.

Therefore, it is relevant to note the legal basis of the appeal preferred by the Respondent-Petitioner-Appellant (hereinafter sometimes referred to as the Appellant).

The learned Magistrate had pronounced the Order without identifying the disputed subject matter of the action.

However, it appears that the Appellant's first ground of appeal regarding the identification of the disputed land, had not been pursued in his written submissions. Thus, it is deemed that the Appellant had not disputed the subject land of the instant action.

The learned Magistrate has erred in law by deciding the dispute regarding the crop of vegetables as not a dispute relating to possession, instead that it is a dispute on the right to crops or produce of the land which yielded.

It was the contention of the Appellant that the learned Primary Court Judge has erroneously made the Order under Section 69 of the Primary Courts' Procedure Act and not under Section 68 of the Act.

The impugned dispute between the Appellant and the Respondent is with regard to the interruption of the possession. Since no dispossession had taken place, and parties have not claimed possession to the disputed land, it clearly manifests that the impugned dispute is in respect of the plucking of coconuts. Hence, it is the duty of the Court to ascertain who has a right to pluck coconuts. Thus, it is seen that the dispute is not based on the right to possession but revolves around the entitlement to the produce.

It was argued on behalf of the Appellant that the learned Primary Court Judge had converted the dispute between the parties from a dispute on right to possession of a land under Section 68 of the Act into a dispute relating to the right in terms of Section 69.

The learned High Court Judge had observed the learned Magistrate's identification of the subject matter of the instant action as proper. The learned Magistrate had decided the instant action in terms of Section 69(1) and 69(2) of the Primary Courts' Procedure act. In this respect it is worthy

to examine the said sections in order to ascertain what Section is applicable to the circumstances of the instant action.

Section 68(1) - Where the dispute relates to the possession of any land or part thereof it shall be the duty of the Judge of the Primary Court holding the inquiry to determine as to who was in possession of the land or the part on the date of the filing of the information under Section 66 and make order as to who is entitled to possession of such land or part thereof.

Section 68(3) –Where at an inquiry into a dispute relating to the right to the possession of any land or any part of a land the Judge of the Primary Court is satisfied that any person who had been in possession of the land or part has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under Section 66, he may make a determination to that effect and make an order directing that the party dispossessed be restored to possession and prohibiting all disturbance of such possession otherwise than under the authority of an order or decree of a competent Court.

Section 69(1) - Where the dispute relates to any right to any land or any part of a land, other than the right to possession of such land or part thereof, the Judge of the Primary Court shall determine as to who is entitled to the right which is the subject of the dispute and make an order under Subsection (2).

Section 69(2) – An order under this subsection may declare 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.

The learned Magistrate having considered the affidavits and the supporting documents filed of record, has concluded that the Appellant had failed to establish his entitlement to the coconut produce in the disputed land as of right.

It is trite law that when a party is seeking relief under Section 69 of the Act, the party is not called upon to establish entitlement to the right in the manner required before a District Court by presenting cogent evidence.

In ***Ramalingam Vs. Thangarajah [1982] 2 SLR 693***, *Sharvananda J*. (as he then was) stated that,

> "On the other hand, if the dispute is in relation 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)".

It is important to note Section 75 of the said act which deals with the meaning of the word 'dispute' affecting land:

Section 75- In this Part "dispute affecting land" includes any dispute as to the right to the possession of any land or part of a land and the buildings thereon or the boundaries there of or as to the right to cultivate any land or part of a land, or as to the right to the crops or produce of any land, or part of a land, or as to any right in the nature of a servitude affecting the land and any reference to "land" in this Part includes a reference to any building standing thereon.

In the evidence placed before the learned Magistrate, it clearly shows that the dispute is relating to an interruption of possession of the land bearing the crops and not entirely based on a dispute relating to the possession of land. Thus Section 68(1) does not apply. Since no dispossession has taken place, Section 68(3) too is not applicable.

Thus, it is clear that the impugned dispute which has arisen between the Appellant and the Respondents, comes within the purview of Section 75 of the said act, which stipulates that "dispute affecting land" includes any dispute as to the right to the possession of any land or part of a land and the buildings thereon or the boundaries thereof or as to the right to cultivate any land or part of a land, or **as to the right to the crops or produce of any land**, or part of a land, or as to any

right in the nature of a servitude affecting the land and any reference to "land" in this Part includes a reference to any building standing thereon.

The learned Magistrate having considered the affidavits and the supporting documents filed of record, has concluded that the Appellant had failed to establish his entitlement to the coconut produce in the disputed land as of right.

As such, the learned Magistrate who was acting as the Primary Court Judge, has come to the correct findings of fact and law, and has distinguished the impugned dispute was not for the land but for the coconut produce of the land. Thus, the learned Magistrate has correctly decided to apply Section 69 of the said Act elegantly.

In ***Weerasinghe Vs. Sepala and another [1996] 2 SLR 229***, it was held that the Order of the Primary Court Judge should have been under Section 69 and not under Section 68 of the Primary Courts' Procedure Act, as the dispute is not related to the right of possession.

Therefore, it clearly manifests that the learned High Court Judge has gone through a fair, reasonable and equitable process in the revision application before him and had decided that the learned Primary Court Judge had clearly identified the subject land and correctly decided the matter under Section 69(1) and (2) of the Primary Courts' Procedure Act.

Hence, we see no reason for us to interfere with the Order dated 16.06.2016 delivered by the learned High Court Judge of Hambantota in revision application bearing No. HGRA01/2014.

Therefore, we dismiss this appeal with costs fixed at Rs.25,000.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL