

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

In the matter of an appeal under and in terms of Article 138 read with Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Officer-In-Charge,  
Police Station,  
Kahawatta.

Informant

Court of Appeal Case No:  
**CA (PHC) 47/2016**

**Vs.**

Provincial High Court of Ratnapura  
Case No: **HCR/RA/42/2010**

01. Kodithuwakku Arachchilage Dharmasiri,  
02. M.M. Podimanike,  
Denawakawatta, Pelmadulla.

1<sup>st</sup> Party

Magistrate's Court of Pelmadulla  
Case No: **41280**

03. K.A. Siripala,  
04. K.A. Padmasiri,  
Denawakawatta, Pelmadulla.

2<sup>nd</sup> Party

**AND**

Munaweera Kankanamlage Sumanawathie,  
Denawakawatta,  
Pelmadulla.

Intervenient Party

**BETWEEN**

K.A. Padmasiri,  
Denawakawatta, Pelmadulla.

2nd Party-Petitioner

**Vs.**

Officer-In-Charge,  
Police Station,  
Kahawatta.

Complainant-Respondent

**Vs.**

01. Kodithuwakku Arachchilage Dharmasiri,  
02. M.M. Podimanike,  
Denawakawatta, Pelmadulla.

1st Party-Respondent

K.A. Siripala,  
Denawakawatta, Pelmadulla.  
2<sup>nd</sup> Party-Respondent

Munaweera Kankanamlage Sumanawathie,  
Denawakawatta,  
Pelmadulla.  
Intervenient Party-Respondent

**AND NOW BETWEEN**

K.A. Padmasiri,  
Denawakawatta, Pelmadulla.  
2<sup>nd</sup> Party-Petitioner-Appellant

**Vs.**

Officer-In-Charge,  
Police Station,  
Kahawatta.  
Complainant-Respondent-Respondent

**Vs.**

01. Kodithuwakku Arachchilage Dharmasiri,  
02. M.M. Podimanike,  
Denawakawatta, Pelmadulla.  
1<sup>st</sup> Party-Respondent-Respondent

K.A. Siripala,  
Denawakawatta, Pelmadulla.  
2<sup>nd</sup> Party-Respondent-Respondent

Munaweera Kankanamlage Sumanawathie,  
Denawakawatta,  
Pelmadulla.  
Intervenient Party-Respondent-  
Respondent

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

**Counsel:** Ashan Nanayakkara for the 2<sup>nd</sup> Party-Petitioner-Appellant.  
Mahesh Dushanthi for the 1<sup>st</sup> Party-Respondent-Respondent.

Both Parties agreed to dispose the matter by way of Written Submissions.

Written Submissions tendered on: 19.02.2020 by the 1<sup>st</sup> Party-Respondent-Respondent.  
20.20.2020 by the 2<sup>nd</sup> Party-Petitioner-Appellant.  
26.08.2022 by the 2<sup>nd</sup> Party-Petitioner-Appellant.

Order delivered on: 06.10.2022

**Prasantha De Silva, J.**

### **Order**

This is an appeal emanating from an Order made by the learned High Court Judge of Ratnapura on 25.04.2016 dismissing the revision application filed against the Order dated 01.06.2010 made by the learned Magistrate who was acting as the Primary Court Judge in case bearing No. 41280 of Magistrate's Court, Pelmadulla.

It appears that the Officer-in-Charge of Police station Kahawatta had filed an information on 18.12.2009 in terms of Section 66 of the Primary Courts' Procedure Act No. 44 of 1979 stating that there is a dispute between the 1<sup>st</sup> Party and the 2<sup>nd</sup> Party in respect of the land described in the said information, where a breach of the peace is threatened or is likely to be threatened.

In relation to the complaint lodged on 20.11.2009 by the 1<sup>st</sup> Party-Respondent, his house had been collapsed 1 ½ months ago due to flooding and as a result of it, he had to settle at his mother's place. Thus, the 1<sup>st</sup> Party-Respondent had vacated the possession of the land 1 ½ months before the information was filed.

However, it was contended by the 2<sup>nd</sup> Party-Respondent that the 1<sup>st</sup> Party-Respondent being dispossessed 1 ½ months prior to lodging their complaint at the Police Station is false. Since the information was filed in terms of Section 66 of the Primary Courts' Procedure Act and it relates to a question of dispossession, it is seen that Section 68 (1) and (3) are applicable in this instance.

Having followed the procedure stipulated under Section 66 of the Primary Courts' Procedure Act and after the conclusion of the inquiry, the learned Magistrate had made an Order on 01.06.2010 and held that the 1<sup>st</sup> Party to the said action should be granted possession of the property in dispute and further prohibited the 2<sup>nd</sup> Party from committing acts which would interfere with the possessory rights of the 1<sup>st</sup> Party.

Being aggrieved by the said Order, 2<sup>nd</sup> Party-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Sabaragamuwa holden at Ratnapura seeking to set aside or revise the said Order of the learned Magistrate and to have reliefs prayed by the 2<sup>nd</sup> Party-Petitioner granted.

At the inquiry before the learned High Court Judge, having considered the preliminary objections and other contentions made by the 1<sup>st</sup> Party-Respondents, the learned High Court Judge delivered his Order on 25.04.2016 dismissing the revision application on the ground that there was no sufficient ground to set aside or revise the Order of the learned Magistrate of Pelmadulla.

Being aggrieved by the said Order dated 25.04.2016, the 2<sup>nd</sup> Party-Petitioner-Appellant has preferred this appeal to this Court seeking to set aside the said Order and to have the reliefs prayed in his affidavit dated 15.02.2010 granted to the 2<sup>nd</sup> Party-Petitioner-Appellant [hereinafter referred to as the Appellant]

It is settled Law that invoking revisionary jurisdiction of Court is confined to cases in which exceptional circumstances exist warranting its intervention. Since, exercising revisionary jurisdiction is a discretionary remedy to grant relief, the party concerned has to establish not only that the impugned order challenged is illegal, but also that the nature of the illegality is such, it shocks the conscience of Court.

It appears that the learned High Court Judge of the Provincial High Court of Sabaragamuwa held that the 2<sup>nd</sup> Party-Respondent had not shown the impugned Order of the learned Magistrate is not illegal and that no exceptional circumstances exist to revise the Order.

It is observable that the learned Magistrate having considered the information filed by the Police, their observation notes and the complaints and the statements made to the Police by the 1<sup>st</sup> Party-Respondent and the 2<sup>nd</sup> Party-Respondent, had come to the correct conclusion that there was no dispossession of the 1<sup>st</sup> Party-Respondent from the premises in dispute 2 months prior to the date on which information was filed.

Moreover, the learned Magistrate had considered the supporting affidavits given by the people living in that area and established that the 1<sup>st</sup> Party-Respondent had to vacate the premises in dispute which he had been in possession for well over 20 years due to floods

caused by the overflowing of the canal adjacent to the disputed premises. This position was substantiated by document 107 given by the Grama Niladhari in that division.

Therefore, the learned Magistrate had come to the correct finding of fact that the 1<sup>st</sup> Party- Respondent was in possession of the disputed premises 2 months prior to the date of filing of information and that he was not dispossessed from the premises in dispute. As such, it is apparent that no miscarriage of justice or any injustice was caused to the 2<sup>nd</sup> Party-Petitioner-Appellant by the Order dated 01.06.2010 made by the learned Magistrate.

Hence, we see no reason for us to interfere with the Order of the learned Magistrate dated 01.06.2010 and the Order made by the learned High Court Judge on 25.04.2016.

Thus, the appeal of the 2<sup>nd</sup> Party-Petitioner-Appellant is dismissed with costs fixed at 25,000/-.

**JUDGE OF THE COURT OF APPEAL**

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

I agree.

**JUDGE OF THE COURT OF APPEAL**