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

In the matter of an application for revision and/or restitution of integrum under Article 138 of the Constitution.

Rathnayake Mudiyanselage
Abeysekara, "Shanthi Nivasa",
Meegahawela,
Soranathota.

Defendant-Appellant-Petitioner

Case No. : CA/RII/0438/2015

Vs

DC Badulla, Case No. L/1079

R.M. Somapala,
"Shanthi Nivasa",
Meegahawela,
Soranathota.

Plaintiff-Respondent-Respondent

Before: Hon. D.N. Samarakoon, J

Counsel : Mahinda Nanayakkara with Aruna Jayathilaka for the Defendant-Appellant-Petitioner.

Malaka Herath instructed by Shrimal Jayasinghe for the Plaintiff-Respondent-Respondent.

Argued on: 28.02.2022

Written submissions tendered on: Defendant-Appellant-Petitioner on 26.04.2022

Plaintiff-Respondent-Respondent 04.04.2022

Decided on: 08.11.2022

D.N. Samarakoon, J.

Judgment

The Preliminary Objection raised for the plaintiff respondent respondent is recorded in the Journal Entry dated 28.02.2022, as reproduced below,

> "Whereas by way of prayer "b" of the prayer to the petition dated 06.11.2025, the petitioner seeks to canvas the order marked P.7, that is, to say the judgment of the High Court of Civil Appellate of Uva Province holden at Badulla dated 16.09.2015 and whereas the High Court of Civil Appellate of Uva Province exercised a similar jurisdiction before the Court of Appeal and whereas the petitioner is seeking to canvass the concurrent jurisdiction of the Civil Appellate High Court, the preliminary objection was raised that the petitioner cannot canvass the said order marked P.7 before the Court of Appeal".

Hence, the preliminary objection is clear. It says, once an appellate Court has exercised jurisdiction and therefore it cannot be done once again.

The paragraph (b) of the prayer to the petition of the defendant appellant petitioner is as reproduced below,

"(b) exercise the revisionary jurisdiction and the jurisdiction of restitutio in integrum and set aside the judgment of the District Court of Badulla marked "P.5" dated 22.02.2013 and the judgment marked "P.7" dated 16.09.2015 of the High Court of the Civil Appeal of Uva Province holden at Badulla".

The District Court has decided the case in favour of the plaintiff and the Civil Appellate High Court has dismissed the defendant's appeal.

Section 5(A)(1) of High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006 established what is commonly called Civil Appellate High Courts or High Courts of Civil Appeal. The said section reads,

"5(A) (1) A High Court established by Article 154P of the Constitution for a Province, **shall have and exercise appellate** and revisionary **jurisdiction** in respect of judgments, decrees and orders delivered and made by any District Court or a Family Court within such Province **and the appellate jurisdiction for the correction of all errors in fact or in law,** which shall be committed by any such District Court or Family Court, as the case may be".

Article 138 of the Constitution, confers the revisionary and restitutio in integrum jurisdiction of the Court of Appeal. It says,

"138(1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law **an appellate jurisdiction for the correction of all errors** in fact or in law **which shall be committed by any Court of First Instance, tribunal or other institution** and **sole and exclusive cognizance by way of appeal, revision and restitutio in integrum of all causes suits, actions, prosecutions, matters and things of which such Court of First Instance, tribunal or other institution may have taken cognizance…"**

But, the 13th Amendment to the Constitution, brought in 1987, amended Article 138. Presently it reads,

> " "138(1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law **an appellate jurisdiction for the correction of all errors** in fact or in law **which shall be 2**[**committed by** the High Court, in the exercise of its appellate or original jurisdiction or by **any Court of First Instance**], **tribunal or other institution** and **sole and exclusive cognizance by way of appeal, revision and restitutio in integrum of all causes suits, actions, prosecutions, matters and things 3**[of which **such** High Court, **Court of First Instance**] **tribunal or other institution may have taken cognizance:..."**

2 - Substituted by the Thirteenth Amendment to the Constitution Sec.3(a) for "committed by any Court of First Instance."

3 - Substituted by the Thirteenth Amendment to the Constitution Sec.3(b) for "of which such Court of First Instance"

The said section has two parts.

(1) **an appellate jurisdiction for the correction of all errors** in fact or in law **which shall be 2**[**committed by** the High Court, in the exercise of its appellate or original jurisdiction or by **any Court of First Instance**], **tribunal or other institution**

(2) and **sole and exclusive cognizance by way of appeal, revision and restitutio in integrum of all causes suits, actions, prosecutions, matters and things 3**[of which **such** High Court, **Court of First Instance**] **tribunal or other institution may have taken cognizance:**

Under (1) there exists an appellate jurisdiction to correct errors. Under (2) the moment the lower Court take cognizance of a cause, suit, action or prosecution, [even prior to the commission of any error] the Court of Appeal has a sole and exclusive cognizance of that cause, etc., in appeal, revision or restitutio in integrum.

This jurisdiction in Part [2] is different to the jurisdiction conferred on the High Court of the Province by section 5(1)(A) of High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

It says,

(3) **shall have and exercise appellate** and revisionary **jurisdiction** in respect of **judgments, decrees and orders** delivered and made by any District Court or a Family Court

(4) **and the appellate jurisdiction for the correction of all errors in fact or in law,** which shall be committed by any such District Court or Family Court

The said High Court cannot, in the exercise of its appellate and revisionary jurisdiction, take cognizance of any cause, etc., prior to the commission of an error or prior to the making of a judgment, decree or order by a District Court or Family Court, within the said Province.

However, the amendment of Article 138 by the Thirteenth Amendment to the Constitution, has to be read with, section 11 of High Court of the Provinces (Special Provisions) Act No. 19 of 1990, which says,

Appeal to Court of Appeal from High Court.

11, (1) The Court of Appeal shall have and exercise, subject to the provisions of this Act or any other law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any High Court established by Article 154P of the Constitution **in the exercise of its jurisdiction under paragraph (3) (a), or (4) of Article 154P of the Constitution** and sole and exclusive cognizance by way of appeal, revision and restitution in integrum of all causes, suits, actions, prosecutions, matters and things of which such High Court may have taken cognizance :

Article 154P (3)(a) is the original Criminal Jurisdiction of the High Court of the Province.

It says, (3) Every such High Court shall –

(a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;

Article 154(4) is the writ jurisdiction of the High Court of the Province.

It says, (4) Every such High Court shall have jurisdiction to issue, according to law –

(a) orders in the nature of habeas corpus, in respect of persons illegally detained within the Province and

(b) orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Province, any power under –

(i) any law; or

(ii) any statute made by the Provincial Council established for that Province,

In **MARTIN v. WIJEWARDENA, (1989) 2 SLR 409,** it was decided,

> "A right of appeal is a statutory right and must be expressly created and granted by statute. It cannot be implied. Article 138 is only an enabling Article and it confers the jurisdiction to hear and determine appeals to the Court of Appeal. The right to avail of or take advantage of that jurisdiction is governed by the several statutory provisions in various Legislative Enactments".

The Supreme Court, also said,

> "Article 138 is an enabling provision which creates and grants jurisdiction to the Court of Appeal to hear appeals from Courts of First Instance, Tribunals and Other Institutions. It defines and delineates the jurisdiction of the Court of Appeal. It does not, nor indeed does it seek to, create or grant rights to individuals viz-a-viz appeals. It only deals with the jurisdiction of the Court of Appeal and its limits and its limitations and nothing more. It does not expressly nor by implication create or grant any

rights in respect of individuals. Article 139 makes it quite clear that the Court of Appeal is an appellate tribunal in respect of the Orders, Judgments, Decrees or Sentences of the Courts of First Instance, Tribunals or Other Institutions".

The Court further said,

> "The rights of appeal granted by the Judicature Act are curtailed, in respect of civil cases by the provisions of Section 754 of the Civil Procedure Code. They are restricted to the parties to the suit. A further restriction on the right of appeal is that an appeal from an Order? not being a Judgment, is exercisable only with the leave of the Court of Appeal first had and obtained. The Code also provides for a Notice of Appeal prior to filing the Appeal petition itself. There are other provisions in the Code, for instance, section 88(1) and Section 389, which preclude an Appeal in certain circumstances".

Hence, it is clear, that, just because Article 138 grants an appellate jurisdiction an individual cannot appeal, unless a statute provides for an appeal. The High Court of the Provinces (Special Provisions) Act No. 19 of 1990 is one such Act. As it was seen, it provided for an appeal to the Court of Appeal from the High Court of the Province exercising its original jurisdiction, on a criminal case or from its exercise of writ jurisdiction.

Article 154P of the Constitution, also inserted by the Thirteenth Amendment to the Constitution, in 154P (3) (b) conferred on the High Court of the Province appellate and revisionary jurisdiction in respect of Magistrate's Courts and Primary Courts within the Province. The said Article reads,

> "(b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province ;..."

Furthermore, section 3 of the High Court of the Province (Special Provisions) Act No. 19 of 1990 provides,

> "**3**. A High Court established by Article 154P of the Constitution for a Province shall, subject to any law, exercise appellate and revisionary jurisdiction in respect of orders made by Labour Tribunals within that Province and orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of any land situated within that Province".

Section 6(a) of that Act provides for the powers of the High Court of Province in appeal. It says,

"

Powers of High Court on appeal.

6.

(a) A High Court established by Article 154P of the Constitution may in the exercise of any appellate jurisdiction vested in it by the Constitution or section 3 or any other law, affirm, reverse, correct or modify any order, judgment, decree or sentence according to law or may give directions to any Court of First Instance, or tribunal or institution or order a new trial or further hearing upon such terms as the court may think fit".

The appeal from the exercise of the appellate power of the High Court of the Province, is to the Supreme Court. It is provided in section 9 of the said Act. It reads,

"**9**. Subject to the provisions of this Act or any other law, any person aggrieved by

(a) a final order, judgment, decree or sentence of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law, may appeal therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court ex mero motu or at the instance of any aggrieved party to such matter or proceedings :

Provided that the Supreme Court may, in its discretion, grant special leave to appeal to the Supreme Court from any final or interlocutory order, judgment, decree or sentence made by such High Court, in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act, or any other law where such High Court has refused to grant leave to appeal to the Supreme Court, or where in the opinion of the Supreme Court, the ease or matter is fit for review by the Supreme Court:

Provided further that the Supreme Court shall grant leave to appeal in every matter or proceeding in which it is satisfied that the question to be decided is of public or general importance ; and

(b) a final order, judgment or sentence of a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction conferred on it by paragraph (3) (a), or (4) of Article 154P of the Constitution may appeal therefrom to the Court of Appeal.

Article 154P (3) (b) and section 3 of Act No. 19 of 1990 provide for the appellate and revisionary jurisdiction of the High Court of the Province.

Therefore, whereas an appeal from the exercise of the original criminal jurisdiction of the High Court of the Province was to the Court of Appeal an appeal from the exercise of the appellate and revisionary jurisdiction of the High Court of the Province [in respect of judgments and orders of Magistrate's Courts, etc.] was to the Supreme Court.

This was the position, until High Court of the Province (Special Provisions) (Amendment) Act No. 54 of 2006 was passed on 28th December 2006.

It inserted section 5A to Act No. 19 of 1990, which read,

"

"Jurisdiction 5A.
to hear

appeals from District Courts and Family Courts.

(1) A High Court established by Article 154P of the Constitution for a Province, shall have and exercise appellate and revisionary jurisdiction in respect of judgments, decrees and orders delivered and made by any District Court or a Family Court within such Province and the appellate jurisdiction for the correction of all errors in fact or in law, which shall be committed by any such District Court or Family Court, as the case may be.

An appeal from the exercise of the jurisdiction vested in the High Court of the Province, under section 5A was to the Supreme Court. It was provided by section 5C, inserted to Act No. 19 of 1990 by Act No. 54 of 2006, which read,

"

Appeal to the Supreme Court from decisions of the High Court. 5C.

(1) An appeal shall lie directly to the Supreme Court from any judgment, decree or order pronounced or entered by a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction granted by section 5A of this Act, with leave of the Supreme Court first had and obtained. The leave requested for shall be granted by the Supreme Court, where in its opinion the matter involves a substantial question of law or is a matter fit for review by such Court.

(2) The Supreme Court may exercise all or any of the powers granted to it by paragraph (2) of Article 127 of the Constitution, in regard to any appeal made to the Supreme Court under subsection (1) of this section.

On the basis of aforementioned Acts, from the exercise of the appellate jurisdiction of the High Court of the Province, in respect of District Courts and Family Courts, no appeal can lie to the Court of Appeal.

If Article 138 (as amended by the Thirteenth Amendment to the Constitution) is taken as the Article that provides for an appeal to the Court of Appeal from a High Court of the Province, that exercises appellate jurisdiction under section 5A, aforesaid, it violates the widely accepted principle laid down by **Matin vs. Wijewardena.**

However, the Supreme Court in **Dr. Ama Weeratunge vs. Sepala Ekanayake and others, SC Appeal No. 111/2015, 113/2015 and 114/2015** by its decision dated 27.05.2020, considered the question reproduced below, which is,

> "Having failed to exercise the right to file an appeal in terms of section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended, could a person invoke the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka in order to canvass a decision made by a Provincial High Court exercising its appellate jurisdiction?"

The Supreme Court, answered this question as below,

> "Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended, does not oust the Revisionary jurisdiction of the Court of Appeal in respect of decisions made by a Provincial High Court exercising its appellate powers. Therefore, the revisionary jurisdiction of the Court of Appeal referred to in Article 138 of the Constitution of the Republic of Sri Lanka can be invoked in order to canvass a decision made by a Provincial High Court concerning its appellate powers".

Considering section 9 of Act No. 19 of 1990 [which directs appeals from the exercise of appellate jurisdiction of the High Court of the Province, in respect of Magistrate's Courts, Primary Courts, Labour Tribunals and Agrarian Tribunals to the Supreme Court – section 9(a)] [However, appeals from the exercise of original criminal jurisdiction and writ jurisdiction of the High Court of the Province are directed to the Court of Appeal – section 9(b)] and section 11 of Act No. 19 of 1990 [which says the same thing as section 9(b) afore], the Supreme Court said,

> "23. It is clear that Section 9 of Act No. 19 of 1990 follows the scheme of Article 154P of the Constitution. It stipulates the appeals in respect of final orders, judgments or sentence decided under Article 154P(3)(a) and 154P(4) must be directed to the Court of Appeal, while appeals in

respect of final orders, judgments or sentences decided under Article 154P(3)(b) must be directed to the Supreme Court.

…….

25. Section 11 in my opinion is an elaboration of Section 9(b) of the same Act, by virtue of which right of appeal in respect of orders, judgments and sentences given in the Provincial High Court's original jurisdiction is vested in the Court of Appeal.

26. The contention of the Respondents is that Section 9 of the Act read together with Section 11 of the same Act, rules out the Court of Appeal's revisionary powers in respect of decisions arrived under Article 154P(3)(b); i.e. orders, judgments and sentences given in the exercise of Provincial High Court's appellate jurisdiction. To put it simply, they argue that there can only be an appeal from an instance where the High Court has exercised **appellate** jurisdiction. [It appears that this should be correctly to a reference to "original" jurisdiction of the High Court of the Province]

27. Respondents further argue that the Court of Appeal's revisionary powers are specifically referred to in Section 11 of the Act, which limits itself to an order, judgment or sentence given by the Provincial High Court pursuant to Article 154P(3)(a) and (4), exercising its original jurisdiction. They submit that the absence of any reference to Article 154P(3)(b) in Section 11, is illustrative of the legislative intent to oust the Court of Appeal's revisionary jurisdiction with regard to Provincial High Court's appellate jurisdiction.

28. The strength of this argument depends on the maxim expressio unius est exclusio alterius which means that the express mention of one thing implies the exclusion of another. However, it is my considered opinion that this maxim does not have absolute universal application. It is no doubt a widely used aid of interpretation. Nevertheless, as observed in Somawathie v. Madawela and others (1983) 2 SLR 15 at page 29, quoting Colquhoun v. Brooks (1888) 21 QBD 52, 65, "It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied when its application, having regard to the subject matter to which it is to be applied, leads to inconsistency or injustice."

However, with great respect, the absence of section 154 (3) (b) in section 11 (1) of Act No. 19 of 1990 cannot be due to inadvertence or accident, because section

154 (3) (b) is expressly referred to in section 9(a) of the said Act, granting an appeal to the Supreme Court.

The Supreme Court further said,

> "29. Particularly in relation to the revisionary jurisdiction, which exists to remedy miscarriage of justice, greater care must be exercised when employing the maxim. As I observed earlier, the revisionary jurisdiction of the Court of Appeal is a Constitutional mandate which, undoubtedly is subject to the provision of statutory law. **Nevertheless, owing to its genesis in the Constitution, any restriction or modification which the Legislature seeks to introduce must be introduced by way of express wording.** The omission to refer to 'revisionary jurisdiction' in Section 9 of Act No. 19 of 1990 cannot be taken as reducing the Court of Appeal's plenitude of powers under Article 138. Nothing less than an express removal of these powers would be required to achieve such a result".

The part in "bold" letters implies that the Court of Appeal can exercise revisionary jurisdiction, because of the presence of Article 138, without having a statute conferring a right. But in **Martin vs. Wijewardena**, it was decided by the Supreme Court that Article 138 is only an enabling Article and something more is necessary to confer a right of appeal. However, the Supreme Court said in the very next passage, referring to **Martin vs. Wijewardena** too, that revision lies without having a parallel statute,

> "30. This is particularly because the revisionary jurisdiction, unlike the appellate jurisdiction, does not depend on a parallel statutory right. It is well established in our law that an appellant cannot prefer an appeal against an order, judgment or sentence unless there is a 'right' created by statute. As Justice Jameel stated in Martin v. Wijewardena (1989) 2 SLR 409, at page 419, "Article 138 is only an enabling Article and it confers the jurisdiction to hear and determine appeals to the Court of Appeal. The right to avail of or to take advantage of the jurisdiction is governed by several statutory provisions in various legislative enactments." An appeal could only result pursuant to the intersection of a forum jurisdiction and right of appeal".

This is correct. Revision lies without having a statute that grants a right to revision.

Furthermore, the said judgment of the Supreme Court is in respect of a Criminal Case. Sepala Ekanayake, as he was once the subject of a retrospective legislation, was the accused. The appellate jurisdiction, if any, referred to in that case was, appellate jurisdiction in respect of Magistrate's Courts, Primary Courts, etc., under Article 154 (3) (b). In addition to that case being on revisionary jurisdiction of the Court of Appeal, in respect of the exercise of "criminal", etc., appellate jurisdiction [under Article 154 (3) (b)] it was neither on an appeal from the exercise of such appellate jurisdiction of the High Court of the Province, nor on an appeal from the exercise of "Civil Appellate" jurisdiction conferred by section 5A of Act No. 19 of 1990.

In respect of "Civil Appellate" powers vested in the High Court of the Province by section 5A of Act No. 19 of 1990, this judgment may apply for "revisionary jurisdiction", on analogy. Hence a party who fails to exercise the right of appeal under section 5C may prefer an application for revision to the Court of Appeal. In a further analogues application of the principle laid down in this Supreme Court case, such a party [i.e., who fails to exercise the right of appeal under section 5C] may, in a fit case, prefer an application for restitutio in integrum, which the Court of Appeal only has the power to exercise.

But, **Dr. Ama Weeratunge vs. Sepala Ekanayake**, specifically decided the question of the availability of revision, **when a party has failed to exercise the right to file an appeal under section 9 of Act No. 19 of 1990**. What will be the situation when a party having exercised the right of appeal, in respect of a matter under Article 154 (b) (3) then comes to the Court of Appeal either in revision or restitutio in integrum? Also, what will be the position when a party aggrieved by a judgment or order made under section 5A of Act No. 19 of 1990, having made an appeal in terms of section 5C, then comes to the Court of Appeal on revision or restitutio in integrum?

In this regard, it is also pertinent to consider what was said by the Court of Appeal in case No. CA(PHC) APN No. 25/2019. Although the said decision was

concerned of a High Court, Trial at Bar, it also referred to the original Criminal Jurisdiction of the High Court of the Province.

The said case said,

> "As already noted Article 154P(3)(a) confers original criminal jurisdiction to a High Court established under Article 154P. However, Article 154P(6) left out mentioning subsection (3)(a) when it made provisions to the effect that "….any person aggrieved by a final order, judgment or sentence of any such Court, in the exercise of its jurisdiction under paragraph 3(b) or 3(c) or (4) may appeal therefrom to the Court of Appeal". The legislative gap is filled by the provisions of section 12B of the Judicature (Amendment) Act No. 09 of 2018, with the conferment of a right to appeal to the Supreme Court. In view of this clear statutory limitation, no appeal lies to the Court of Appeal, when a High Court of the Provinces, established under Article 154P, exercises its original criminal jurisdiction". (page 18)"

What is said in Article 154P (6) is as stated below,

> "(6) subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgement or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4) may appeal there from **to the Court of Appeal** in accordance with Article 138".

In Article 154P(6) the subsections mentioned are, 3(b), 3(c) and (4). They are respectively,

"3(b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;

3(c) exercise such other jurisdiction and powers as Parliament may, by law, provide.

(4)(The writ jurisdiction)"

Thus, the Court of Appeal concludes that when the High Court of the Province exercises its "original criminal jurisdiction" the appeal does not come to the Court of Appeal.

The Court of Appeal has in the aforequoted passage has further said,

> "The legislative gap is filled by the provisions of section 12B of the Judicature (Amendment) Act No. 09 of 2018, with the conferment of a right to appeal to the Supreme Court".

But section 12B of the Judicature (Amendment) Act No. 09 of 2018 did not, with respect, deal with an appeal from the High Court of the Province, in the exercise of its "original criminal jurisdiction". The said section 12B deals with an appeal from a judgment of the Permanent High Court at Bar. It says,

> "An appeal from any judgment, sentence or order pronounced at a trial held by a Permanent High Court at Bar under section 12A, shall be made within twenty eight days from the pronouncement of that judgment, sentence or order to the Supreme Court and shall be heard by a Bench not less than five Judges of that Court nominated by the Chief Justice…."

Hence, it appears, with respect, that section 12B of the Judicature (Amendment) Act No. 09 of 2018 did not fill any gap in the designation of an appellate forum for any judgment, sentence or order made by the High Court of the Province in the exercise of its "original criminal jurisdiction".

In view of the aforesaid, this court cannot agree with the Court of Appeal when it said in the aforementioned case that,

> "In view of this clear statutory limitation, no appeal lies to the Court of Appeal, when a High Court of the Provinces, established under Article 154P, exercises its original criminal jurisdiction".

As it was seen, a final order, judgment or sentence of a High Court of the Province in the exercise of original Criminal Jurisdiction under Article 154P (3) (a) is

appealable to the Court of Appeal, under section 9(b) as well as section 11 of Act No. 19 of 1990.

In addition, although section 9(a) of Act No. 19 of 1990 designated the Supreme Court as the appellate forum for the exercise of the High Court of the Province, in its appellate jurisdiction under Article 154P (3) (b) [appellate power over Magistrate's Courts and Primary Courts] that section is "**Subject to the provisions of this Act or any other law...**"

It is seen that, Article 154P (6) provides that,

> "(6) subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgement or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3)(b) or (3)(c) or (4) may appeal there from **to the Court of Appeal** in accordance with Article 138".

Hence, whereas Act No. 19 of 1990 which came to power in 1990 provides Supreme Court as the appellate forum for the exercise of appellate jurisdiction under Article 154P (3) (b), the Constitution, by its Thirteenth Amendment in 1987 has already provided the Court of Appeal for such appeals.

The defendant appellant petitioner has adverted to the facts of the case too by Written Submissions dated 26.04.2022.

It appears that under a Grant from the State the original owner of the land in question, the identity of which is admitted by parties, was the father of the plaintiff and defendant, one Ratnayake Mudiyanselage Sudubanda. The plaintiff averred in paragraph 03 of the plaint that the said Sudubanda was given the Grant Badu/Pra. 3133 registered at LDO 219/93 which was marked P.01. The defendant admitted this paragraph by admission No. 2. The position of the defendant was, whereas he was the nominee or proposed successor of Sudubanda, the plaintiff has by various influences obtained a permit in plaintiff's name. [See., issue No. 5] As per the learned district judge, the defendant has disputed P.03, issued by the Divisional Secretary. However, the

learned district judge has decided that P.03 was proved by the evidence of the female officer from the Divisional Secretariat of Soranathota called for the defence.

The learned district judge further states that he has no power to quash P.03. The Writ Application bearing No. 7/2014 of the Provincial High Court of Badulla instituted by the defendant to quash P.03 has been dismissed.

The learned district judge has found that the plaintiff has a right to possess the land under P.03 and as the defendant has effected improvements, the plaintiff can obtain possession of the land having paid to the defendant Rs. 786,250/-, until the payment of which, the defendant is having jus retentionis.

In the circumstances, this Court sees no reason to interfere with P.05 or P.07 and the application of the defendant petitioner is dismissed. There is no order on costs.

D.N. Samarakoon
Judge of the Court of Appeal