

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

LANKA.

In the matter of an Application under and in terms of Article 154(p)(3)(b) of the constitution of the Democratic Socialist Republic of Sri Lanka read with the terms of High Court of the Provinces (Special Provinces) Act No.19 of 1990.

Court of Appeal Case No:
CA (PHC) 45/2016

High Court of Ratnapura Case No:
RA/45/2014

Magistrate's Court of Ratnapura Case No:
92956

Hettithanthrige Shiromani
Bernadette Fernando,
No.22/05, Pothgul Vihara Road,
Ratnapura.

Petitioner

Vs.

01. Palliyaguruge Wickramapala,
No.124/11, Pothgul Vihara Road,
Ratnapura.

02. Baddegadara Vithanage Ajantha,
No.20/5, Ihalawatta, Muwagama,
Ratnapura.

Respondents

01. Lindamulage Sujani Taniya De
Silva,
No. 136/27, Pothgul Vihara Road,
Ratnapura.

02. Lindamulage Andrew De Silva,
No. 136/27, Pothgul Vihara Road,
Ratnapura.

Intervenient-Respondents

AND NOW

01. Palliyaguruge Wickramapala,
No.124/11, Pothgul Vihara Road,

Ratnapura.

1st Respondent-Petitioner

Vs.

01. Hettithanthrige Shiromani
Bernadette Fernando,
No.22/05, Pothgul Vihara Road,
Ratnapura.

**Petitioner-
Respondent**

02. Baddegedara Vithanage Ajantha,
No.20/05, Ihalawatta Muwagama,
Ratnapura.

**2nd Respondent-
Respondent**

03. Lindamulage Sujani Taniya De
Silva,
No. 136/27, Pothgul Vihara Road,
Ratnapura.

04. Lindamulage Andrew De Silva,
No. 136/27, Pothgul Vihara Road,
Ratnapura.

**Intervenient Respondent-
Respondents**

AND NOW BETWEEN

01. Palliyaguruge Wickramapala,
No.124/11, Pothgul Vihara Road,
Ratnapura.

**1st Respondent-Petitioner-
Appellant**

Vs.

01. Hettithanthrige Shiromani
Bernadetta Fernando,
No.22/05, Pothgul Vihara Road,
Ratnapura.

**Petitioner-Respondent-
Respondent**

02. Baddegedara Vithanage Ajantha,
No.20/05, Ihalawatta,
Muwagama,
Ratnapura.

**2nd Respondent-Respondent-
Respondent**

03. Lindamulage Sujani Taniya De
Silva,
No. 136/27, Pothgul Vihara Road,
Ratnapura.

04. Lindamulage Andrew De Silva,
No. 136/27, Pothgul Vihara Road,
Ratnapura.

**Intervient Respondent-
Respondent-Respondents**

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

Counsel: D.D.K. Kalugampola for the 1st Respondent-
Petitioner-Petitioner.
Chandrasiri Wanigapura for the Petitioner-
Respondent-Respondent.

**Written Submissions
tendered on:** 17.09.2019 by the 1st Respondent-Petitioner-
Petitioner.
07.11.2022 by the Petitioner-Respondent-
Respondent.

Argued on: 02.06.2022

Decided on: 23.11.2022

Prasantha De Silva, J.

Judgment

It appears that the 1st Respondent-Petitioner-Appellant, Palliyaguruge Wickramapala has preferred this appeal seeking to revise the Order of the learned High Court Judge of Ratnapura made in respect of the Order delivered by the learned Magistrate of

Ratnapura acting as the Primary Court Judge exercising jurisdiction in terms of Section 66 of the Primary Courts' Procedure Act No. 44 of 1979 in case bearing No. 92956.

Apparently, the Petitioner Hettithanthrige Shiromani Bernadetta Fernando had filed an information under Section 66 (1) (b) of the said Act, claiming that the 1st Respondent and the 2nd Respondent-Respondent-Respondent [hereinafter referred to as the 4th Respondent] had forcibly commenced putting up a structure in premises belonging to her at No. 140, Pothgul Vihara Road, Ratnapura.

It was the contention of the Petitioner and the Respondents that they have been in possession of the disputed premises for a period of well over 30 years until the 1st and 2nd Respondents forcibly entered the land in dispute and attempted to put up a boutique. Thereby, they were disturbed and dispossessed from the disputed premises.

Although, the 3rd and 4th Interventient Respondents had intervened during the pendency of the case and claimed that they are entitled to the possession of the premises, nevertheless, they did not pursue their claims seeking to set aside the Order of the learned Magistrate dismissing their claim.

By Order dated 25.08.2014, the learned Magistrate allowed the application of the said Petitioner holding that she is entitled to the possession of the disputed premises and restored the possession of the Petitioner.

Being aggrieved by the said Order of the learned Magistrate, the 1st Respondent-Petitioner Palliyaguruge Wickramapala moved in revision to the High Court of Ratnapura and the learned High Court Judge of Ratnapura had dismissed the application of the Petitioner on the ground that the Petitioner had not disclosed any question of law or facts. Thereafter, the Petitioner preferred an appeal to this Court seeking to revise or set aside the Order of dismissal by the learned High Court Judge dated 05.05.2016 and the Order of the learned Magistrate dated 25.08.2014.

It was alleged by the said 1st Respondent-Petitioner that the learned High Court Judge had not analysed the evidence or given any reasons for his decision.

However, it is seen that the learned High Court Judge had stated in his Order that he has considered the revision application filed by the Petitioner and the objections of the Respondents with the other relevant points/important matters and also the written submission tendered by both parties.

It was further stated by the learned High Court Judge in his Order that the learned Additional Magistrate of Ratnapura had come to the correct findings of fact and law and has held that the impugned dispute comes within the purview of Section 68 of the Primary Courts' Procedure Act.

It is relevant to note that the learned High Court Judge stated in his Order that;

“...පෙත්සම්කාරිය ඉදිරිපත් කර ඇති ලේඛණ අදාළ විෂය වස්තුවට නොව වෙනත් පුද්ගලික ඉඩමකට අයත් බව සඳහන් කරයි. පොලිස් නිරීක්ෂණ සටහන් කරමින් ආරවුලට අදාළ ස්ථානය එනම් පලවන වගඋත්තරකරු පවත්වාගෙන යන වෙළඳසැලට යාබදව යකඩින් තනන ලද තාවකාලික ඉදිකිරීමක් ගෙනවිත් තබා ඇති බවත්, එය පොලිස් නිරීක්ෂණ අනුව එදින හෝ ඊට ආසන්න දිනයක ගෙනවිත් තබා ඇති බව පැහැදිලි වන බව සඳහන් කර ඇත. මෙම කරුණු තහවුරු කිරීමට පෙ12, පෙ13, පෙ14 ඡායාරූපද ගොනු කොට ඇති අතර, එකී ඡායාරූප පොලිස් නිරීක්ෂණ තහවුරු කරන බව පෙනී යයි. වගඋත්තරකරුවන් විසින් ඉදිරිපත් කරන ලද විදුලි බිල්පත් ආදිය ආරවුල් ස්ථානයට අදාළ නොවන බවද උගත් මහේස්ත්‍රාත්තුමා නිවැරදිව නිගමනය කර ඇත. පෙ18 ලේඛනය සඳහන් කරමින් එකී ලේඛනයේ වැදගත්කම හුවා දක්වමින් එය වගඋත්තරකරුවන් ප්‍රතික්ෂේප කර නොමැතිය යන කරුණද අවධානයට යොමු කර ඇත. පෙ38, පෙ39 ලේඛන වගඋත්තරකරුවන් හට කර නොමැති යන කරුණ ද අවධානයට යොමු කොට ඇත. මෙකී කරුණු සියල්ල සලකිල්ලට ගනිමින් ආරවුල් විෂය වස්තුව අදාළ වන්නේ පොලිස් නිරීක්ෂණවල එක්ස් ලෙස සටහන් කර ඇති ස්ථානය බව මහේස්ත්‍රාත්වරයා නිගමනය කර ඇති අතර මෙම නඩුවේ සමස්ථ කරුණු පරීක්ෂා කර බැලීමේදී එකී නිගමනයේ දෝෂයක් පවතින බව නොපෙනේ. ඒ අනුව උගත් අතිරේක මහේස්ත්‍රාත්වරයා විසින් දී ඇති නියෝගය ප්‍රතිශෝධනය කිරීමට තරම්

නීතිමය හෝ සිද්ධිමය කරුණක් අනාවරණය නොවන හෙයින් ප්‍රතිශෝධන අයදුම්පත නිෂ්ප්‍රභා කරමි....”

In view of the findings of the learned Magistrate and the learned High Court Judge, we see no reason to interfere with the Orders of the learned High Court Judge of Ratnapura dated 05.05.2016 and the learned Magistrate of Ratnapura dated 25.08.2014 in which it was decided that the Petitioner-Respondent-Respondent in this appeal is entitled to the possession of the land in dispute and restored the possession of the same.

Hence, the appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL