

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

Officer in Charge,
Police Station,
Inginiyagala.

Complainant

Vs.

Court of Appeal Case No:
CA (PHC) 51/2015

Provincial High Court of Ampara
Case No: **HC/AMP/REV/426/2014**

Magistrate's Court of Ampara Case
No: **65547**

1. J.K.A. Jayawickrama Wilson,
 2. H.H. Githawathie Violet
- Both of No. 29/A 1,
Kethsirigama.

First Party Respondents

1. Hewa Heenpallage Latha,
 2. Hewa Heenpallage Wasanthi Kumari,
- Both of No. 29 A/1,
Kethsirigama.

Second Party Respondents

AND BETWEEN

1. J.K.A. Jayawickrama Wilson,
 2. H.H. Githawathie Violet
- Both of No. 29/A 1,
Kethsirigama.

First Party Respondent-Petitioners

Vs.

1. Hewa Heenpallage Latha,
 2. Hewa Heenpallage Wasanthi Kumari,
- Both of No. 29 A/1,
Kethsirigama.

Second Party Respondent-Respondents

AND NOW BETWEEN

Hewa Heenpallage Wasanthi Kumari,
No. 29 A/1, Kethsirigama.

**Second Party 2nd Respondent-
Respondent-Appellant**

Vs.

1. J.K.A. Jayawickrama Wilson,
 2. H.H. Githawathie Violet
- Both of No. 29/A 1,

Kethsirigama.

**First Party Respondent-
Petitioner-Respondents**

Hewa Heenpallage Latha,
No. 29 A/1, Kethsirigama.

**Second Party 1st Respondent-
Respondent-Respondent**

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

Counsel: Iresh Senewiratne A.A.L with Anoma Priyadarshani A.A.L for the
Respondents.
Appellant is absent and unrepresented.

Decided on: 08.11.2022

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

Officer in Charge,
Police Station,
Inginiyagala.

Complainant

Vs.

Court of Appeal Case No:
CA (PHC) 51A/2015

Provincial High Court of Ampara
Case No: **HC/AMP/REV/426/14**

Magistrate's Court of Ampara Case
No: **65547/PC**

3. J.K.A. Jayawickrama Wilson,
 4. H.H. Githawathie Violet
- Both of No. 29/A/1,
Kethsirigama.

First Party Respondents

3. Hewa Heenpallage Latha,
 4. Hewa Heenpallage Wasanthi Kumari,
- Both of No. 29/A,
Kethsirigama.

Second Party Respondents

AND BETWEEN

3. J.K.A. Jayawickrama Wilson,

4. H.H. Githawathie Violet

Both of No. 29/A/1,

Kethsirigama.

First Party Respondent-Petitioners

Vs.

3. Hewa Heenpallage Latha,

4. Hewa Heenpallage Wasanthi Kumari,

Both of No. 29/A,

Kethsirigama.

Second Party Respondent-Respondents

AND NOW BETWEEN

1. J.K.A. Jayawickrama Wilson,

2. H.H. Githawathie Violet

Both of No. 29/A/1,

Kethsirigama.

**First Party Respondent-
Petitioner-Appellants**

Vs.

1. Hewa Heenpallage Latha,

2. Hewa Heenpallage Wasanthi Kumari,

Both of No. 29/A,

Kethsirigama.

**Second Party Respondent-Respondent-
Respondents**

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

Counsel: Irish Senewiratne A.A.L with Anoma Priyadarshani A.A.L for the
Appellants.
Respondents are absent and unrepresented.

Counsel for the Appellant agreed to dispose the matter by way of Written Submissions.

Written Submissions 07.07.2020 by the Appellants.
tendered on:

Decided on: 08.11.2022

Prasantha De Silva, J.

Judgment

These appeals are emanating from the Order dated 05.05.2015 made by the Provincial High Court of the Eastern Province holden in Ampara. The learned High Court Judge held with the 1st Party Respondent-Petitioner-Respondents by setting aside the Order dated 05.06.2014 made by the learned Magistrate, who was acting as the Primary Court Judge.

It appears that the Officer-in-Charge of the Inginiyagala Police Station filed an information on 08.01.1997 in terms of Section 66 of the Primary Courts' Procedure Act upon the complaint made by J.K.A. Jayawickrama Wilson, the 1st Party, over a land dispute informing that Hewa Heenpellage Latha, the 2nd Party had been disputing the possession of the subject matter of the action.

The matter was taken up for inquiry and at the inquiry, the matter was settled between the parties and a settlement was entered on 27.05.1998. Upon the said settlement, the learned Magistrate made an Order on 17.02.1999 to survey the disputed land.

Being aggrieved by the said Order, the 1st Party Respondent-Petitioners [hereinafter sometimes referred to as the 1st Party] had made an application bearing No. HC/REV/95/99 to the Provincial High Court of Ampara. Having inquired into the matter, the learned High Court Judge by his Order dated 30.11.2000, revised and set aside the Orders of the learned Magistrate and directed to recommence the inquiry.

Being aggrieved by said Order of the learned High Court Judge, the 2nd Party Respondent-Respondents [hereinafter sometimes referred to as the 2nd Party] preferred an appeal bearing No. CA/Appeal/109/2002. The said appeal was dismissed by the Court of Appeal in terms of Rule 13(b) of the Supreme Court.

Thereafter, the 1st Party had made an application before the learned Magistrate to obtain an Interim Order and it was refused by the learned Magistrate by Order dated 25.07.2013 and the entire action was dismissed on the basis that the subject matter had not been identified at the time of filing of the information.

Subsequent to the above, the 1st Party made an application to the learned Magistrate and consequently, the learned Magistrate had made an Order dated 20.02.2014 restoring the 1st Party and the 2nd Party 2nd Respondent-Respondent-Appellant's [Hewa Heenpallage Wasanthi Kumari] [hereinafter sometimes referred to as the 2nd Party 2nd Respondent] possession to the lands in which the 1st Party and the 2nd Party 2nd Respondent were in possession immediately before the dispute arose. The 1st Party were restored to the possession of the high land and the 2nd Party 2nd Respondent's possession was restored to the paddy field. In view of the said Order, the learned Magistrate had issued a writ and the writ was executed on 29.04.2014.

Thereafter, the 2nd Party 2nd Respondent had made an application to the learned Magistrate to set aside the order executing the writ. In this instance, the learned Magistrate had made an Order on 05.06.2014 effectuating the purported settlement entered on 27.05.1998, which was subsequently set aside by the learned High Court Judge by Order dated 30.11.2000.

By effectuating the aforesaid purported settlement, the learned Magistrate had directed to grant possession of Lot 1 and 2 of Plan bearing No.232 to the 2nd Party 2nd Respondent and the high land to the 1st Party. Further, the 1st Party was ordered to pay Rs. 50,000 to the 2nd Party 2nd Respondent.

Being aggrieved by the said Order dated 05.06.2014, the 1st Party had invoked the revisionary jurisdiction of the High Court of Ampara by application bearing No. ප්‍රති /426/2014. It is to be noted that the 2nd Party 2nd Respondent also made an application by way of revision bearing No. ප්‍රති/427/2014 against the said Order dated 05.06.2014.

The learned High Court Judge considering both applications and had made an Order on 05.05.2015, expunging all Orders made after 17.02.1999.

Being aggrieved with the aforesaid Order dated 05.05.2015, the 2nd Party 2nd Respondent-Respondent-Appellant [hereinafter sometimes referred to as the Appellant] had preferred this appeal bearing No. CA (PHC) 51/2015, seeking to set aside the said Order dated 05.05.2015 and to have the Appellant restored to the land in which the Appellant was in possession immediately before the dispute arose.

The 1st Party-Respondent-Petitioner-Appellants too preferred an appeal bearing No. CA PHC 51A/2015, and sought an order to restore them to the land in which the Appellants were in possession.

It is to be observed that the 2nd Party 2nd Respondent-Respondent-Appellant in appeal No. CA (PHC) 51/2015 and 2nd Party Respondent-Respondent in appeal No. CA (PHC) 51A/2015 had not taken any interest in participating in these appeals and after issuing notices on several occasions thus Court fixed both appeals to hear in the absence of the said Appellant in appeal No. CA (PHC) 51/2015 and 2nd Party Respondent-Respondent in appeal No. CA (PHC) 51A/2015.

However, it is seen that the 2nd Party 2nd Respondent-Respondent-Appellant in appeal No. CA (PHC) 51/2015 had not paid brief fees after issuing notices on several occasions, thus had not exercised due diligence to prosecute with the said appeal.

As such, we dismiss appeal No. CA (PHC) 51/2015 in terms of Rule 13 (b) of the Supreme Court Rules.

However, it is relevant to note that the appeal bearing No. CA (PHC) 51A/2015 before us is an appeal emanating against an Order pronounced by the Provincial High Court of Ampara exercising its revisionary jurisdiction. Thus, the task before us is not to consider an appeal made against the order made by the learned Magistrate but to consider an appeal in which an Order pronounced by the Provincial High Court of Ampara dated 05.05.2015 exercising its revisionary jurisdiction is sought to be called in question.

Nevertheless, it is imperative to note that the Order on 05.06.2014 made by the learned Magistrate who was acting as the Primary Court Judge is a provisional order. As such, the rights of the parties have to be adjudicated by invoking civil jurisdiction of a competent Court.

It is apparent that the intention of the Legislature in introducing Part VII of the Primary Courts' Procedure Act No.44 of 1979 is to prevent a breach of the peace and not to go on a protracted trial investigating title when deciding the matter in dispute.

That is the very reason that the Legislature in its wisdom made provisions providing a time frame of three months to conclude matters before the Primary Court Judge and while no

right of appeal is provided. Thus, it is apparent that the Legislature intended to discourage people from filing appeals and applications on frivolous and meritless grounds.

It is observable that the information pertaining to the instant application under Section 66 of the Primary Courts' Procedure Act was filed on 18.02.1996 and the matter was settled between the parties when the learned Primary Court Judge concluded the matter on 27.05.1998. Thus, it appears that 26 years have passed since the institution of the instant action without having the final adjudication of the civil rights of parties decided by a competent Court.

The learned High Court Judge has set aside the Orders made by his predecessor on 27.05.1998 and 17.02.1999 on the settlement entered upon the Appellant and the Respondents, in view of the Superior Courts Judgments cited, *Peoples Bank Vs. Gilbert Weerasinghe [1986] 2 CALR 260* and *Nandawathi Vs. Jayathilake [2005] 3 SLR 230*.

It is seen that the learned High Court Judge had specifically mentioned in his judgment dated 05.05.2015 that;

“කෙසේ නමුත් මෙම පනතේ 66 වගන්තිය යටතේ දෙන ලද නියෝගයක් වන අතර, එය තාවකාලික නියෝගයක් වන අතර පාර්ශ්වකරුවන් තමාගේ අයිතිවාසිකම් නිසි සිවිල් අධිකරණයකින් ලබා ගැනීමට හෝ පාර්ශ්වකරුවන්ගේ ඉඩම් සංවර්ධනය කිරීම සලකා බලා ඔවුන්ගේ බලපත්‍ර සංශෝධනය කර නිසි ආකාරයට නැවත බලපත්‍ර ලබා දීමට [සමථය එකඟ වූ පරිදි] අදාළ ප්‍රාදේශීය ලේකම්වරයාට අවසරය තිබෙන බවට සඳහන් කරමි.”

It is relevant to note that the land in dispute is a reservation land belonging to the state. Originally, the father of 1st Party 2nd Respondent-Petitioner-Respondent [H.H. Githawathie Violet] and 2nd Party 2nd Respondent-Respondent-Appellant [Hewa Heenpallage Wasanthi Kumari] were in possession of the land and the dispute between the parties has arisen after the father's demise.

Since the land is a state land, it is appropriate for the learned Primary Court Judge to direct the parties to enter into a settlement. As such, it clearly manifests that the learned High Court Judge had considered all the relevant facts and Law and set aside the Order

made by his predecessor and directed the parties to resolve their dispute and obtain license according to their entitlement from the divisional secretary.

Hence, we see no reason for us to interfere with the Order dated 05.05.2015 of the learned High Court Judge of Ampara.

Therefore, we dismiss this appeal. Parties have to bear their own cost of litigation in the Primary Court, Provincial High Court and also in this Court.

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL