

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

*In the matter of an application for Revision  
under and in terms of Article 138 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka to be read with the  
provisions of the Act No. 19 of 1990.*

The Officer in Charge,  
Police Station,  
Kuchchaveli.

CA (PHC) APN No.65/2022

HC.Trinco No.HCT/Rev/612/20

MC.Trinco No.PPC/K/07/66/19

**Informant-Complainant**

**Vs.**

1. Muttiah Mohan,  
Ward No. 04, Irakkandy.
2. George Zal Ajith Chetty,  
No. 14, Cambridge Place,  
Colombo 07.

**1<sup>st</sup> Party Respondents**

Mohamed Yusuf Mohamed Ikras,  
Vallaitivu,  
Irakkandy, Nilaveli.

**2<sup>nd</sup> Party Respondent**

Nagoor Pichche Mohamed Illiyaz,  
No. 287, Kandy Road,  
Trincomalee.

**2<sup>nd</sup> Party Intervenant-Respondent**

**AND**

George Zal Ajith Chetty,  
No. 14, Cambridge Place,  
Colombo 07.

**1<sup>st</sup> Party Respondent-Petitioner**

**Vs.**

The Officer in Charge,  
Police Station,  
Kuchchaveli.

**Informant-Complainant-Respondent**

Muttiah Mohan,

Ward No. 04, Irakkandy.

**1<sup>st</sup> Party 1<sup>st</sup> Respondent-Respondent**

Mohamed Yusuf Mohamed Ikras,

Vallaitivu,

Irakkandy, Nilaveli.

**2<sup>nd</sup> Party Respondent -Respondent**

Nagoor Pichche Mohamed Illiyaz,

No. 287, Kandy Road,

Trincomalee.

**2<sup>nd</sup> Party Intervenient-Respondent-  
Respondent**

**AND NOW**

Mohamed Yusuf Mohamed Ikras,

Vallaitivu,

Irakkandy, Nilaveli.

**2<sup>st</sup> Party Respondent-Respondent-  
Petitioner**

Nagoor Pichche Mohamed Illiyaz,  
No. 287, Kandy Road,  
Trincomalee.

**2<sup>nd</sup> Party Intervenient-Respondent-  
Respondent- Petitioner**

**Vs.**

George Zal Ajith Chetty,  
No. 14, Cambridge Place,  
Colombo 07.

**1<sup>st</sup> Party Respondent- Petitioner-  
Respondent**

The Officer in Charge,  
Police Station,  
Kuchchaveli.

**Informant-Complainant-Respondent-  
Respondent**

Muttiah Mohan,  
Ward No. 04, Irakkandy.

**1<sup>st</sup> Party 1<sup>st</sup> Respondent-Respondent-  
Respondent**

**Before** : Sampath B. Abayakoon, J.  
: K.K.A.V. Swarnadhipathi, J.

**Counsel** : Rasika Dissanayaka with C. Wanigapura for 2<sup>st</sup> Party  
Respondent-Respondent-Petitioner

**Supported on** : 21-07-2022

**Order on** : 01-08-2022

**Sampath B Abayakoon, J.**

This is an application in revision by the second party respondent-petitioner and second party intervenient-respondent-petitioner (hereinafter collectively referred to as the second party respondent-petitioners) on the basis of being aggrieved by the judgement dated 23-06-2022 of the learned Provincial High Court Judge of the Eastern Province holden in Trincomalee, pronounced in Case No. HCT/Rev/612/20.

Since the learned Counsel to the second party respondent-petitioners sought permission from the Court to support this matter, in order to obtain an interim order to stay the operation of the judgement and to get the notices issued to the respondents mentioned in the petition without notice of the application for interim relief on the basis of urgency, the learned Counsel was permitted to support his application without notice to the respondents.

Accordingly, heard the learned Counsel for the second party respondent-petitioners.

It was held in the case of **Hotel Galaxy (Pvt) Ltd. Vs. Mercantile Hotels Management Ltd. (1987) 1 SLR 05** that;

*“It is settled law that the exercise of the revisionary powers of the appellate Court is confined to cases in which exceptional circumstances exist warranting its intervention.”*

In the case of **Wijesinghe Vs. Thamaratnam, (Srikantha Law Reports Vol-IV page 47)** it was held that;

*“Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of the Court.”*

In the case of **Vanik Incorporation Ltd. Vs. Jayasekare (1997) 2 SLR 365** it was held thus;

*“Revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice.”*

With the above legal principles in mind, I will now consider whether there is a basis to grant a stay order as sought in the first instance, and to issue notice on the respondents mentioned.

This is a matter that emanates from an information filed by Officer-in-Charge (OIC) of the Kuchchaveli police in terms of section 66 (1) of the Primary Courts' Procedure Act No. 44 of 1979, seeking an order from the Magistrate of Kuchchaveli in order to prevent the breach of the peace that may arise between the respondent parties mentioned in the information provided owing to a dispute over the possession of a land

However, the learned Magistrate of Kuchchaveli by her order dated 13-03-2019 has rejected the application of the OIC of Kuchchaveli on the basis that the notices in relation to this action cannot be exhibited on the land as the land has not been properly identified, rather than going into the merits of the application and making an appropriate order to prevent breach of the peace.

It appears from the documents tendered by the second party respondent-petitioners to this Court that the said order by the learned Magistrate of Kuchchaveli has been challenged by way of Revision Application No.

HCT/Rev/566/2019 before the Provincial High Court of Trincomalee by the first party respondent-petitioner-respondents (hereinafter referred to as first party respondents), named in the present application before this Court. After hearing that matter, the Provincial Judge of Trincomalee by his order dated 16-09-2019 has allowed the said revision application and has directed the learned Magistrate of Kuchchaveli to hear the said action on its merits and make an appropriate order. It is clear from the judgement that the learned High Court Judge has correctly held that the disputed land can be identified and an appropriate order should be pronounced in relation to the information filed by the police.

Accordingly, the learned Magistrate of Kuchchaveli has heard the matter and has pronounced her order on 08-01-2020, dismissing the information filed by the OIC of Kuchchaveli Police, again on the same basis of her earlier rejection of the application, that is to say, that the subject matter of the dispute has not been duly identified.

Against this order, the first party respondents have filed another revision application, in the Provincial High Court of Trincomalee. After hearing the said revision application, the learned Provincial High Court Judge of Trincomalee by his judgement dated 23-06-2022, set aside the second order made by the learned Magistrate of Kuchchaveli exercising the discretionary power of revision vested in him, which is the subject matter of the action before this Court.

After considering the facts and the relevant law exhaustively, the learned High Court Judge has held and ordered as follows;

1. That the second party respondent-respondent and second party intervenient-respondent-respondent have forcibly occupied and dispossessed the first party respondent-petitioner from petitioner's disputed land and forcibly possessed the petitioner's disputed land.
2. The first party respondent-petitioner has established his entitlement and possession of the disputed land from 1973-03.02.2019 till dispossession.

3. The second party respondent-respondent has continuously and forcibly possessed the first party petitioner's disputed land.
4. Disputed land is identified and the second party respondent-respondent and second party intervenient-respondent-respondent have forcibly disposed the petitioner from his land and forcibly occupied the petitioner's disputed land.
5. I set-aside the order dated 08.01.2020 by learned Primary Court-Trincomalee.
6. I order to eject the second party respondent-respondent and his dependents, agents, servants those who are holding in the land and handover the Peaceful possession to first party second respondent-petitioner.
7. I order to eject the second party intervenient-respondent-respondent and his dependents, agents, servants those who are holding in the land and handover the Peaceful possession to the first party second respondent-petitioner.

Making submission in support of the application in revision, it was the view of the learned Counsel for the 2<sup>nd</sup> party respondent petitioners that the judgment of the learned High Court Judge was without basis and in contrary to the facts and the relevant law. Submitting that the disputed land has not been properly identified for the learned Magistrate to act upon, and the only option available to the learned Magistrate was to dismiss the action, it was the contention of the learned Counsel that the learned High Court Judge was misdirected in that regard in his judgment dated 23-06-2022.

Moreover, it was the position of the learned Counsel that the learned High Court Judge in the process of deciding on the matter has made several adverse remarks and suggestions against his clients, which are highly detrimental to their legal rights. It was his view that the said remarks, which are remarks based on the title of the 2<sup>nd</sup> party respondent petitioners to the land in dispute are wrong, and made beyond the jurisdiction of the learned High Court Judge.

It was revealed during the submissions of the learned Counsel that after the rejection of the information filed in terms of section 66 by the Magistrate, the 1<sup>st</sup> party respondents have instituted the land action No- L5720/2022 on 10-02-2022, in the District Court of Trincomalee in order to assert their rights and the matter is now pending.

At this juncture, it needs to be noted that the only inference that can be drawn from the orders of the learned Magistrate of Kuchchaveli is that the learned Magistrate was not possessed of any understanding of the purpose of section 66 of the Primary Courts' Procedure Act (Act) when she made the first order of dismissing the information filed by the OIC of Kuchchaveli police. The purpose of section 66 of the Act is for a judge to make a suitable order when a dispute affecting a land is brought before the judge in order to prevent the breach of the peace until the parties to the dispute resolve their rights by going before a competent Court. If the Magistrate found that the information provided by the OIC was not sufficient to identify the land in dispute, she should have directed the police to provide further necessary information in that regard, rather than choosing the easy way out, leaving the dispute as it is.

Even after the learned Provincial High Court Judge of Trincomalee by his previous revisionary judgment, directed the Magistrate to pronounce an appropriate order after considering the merits of the application, it appears that the learned Magistrate has still failed to understand the purpose of section 66, by dismissing the action again on the same basis of failure to identify the land in dispute.

It is against this order the 1<sup>st</sup> party respondents have initiated another application is revision, which has led to the judgment of the learned Provincial High Court Judge of Trincomalee, where the earlier mentioned orders were pronounced.

It is clear from the judgment of the learned High Court Judge that he was well possessed of the relevant legal principles that he should bear in mind when

considering an application in revision under exceptional circumstances. No need to mention that the order of the learned Magistrate was an order that shocks the conscience of the Court as I have earlier mentioned.

The learned High Court Judge has carefully considered whether the land cannot be identified for her to make an appropriate order as stated by the Magistrate, and has rightly found it was not so in terms of the requirements of the Primary Courts' Procedure Act. It clearly appears that even if the learned Magistrate took care to go through the investigation notes and the sketch prepared in that regard by the police officer who investigated the dispute, with her task in mind, this kind of an order would not have been possible. (At page 443 and 444 of the brief). The purpose of identifying a land in a dispute affecting land in terms of section 66 of the Act is to enable the Court to make an order that can be executed if it becomes necessary. For such a purpose it is not necessary to go by the exact boundaries or extents mentioned in a plan or the title as pleaded. Any order pronounced with regard to the possession of a disputed land will be in effect only until a competent Court pronounce a relevant order or judgment in that regard and no more.

I find that after correctly identifying the land in dispute, the learned High Court Judge, acting in revision, has pronounced rightful orders in order to prevent the breach of the peace and as the justice demand.

I am unable to agree that the learned High Court Judge has acted without jurisdiction when he made his observations as to the title pleaded by the 2<sup>nd</sup> party respondent petitioners. The learned High Court judge has come to his findings based on the documents presented to the Court by the parties pleading their respective titles, although title was not a requirement in a case of this nature. I am unable to conclude that the learned High Court Judge has gone on a voyage of discovery on his own. Hence, reasons to disagree with the said findings.

It would have been better if the learned High Court Judge avoided making remarks on the actions that the other party can take based on the findings on title. However, I find that no adverse orders have been pronounced by the learned High Court Judge in that regard.

For the reasons as stated above, I find no reasonable basis to issue a stay order staying the judgment of the learned High Court Judge or to issue notice of this application to the respondents mentioned.

The application for revision therefore, is *in limine* dismissed.

The Registrar of the Court is directed to send the copies of this order to the Circuit Magistrate Court of Kuchchaveli and to the High Court of Trincomalee for information.

Judge of the Court of Appeal

**K.K.A.V. Swanadhipathi, J.**

I agree.

Judge of the Court of Appeal