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

In the matter of a Petition of Appeal against the Judgement of the learned High Court Judge of the Provincial High Court of Central Province dated 08.11.2019.

Officer-in-Charge,
Police Station,
Gampola

Plaintiff

CA (PHC) No: 203_2019
PHC Kandy: (Rev) 43/19
MC Gampaha: 5005/17

VS

1. Walpale Gedara Malani Manjalika
No.370,
Elpitiya,
Weligalla.

1st Party

2. Muthusami Loganathan
No.181/14, Kobbewala Road,
Mahara,
Gampola

2nd Party

AND BETWEEN

Muthusami Loganathan
No.181/14, Kobbewala Road,
Mahara,
Gampola

2nd Party- Petitioner

VS

Walpale Gedara Malani Manjalika
No.370,
Elpitiya,
Weligalla.

1st Party-Respondent

Officer-in-Charge,
Police Station,
Gampola

Plaintiff-Respondent

AND NOW BETWEEN

Muthusami Loganathan
No.181/14, Kobbewala Road,
Mahara,
Gampola

2nd Party- Petitioner-Appellant

VS

Walpale Gedara Malani Manjalika
No.370,
Elpitiya,
Weligalla.

1st Party-Respondent-Respondent

Officer-in-Charge,
Police Station,
Gampola

Plaintiff-Respondent-Respondent

Before: **Prasantha De Silva, J.**

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

Counsel: T. Sivanandaraja AAL for the 02nd Party-Petitioner-Appellant.

Hiranya Damunupola AAL and Dinesha de Silva AAL with Ushani Bambuwela AAL for the1st Party-Respondent-Respondent.

Both Counsel agreed to dispose this matter by way of written submissions.

Written Submissions: filed on 20.02.2023 for the 02nd Party-Petitioner-Appellant.

Delivered on: 04.04.2023

Prasantha De Silva, J

Judgment

The officer in charge of the police station – Gampaha had filed an information in terms of Section 66 of the Primary Courts' Procedure Act No. 44 of 1979 [hereinafter referred to as 'the Act'] on the complaint made by the 1st Party, alleging that the 2nd Party had obstructed the access to roadway in the 1st Party's residential premises by erecting a fence.

The learned Magistrate who was acting as the Primary Court Judge having inquired into the matter delivered his order dated 21.02.2019 in favor of the 1st Party. The learned Magistrate held that the 1st Party is entitled to use the disputed roadway and ordered the 2nd Party to remove the fence which has been erected on the roadway, obstructing the access to the 1st Party's residential premises.

Being aggrieved by the said order the 2nd Party-Petitioner invoked the revisionary jurisdiction of the Provincial High Court of the Central Province holden at Kandy in case bearing no. Rev 43/19 – by way of Petition dated 29.03.2019. The 1st Party-Respondent had filed Statement of Objections to the said application and thereafter, the Parties were heard by the Learned High Court Judge.

After the conclusion of the inquiry, the learned High Court Judge dismissed the said revision application of the 2nd Party-Petitioner by his order dated 08.11.2019.

Being dissatisfied by the said order of the learned High Court Judge, the 2nd Party-Petitioner-Appellant [hereinafter referred to as 'the Appellant'] had preferred this appeal, seeking to set aside the said order of the learned High Court Judge and the order made by the learned Magistrate held against the Appellant.

It is relevant to note that the learned Magistrate had correctly determined that the dispute between the Parties relating to land comes within the purview of Section 69 of the Primary Courts' Procedure Act.

Since this appeal emanates from an order of the learned High Court Judge of the Provincial High Court of Kandy exercising revisionary jurisdiction against the order of the learned Magistrate, it is not the task before this Court to consider an appeal against an order made under Section 66 of the Primary Courts' Procedure Act.

In **Nandawathi and another Vs. Mahindasena [(2009) 2 SLR 218]** it was held that

> "When an Order of a Primary Court Judge is challenged by way of revision in the High Court, the High Court can exercise only the legality of that Order and not the correction of that Order".

It was emphasized by Ranjith Silva J. that;

> "I am of the opinion that this particular right of appeal in the circumstances should not be taken as an appeal in the true sense, but in fact as an application to examine the correctness, legality or the propriety of the Order made by the High Court Judge in the exercise of revisionary powers. The Court of Appeal should not under the guise of an appeal attempt to re-hear or re-evaluate the evidence led in the main case".

It is to be observed that the main reason for the learned High Court Judge to have dismissed the revisionary application of the Appellant was because the Appellant had failed to establish exceptional grounds needed to invoke the revisionary jurisdiction of the Provincial High Court. It is trite law that revisionary powers can be considered and exercised only when there are exceptional circumstances pleaded by the Petitioner.

In this instance, Court draws the attention to the revision application dated 29.03.2019 made by the Appellant to the Provincial High Court of Kandy. In the present Appeal, the Appellant has averred exceptional circumstances in paragraph 12 of the Petition to invoke the revisionary jurisdiction of the High Court.

Therefore, this court will consider whether the exceptional grounds substantiated by the Appellant are sufficient for the Appellant to invoke the revisionary jurisdiction of the High Court.

In this respect, it is submitted that this court should look into whether the learned High Court Judge has properly exercised his duty to ascertain whether any injustice or prejudice is caused to a Party or whether there is a miscarriage of justice by the order of the learned Magistrate. The Court of Appeal is not empowered to correct the errors made by the learned Magistrate [*Aluthhewage Hashani Chandrika and others vs. Officer in Charge and others CA(PHC) 65/2003 C.A.M. 21.04.2020*].

In the instant case, the learned Magistrate had determined that both 1st Party-Respondent-Respondent and the 2nd Party-Petitioner-Appellant are entitled to use the impugned road access depicted as Lot 85 in Cadastral Map bearing no. 320/22. Further, the learned Magistrate has ordered to remove the obstructing fence erected by the Appellant.

It is worthy to note that the learned High Court Judge has observed that the learned Magistrate has analyzed and evaluated the evidence placed before him and had come to the correct findings of fact and law and had determined the matter in terms of Sections 68(1) and 68(3) of the Act.

As such, it is apparent that no injustice was caused to the Appellant by the order of the learned Magistrate thus, no miscarriage of justice occurred to the Appellant by exercising jurisdiction under Section 66 of the Primary Courts' Procedure Act.

It was held in the case of **Bank of Ceylon Vs. Kaleel [2004] (1) SLR 284:**

> "The Court to exercise revisionary jurisdiction, the Order challenged must have occasioned failure of justice and manifestly erroneous which goes beyond an error or defect or irregularity that an ordinary person would instantly react to it. In other words, the Order complained of is of such nature which would have shocked the conscience of Court."

Similarly, in ***Siripala Vs. Lanerolle [2012] 1 SLR 105***, *Sisira de Abrew J.* held:

> "Even though the Petitioner attempts to justify the recourse to revision in his written submissions, it is well settled law that existence of such exceptional circumstances should be amply and clearly demonstrated in the petition itself….in the instant application, the Petitioner has neither disclosed nor expressly pleaded exceptional circumstances that warrant intervention by way of revision."

It was held in the case ***Athurupana Vs. Premasinghe (SC) B.L.R [2004] Vol. X Part II P. 60,***

> "Every illegality, impropriety or irregularity does not warrant the exercise of revisionary jurisdiction but such jurisdiction will be exercised only where the illegality, impropriety or irregularity in the proceeding has resulted in a miscarriage of justice by the party affected being denied what is lawfully due to the party."

Therefore, it clearly manifests that no exceptional circumstances exist which shocks the conscience of the Court, for the learned High Court Judge to exercise Revisionary jurisdiction to set aside the order of the learned Magistrate. Hence, the learned High Court Judge has rightfully decided to not interfere with the order of the learned Magistrate.

In view of the foregoing reasons, we see no reason for us to set aside the order of the learned Magistrate dated 21.02.2019 as well as the order of the learned High Court Judge dated 08.11.2019.

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