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

In the matter of an Appeal under Article 154P (6) of the Constitution read with Section 11(1) of the High Court of the Provinces (Special Provisions) Act No.19 of 1990.

Officer in Charge,
Police station,
Kurunegala.

INFORMANT

Vs.

1. Anura Samarajeewa,
2. Irangi Shulari Samarajeewa,
3. Mekala Chathumini Samarajeewa,
4. Madurasiri Adikaree,

No.65/25, Jayanthipura road,
Kurunegala.

1st PARTY

1. T.D.H. Sriyani Manel Dharmadasa,
   No.229, Colombo Road,
   Kurunegala.

2. Wijesinghe Arachchige Rasika Gangadara,
   No.65/25, Jayanthipura road,
   Kurunegala.

2nd PARTY

AND

Wilesinghe Arachchige Rasika Gangadara, No.65/25, Jayanthipura road,
Kurunegala.

2nd PARTY-2nd RESPONDENT-PETITIONER

C.A. (PHC) No. 110 /2015

HC Revision Application No. H.C.R. 84/2014

MC Kurunegala No. 63468

Vs.

Anura Samarajeewa,
No. 164, Gamunupedasa,
Aluthmal Kaduwawa, Kurunegala.

1st PARTY~ 1st RESPONDENT ~
1st RESPONDENT

Irangi Shulari Samarajeewa, No.164
Gamunupedesa,
Aluthmal kaduwawa, Kurunegala.

1st PARTY~ 2nd RESPONDENT~
2nd RESPONDENT

Mekala Chathumini Samarajeewa,
No. 164, Gamunupedesa,
Aluthmal kaduwawa, Kurunegala.

1st PARTY – 3rd RESPONDENT~
3rd RESPONDENT

Madurasiri Adikaree,
No. 164, Gamunupedesa,
Aluthmal kaduwawa, Kurunegala.

1ST PARTY~4th RESPONDENT~
4th RESPONDENT

T.D.H. Srivani Manel Dharmadasa,
No.229, Colombo Road,
Kurunegala.

2nd PARTY~1st RESPONDENT~
5th RESPONDENT

Officer in Kurunegala in Charge,
Police station,
Kurunegala

INFORMANT~6th RESPONDENT

AND NOW BETWEEN

Wijesinghe Arachchige Rasika
Gangadara,
No.65/25, Jayanthipura road,
Kurunegala.

2nd PARTY~ 2nd RESPONDENT
~PETITIONER~APPELLANT

Vs.

Anura Samarajeewa,
No.164, Kurunegala.

1st PARTY~ 1st RESPONDENT
~1st RESPONDENT – 1st RESPONDENT

Irangi Shulari Samarajeewa,
No. 164, Gamunupedesa,
Aluth mal kaduwawa, Kurunegala.

1st PARTY~ 2nd RESPONDENT
~ 2nd RESPONDENT ~ 2nd
RESPONDENT

Mekala Chathumini Samarajeewa,
No. 164, Gamunupedesa,
Aluth mal kaduwawa, Kurunegala.

1st PARTY~ 3rd RESPONDENT
~3rd RESPONDENT ~3rd RESPONDENT

Madurasiri Adikaree,
No. 164, Gamunupedesa,
Aluth mal kaduwawa, Kurunegala.

1st PARTY~ 4th RESPONDENT
~4th RESPONDENT ~4th RESPONDENT

T.D.H. Sriyani Manel Dharmadasa,
No.229, Colombo Road,
Kurunegala.

2nd PARTY – 1st RESPONDENT
~5th RESPONDENT~5th RESPONDENT

Officer In Charge,

Police station,
Kurunegala.

INFORMANT-6th RESPONDENT
-6th RESPONDENT

Before:	**Prasantha De Silva, J.**
	K.K.A.V. Swarnadhipathi, J.
Counsel:	Hirosha Munasinghe AAL for the 2nd Party-2nd Respondent-Petitioner-Appellant
	Dr Sunil Cooray with Diana S. Rodrigo AAL for the 1st Party-1st,2nd,3rd and 4th Respondent-Respondents
Written Submissions:	03.02.2021 for the 2nd Party-2nd Respondent-Petitioner-Appellant
filed on	21.02.2023 for the 1st,2nd,3rd and 4th Respondent-Respondents
Delivered on:	06.04.2023

Prasantha De Silva, J.

Judgment

This is an appeal emanating from an order of the High Court of the North-Western Province holden at Kurunegala.

The Officer-in-charge of the Police station of Kurunegala had filed an information in the Magistrate Court of Kurunegala in case bearing no. 63468 informing that breach of peace is threatened or likely to be threatened due to a land dispute between the 1st Party and the 2nd Party Respondents.

It appears that Anura Samarajeewa, Shulari Samarajeewa, Irangi Mekala Chatumini Samarajeewa, Madurasiri Adirake were named as the 1st Party and T. D. H. Sriyani Manel Dharmadasa Wijesinghe Arachchige Rasika Ganardhara named as 2nd Party in the said case filed at the Magistrate court.

After following the procedure under Part VII of the Primary Court Procedure Act no. 44 of 1979 (hereinafter referred to as 'the Act') the learned Additional Magistrate who was acting as the Primary Court judge issued notices on the said 1st Party and the 2nd Party Respondents.

The learned Additional Magistrate having inquired into the dispute between the Parties had concluded the matter in terms of section 68(3) of the Act and has held that the 1st Party Respondent had been dispossessed from the premises in dispute within two months immediately before the date of filing of the information. Therefore, the learned Magistrate has ordered to place the 1st Party Respondent in possession of the premises in dispute.

Being aggrieved by the order of the learned Additional Magistrate, the 2nd Party Respondent-Petitioner had invoked the revisionary jurisdiction of the High Court of the North Western Province holden in Kurunegala. However, the learned High Court Judge had held in favour of the 1st Party Respondent-Respondent and dismissed the application of the 2nd Party-Respondent-Petitioner.

Being dissatisfied with the said order of dismissal, the 2nd Party-Respondent-Petitioner -Appellant had preferred an appeal to this court seeking to set aside the said order of the learned High Court Judge and the learned Additional Magistrate.

It is to be noted in the Case of ***Punchi Nona Vs. Padumasena and Others***[1], it was held that the primary court exercising special jurisdiction under section 66 of the Act, is not involved in an investigation into the title or the right to possession, which is the function of a civil court. What the primary court is required to do is to take preventive action and make a provisional order pending the final adjudication of the rights of the parties in a civil court. It is to be observed that section 66 of the Act has not granted legal competency to investigate and ascertain the ownership or title to the disputed premises which is a function of the District Court.

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

Section 74 of the said Act stipulates that;

> (1) An order under this Part shall not affect or prejudice any right or interest in any land or part of a land which any person may be able to establish in a civil suit; and it shall be the duty of a Judge of a Primary Court who commences to

[1] [1994] 2 SLR 117

hold an inquiry under this Part to explain the effect of these sections to the persons concerned in the dispute.

(2) An appeal shall not lie against any determination or order under this Part.

As stated above, according to terms of section 74(2) of the Act, there is no appeal process against any order or determination made under Part VII of the Act.

However, the aggrieved party can move in revision to the High Court against the order of the Primary Court. Revisionary Jurisdiction is available not as a right but at the discretion of court to remedy a miscarriage of justice. Furthermore, order of the High Court in a revision application can be appealed to the Court of Appeal by operation of the law. Moreover, if a party is dissatisfied by judgement of the Court of Appeal, he is entitled to prefer an appeal to the Supreme Court.

In this respect, court draws attention to the article titled **'Does Section 66 Applications Create A Blind Hope for Litigants'**[2] which analyses the intricacies of section 66.

> Accordingly, in terms of Section 66 of the Primary Courts' Procedure Act, the Orders of the Primary Court as well as the High Court are Provisional Orders made for the purpose of preserving public peace in a dispute affecting land pending final adjudication of the rights of the parties in a competent civil Court.
>
> Towards the end of Part VII of the Primary Courts' Procedure Act, remedy for an aggrieved party is provided. (Section 74 is given above).
>
> Right of appeal is a statutory right which is not available as of a right and that can be taken away by specific terms. Although Section 74 (2) prohibits appeals from orders made in Section 66 applications, the matter may nevertheless be canvassed by way of revision. The Court of Appeal shall have the jurisdiction of appeal and revision by way of Article 138 of the Constitution. However, without taking away such right, Article 154(3) (b) has given the High Court the appellate and revisionary jurisdiction in respect of orders given by Magistrate's Courts and Primary Courts.
>
> Most of the Magistrates direct parties go before the District Court to have the dispute resolved. That is the reason why the Legislature in its wisdom did not provide a right of appeal against the order of the Magistrate.

[2] Prasantha. De Silva and Dinithi Amarasiri, Does Section 66 Applications Create A Blind Hope for Litigants [2022], Vol 13. Junior Bar Law Journal, page 26-32.

It is imperative to note that preferring an appeal to the Court of Appeal would not serve the purpose behind the enactment or the intention of the Legislature in introducing Part VII of the Primary Courts' Procedure Act. Thus, it is felicitous for the party concerned to invoke the civil jurisdiction of a competent court rather than preferring an appeal to the Court of Appeal.

Thus, the Primary Courts' Procedure Act No. 44 of 1979 further stipulates that "no appeal shall lie against any Determination or Order under this Act" to prevent prolong and protracted hearings and also to prevent frittering away precious time of courts and parties. When examining the intention of the Legislature in including the 3-month time frame for a matter to be concluded before the Primary Court Judge, the implication is such that Legislature intended to discourage people from filing cases on frivolous grounds, devoid of merit.

Thus, in actual sense the suitable step is to have civil rights of the relevant parties adjudicated in the relevant competent civil court. Therefore, when filing an appeal against a provisional order given under the Primary Courts' Procedure Act, the party concerned must come to a degree of certainty that their claim has merit and is likely to succeed and thereupon decide on the appropriate platform from which he can receive a fair remedy. It is incumbent upon the learned High Court Judges to direct parties to a competent civil Court for a final adjudication of their legal rights pertaining to the land in question instead of invoking the jurisdiction of the Court of Appeal. This will enable us to witness an efficient administration of justice in our Court system" [3]

The intention of the legislature was discussed in the case of ***Krishnamoorthi Sivakumar Vs. Pathima Johara Packer*** where De Silva, J. held that;

> *"The intention of the legislature in introducing Part VII of Primary Courts' Procedure Act No.44 of 1979 is to prevent a breach of the peace and not to embark on a protracted trial investigating the title when deciding the matter in dispute.* [4]

[3] ibid
[4] No: CA (PHC) 122/2018, CAM dated 27.09.2022

Thus, if the Appellant in this application wishes to establish his legal rights to the disputed portion of land, this is not the forum to adjudicate legal right of parties relating to the land in dispute.

In the case of ***Nandawathi and others v Mahindasena***[5] 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".

In view of the afore cited Judgment, this court is not supposed to consider this as an appeal preferred against the order of the Magistrate's Court. This Court should only consider the order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction.

It was emphasized in the case of ***Dissanayake Rallage Nihal Chandrasiri Dissanyake Vs. Rev. Mampita Hemaloka Thero and others,*** where De Silva, J. held that;

> "In this instance, it was submitted that the order of the Primary Court is a provisional Order, and if any dispute exists over civil rights, one must resort to a civil action. The Primary Court was of the view that as there is a breach of peace and as the road has been classified as a public road and as a road maintained by the Pradeshiya Sabha, the Respondents are entitled to use the roadway and to have the right granted until the matter is finally decided by a civil Court with competent jurisdiction."[6]

It was held in the case of ***Bank of Ceylon Vs Kaleel***

> "The Court to exercise revisionary jurisdiction, the order challenged must have occasioned failure of justice and manifestly erroneous which goes beyond an

[5] [2009] 2 S L R 218
[6] CA (PHC) 168/2012, CAM 25.10.2022

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". [7]

In ***Urban Development Authority Vs. Ceylon Entertainments Ltd.*** *Nanayakkara J.* held with *Udalagama J.* agreeing,

> "That presence of exceptional circumstances by itself would not be sufficient if there is no express pleading to the effect in the petition whenever an application is made invoking, the revisionary jurisdiction of the Court of Appeal". [8]

Similarly, in ***Siripala Vs. Lanerolle,*** *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."[9]

It was held in the case ***Athurupana Vs. Premasinghe B.L.R,***

> "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."[10]

Since litigants are unaware of the intricacies of the appeals and revision applications filed in the superior courts, they are convinced that all their disputes and legal rights would be determined by way of an appeal or a revision application. For this reason, it is apparent that sometimes it is a waste of time for the litigants and further litigation is a meaningless exercise by Courts. In such a situation, a High Court Judge should be mindful to direct parties to invoke the civil jurisdiction of a competent civil court and allow parties to withdraw the revision application to end litigation under Section 66 of the Primary Court Procedure Act. Since Part VII of the Act is introduced to prevent the breach of peace being threatened or when likely to be threatened relating to a land dispute, it is incumbent upon

[7] [2004] (1) SLR 284
[8] CA 1319/2001, C.A.M. dated 05.04.2002
[9] [2012] 1 SLR 105
[10] [2004] Vol. X Part II P. 60SC

the learned High Court Judges to direct parties to the competent civil courts to have their legal rights in question adjudicated and possession of the rightful owners established.

In the case of ***Rasheed Ali v Mohomed Ali and Others,***[11] it was held that the powers of revision could be used only in exceptional circumstances. A merely wrong order made by a judge or wrong reasons given for the order by a judge alone does not amount to exceptional circumstances.

Although there is no right of appeal against the order of a Magistrate acting in the capacity of a Primary Court Judge exercising jurisdiction in terms of Section 66 of the Primary Courts' Procedure Act, revisionary jurisdiction is permissible in exceptional circumstances where any injustice or a miscarriage of justice has been caused to a party. The Court of Appeal is not empowered to correct errors made by the learned Magistrate. However, Court of Appeal has to determine whether the learned High Court Judge has properly exercised his duty when ascertaining whether any injustice was caused to a party or whether any miscarriage of justice has occurred by the Order of the learned Magistrate. By invoking the revisionary jurisdiction of a Court, the aggrieved party can challenge the legality of an order but not the correctness of an order.

Therefore, the learned High Court Judge was correct in refusing to intervene with the order dated 20.06.2017 of the learned Magistrate/ Primary Court Judge.

In view of the aforesaid judicial pronouncements, it clearly manifests that existence of exceptional circumstances is a pre-condition for the exercise of revisionary powers.

It is seen in the averments of the Petition of Appeal that the Appellant had purchased the subject matter of the instant action by deed of transfer bearing no 3998 on 26.02.2014 from the 5th Respondent in this Appeal.

Apparently, the 1st Respondent namely Anura Samarajeewa and the 5th Respondent namely Sriyanie Manel Dharmadasa are husband and wife.

According to the Police complaint made by the said 5th Respondent wife alleging that the 1st Respondent had beaten her, and the Police had filed case bearing No B527/14 on 11.03.2014. Consequently, the 1st Respondent was remanded until 14.03.2014 and he was bailed out on 14.03.2014.

[11] [1981] 1 SLR 262

The 5th Respondent had made an application bearing No. 62446/14 to the Magistrates Court of Kurunegala against the 1st Respondent in terms of the provisions of Domestic Violence Act No 34 of 2005. The learned Magistrate had issued an interim protection order in the said case, restraining 1st Respondent from entering the house of the 5th Respondent by order dated 12.02.2014.

It was informed by the fiscal that the said notice of the protection order could not be served on the 1st Respondent, later it was found that he was in remand custody consequent to an order made in case bearing no B 527/14.

Pursuant to the above, Appellant has contended that since the restraining order was issued on the 1st Respondent, he did not have possession in respect of the disputed property. However, as the disputed premises is 1st Respondent's matrimonial home, he has constructive possession of the said premises.

It appears that the Officer in Charge of the Police station at Kurunegala had filed an information on 31.03.2014, under Section 66 of the Primary Court Procedure Act No. 44 of 1979, based on the Complaint made to the Police by the 1st Respondent.

However, having concluded the inquiry the learned Magistrate who was acting as the Primary Court Judge held in terms of Section 68 (3) of the Primary Court Act, granting possession of the disputed premises to the 1st Respondent.

In terms of Section 68 (3) of the said Act, it is to be noted that the Court has to look into whether any person who had been in possession of the disputed land or any part has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under Section 66 of the Act.

It is to be observed that the Appellant purchased the disputed property on 26.02.2014 and had taken possession of the disputed property on the same day. It is relevant to note that on the date on which the aforesaid deed was executed, the 1st Respondent was in remand custody.

In light of the facts and circumstances of the instant case, it is relevant to note that the proper remedy available to the aggrieved party is to adjudicate their legal rights by exercising the competent civil jurisdiction of the relevant court.

It was also revealed in evidence that the 1st Respondent had instituted an action bearing no 8050/L against his wife the 5th Respondent seeking a declaration that the Defendant

wife is holding the property in dispute as a trust in favour of the Plaintiff husband, the 1st Respondent.

Furthermore, on the day an enjoining order was issued in the said case, the Defendant wife the 5th Respondent had transferred the property in dispute to the Appellant in this is appeal by deed of transfer bearing no 3998 dated 26.02.2014.

Thereafter, the 1st Respondent had instituted another action bearing case no 8536/SPL in the District Court of Kurunegala praying for a declaration to declare the Deed of transfer bearing no 3998 dated 26.02.2014 be declared null and void.

In the case of ***Devi Property Development [Pvt] Limited vs Lanka Medical [Pvt] Ltd***[12] Nanayakkara J. held: "revision is an extra ordinary jurisdiction vested in court to be exercised under exceptional circumstances if no other remedies are available." (Emphasis is mine).

In this situation, therefore, the appropriate remedy for the Appellant is to invoke the civil jurisdiction of the District Court to adjudicate their legal rights of ownership to the disputed premises instead of preferring an appeal to this court.

The learned High Court Judge has observed that the learned Magistrate has analyzed and evaluated the evidence placed before him and has come to correct findings of fact and law. It was rightfully concluded that the 1st Respondent had been in possession of the disputed premises and that the 1st Respondent was dispossessed from the same and therefore, declared that the 1st Respondent was within a period of two months immediately before the date of filing of the information. Thus, he is entitled to the possession of the said premises under *Section 68(3) of the Act* and has ordered the 2nd Party Respondent T.D.H. Sriyani Manel Dharmadasa and Wijesinghe Arachchige Rasika Gangadara, to restore the 1st Respondent in possession of the disputed premises.

The learned High Court Judge has affirmed the Magistrate court's decision and held that there is no miscarriage of justice, or any injustice caused to the Appellant by the said order made by the learned Magistrate. Thus, it clearly manifests that no exceptional circumstances exist for the Appellant to invoke the revisionary jurisdiction of the High Court of Kurunegala.

[12] C.A. No. 513/2001, CAM 20/06/2001

As such, in view of the aforementioned reasons we see no reason to interfere with the order of the learned High Court Judge dated 29.06.2015 and the order of the learned Magistrate dated 18.07.2014.

Hence this appeal is dismissed with costs fixed at Rs 35,000.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL