

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

In the matter of an application under the
Provincial High Court Act No. 19 of 1990
(Special Provisions) read together with
Section 154(G) of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

Officer in Charge
Police Station
Ragama

Complainant

Court of Appeal Case No:
CA PHC 43/2018

Negombo High Court Revision
Application: **HCRA 310/17**

Negombo MC No: **11530/16**

Vs.

1. K. J. Tyrone Silva
No. 1054/A,
Lanka Matha Mawatha,
Duwawatta,
Ragama

1st Party

2. H W Manjula de Silva
No. 139/5
Kadawatha road,
Ragama

2nd Party

AND BETWEEN

K. J. Tyrone Silva
No. 1054/A,
Lanka Matha Mawatha,
Duwawatta,
Ragama

1st Party - Petitioner

VS

1. H W Manjula de Silva
No. 139/5
Kadawatha road,
Ragama

2nd Party – Respondent

2. Officer in Charge
Police Station
Ragama

Complainant- Respondent

AND NOW BETWEEN

K. J. Tyrone Silva
No. 1054/A,
Lanka Matha Mawatha,
Duwawatta,
Ragama

1st Party Petitioner-Appellant

VS

1. H. W. Manjula de Silva
No. 139/5
Kadawatha road,
Ragama

2nd Party – Respondent-Respondent

2. Officer in Charge
Police Station
Ragama

Complainant- Respondent -Respondent

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

Counsel: Eshanthi Mendis for the 2nd Party-Respondent-Respondent-
Respondent.
P. L. Gunawardene for the 1st Party-Respondent-Petitioner-Appellant.

Parties agree to dispose this matter by way of written submissions.

Written Submissions: 02.02.2023 for the 2nd Party Respondent - Respondent - Respondent
filed on 03.03.2023 for the 1st Party Respondent - Petitioner – Appellant

Delivered on: 21.03.2023

Prasantha De Silva, J.

Judgment

The Officer-in-Charge of the Police Station Ragama had filed an information in terms of section 66 of the Primary Courts' Procedure Act No.44 of 1979 upon a complaint made on 28.06.2016 by Karunayake Jude Tyron Silva against Hettihewage Viswajith Manjula De Silva. The said Karunayake Jude Tyron Silva and Hettihewage Viswajith Manjula De Silva were made 1st Party Respondent and 2nd Party Respondent respectively.

According to the complaint made by the said 1st Party-Respondent, he has a 23 perch block of land in Ragama, Kadawatha Road, at Horape Temple Junction. Case bearing No. 1012/L has been instituted in the District Court of Gampaha to have the boundaries of the said land demarcated. The 1st Party- Respondent had been informed by the adjoining landowner that a backhoe machine operator was removing earth and covering the road which leads to the southern boundary of the land of the 1st Party-Respondent.

According to the complaint made by the 1st Party- Respondent, the 2nd Party- Respondent has forcibly encroached the land of the 1st Party-Respondent and widened the road adjacent to the southern boundary of the 1st Party-Respondent's land using a backhoe without any permission. 1st Party- Respondent has also stated that the 6-feet wide road had been expanded to 12 feet with the intention of using it as a parking lot to park vehicles coming to the service centre run by the 2nd Party-Respondent.

The 2nd Party-Respondent pursuant to the complaint of the 1st Party-Respondent had made a statement to the Police Station-Ragama on 01.07.2016. He had stated in the above complaint that there was no road being widened and that all he did was remove earth from his land and put it on the road as soil on the road was washed off due to rain.

Pursuant to the information filed according to the above complaints, the learned Magistrate who was acting as the Primary Court Judge had followed the procedure stipulated in section 66(1)(a) of the Primary Courts' Procedure Act No. No. 44 of 1979 and inquired into the dispute between 1st Party- Respondent and 2nd Party- Respondent. The learned Magistrate had held against the 1st Party-Respondent and decided the matter in terms of Section 69(1) of the said Act and made an order on 20.06.2017 under Section 69(2) in favour of the 2nd Party-Respondent.

Being aggrieved by the said order, the 1st Party-Respondent-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Western Province holden in Negombo

seeking to have the order of the learned Magistrate dated 20.06.2017 set aside. Having inquired into the matter, the learned High Court Judge had held there is no reason to interfere with the order of the learned Magistrate and dismissed the application of the 1st Party-Respondent-Petitioner. Being dissatisfied with the order of the learned High Court Judge dated 29.03.2018, the 1st Party-Respondent-Petitioner-Appellant (hereinafter referred to as the Appellant) has preferred this appeal.

It was alleged by the Appellant that the 2nd Party-Respondent-Respondent-Respondent (hereinafter referred to as the Respondent) has encroached a portion of his land and widened the road on the southern boundary by filling it using a backhoe with the intention of expanding 6 feet wide road to 12 feet. It was further alleged that a concrete post belonging to the Ceylon Electricity Board has also been broken down. The Respondent had denied the said allegations and stated that he has not widened the road and that width of the impugned road was 10 feet. He has further stated that he used a backhoe to remove soil from his land in order to put it on the road as the soil on the road was washed off due to rain. The 2nd Party-Respondent has also stated that a concrete electricity post was not broken down by him and that what he removed was a broken lamppost partly buried under soil.

It is evident from the evidence placed before the learned Magistrate that Appellant had not substantiated the said allegations levelled against the Respondent. Therefore, it is apparent that the learned Magistrate has come to the correct findings of fact and law and held against the Appellant.

It should be noted that that Ragama Police had visited the disputed area and investigated the complaint of the Appellant. According to the investigation notes dated 29.06.2016 and sketch submitted by the Police, the impugned disputed roadway has no physical boundaries or demarcations. The entry to the roadway had been cleaned and filled with earth and it had been visible that width of the impugned road is about 10 feet wide. The said investigation notes revealed that no serious damage has been caused to the disputed area of land, particularly to the Appellant's land and it was brought to the notice of Court that there is a land matter pending in the District Court of Gampaha.

The learned High Court Judge too has analyzed and evaluated the evidence placed before the learned Magistrate and decided that the learned Magistrate has come to the correct findings of fact and law and held in favour of the 2nd Party-Respondent-Respondent-Respondent in the instant action. It is seen there is no miscarriage of justice or any injustice caused to the Appellant by the findings of the learned Magistrate. Thus, the Appellant has not shown any exceptional

circumstances which shock the conscience of Court to have the revisionary jurisdiction of the Provincial High Court invoked.

In view of the aforesaid reasons, I hold that learned Primary Court Judge has properly exercised jurisdiction under section 69 of the Primary Courts' Procedure Act No. 44 of 1979. As such, the learned Magistrate is empowered to make an order declaring that the 2nd Party-Respondent-Respondent is entitled to use 10 feet wide roadway pertaining to the instant action. Therefore, the learned High Court Judge was right in refusing to intervene with the order dated 20.06.2017 of the learned Magistrate/ Primary Court Judge.

As it was revealed that a civil case is pending in the District Court of Gampaha over demarcation of boundaries, parties are entitled to get a permanent solution to the impugned dispute from the relevant civil court.

Thus, I refuse to interfere with the order of the learned High Court Judge. Therefore, the appeal stands dismissed.

Appeal dismissed with costs.

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

JUDGE OF THE COURT OF APPEAL

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