

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

**LANKA.**

Officer in Charge,  
Police Station,  
Akkaraipattu.

**Informant**

Court of Appeal Case No:  
**CA (PHC) 76/2015 (A)**

High Court (Rev) Kalmunai Case  
No: CP/KAL/Rev/95/2013

Magistrate's Court Akkaraipattu  
Case No. 37912/PCA/13

**Vs.**

1. Thanganayaki Mahadevan,  
No. 60, Kithangi Road,  
Kalmunai-01.
2. Subair Lafeer,  
No. 141/2, Aysha Street,  
Pallikudiyiruppu-02,  
Akkaraipattu.
3. Mohamed Ismail Munasik,  
No. 17, Masjidul Rahman,  
Akkaraipattu-06.

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

1. Subramanium Perinbarajah,  
No. 53, Wanniyaranar Street,  
Akkaraipattu- 8/1.
2. Vinayagamoorthy Velumurugu,  
No. ½, Wachchikuda Road,  
Akkaraipattu.
3. Thangiah Danarajan,  
No. ½, Wachchikuda Road,  
Alayadivembu,  
Akkaraipattu.
4. Sundarajan Madan,  
Potkollar Street,  
No. ½, Wachchikuda Road,  
Akkaraipattu-07.
5. Murugupillai Thatchamoorthy,  
Ampara Road,  
No. ½, Wachchikuda Road,  
Akkaraipattu-7/2.

**Party of the 2<sup>nd</sup> Party Respondents**

**BETWEEN**

1. Thanganayaki Mahadevan,  
No. 60, Kithangi Road,  
Kalmunai-01

**Petitioner**

**1<sup>st</sup> named Respondent-Petitioner of  
the Party of the 1<sup>st</sup> Party  
Respondents**

**Vs.**

1. Officer in Charge,  
Police Station,  
Akkaraipattu.

**Informant-Respondent**

2. Subair Lafeer,  
No. 141/2, Aysha Street,  
Pallikudiyiruppu-02,  
Akkaraipattu.  
**2<sup>nd</sup> Respondent**  
**2<sup>nd</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party Respondents**

3. Mohamed Ismail Munasik,  
No. 17, Masjidul Rahman,  
Akkaraipattu-06.  
**3<sup>rd</sup> Respondent**  
**3<sup>rd</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party Respondents**

4. Subramanium Perinbarajah,  
No. 53, Wanniyaranar Street,  
Akkaraipattu- 8/1.  
**4<sup>th</sup> Respondent**  
**1<sup>st</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party Respondents**

5. Vinayagamoorthy Velumurugu,  
No. ½, Wachchikuda Road,  
Akkaraipattu-8.  
**5<sup>th</sup> Respondent**

**2<sup>nd</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents**

6. Thangiah Danarajan,  
No. ½, Wachchikuda Road,  
Alayadivembu,  
Akkaraipattu.  
**6<sup>th</sup> Respondent**  
**3<sup>rd</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents**
  
7. Sundarajan Madan,  
Potkollar Street,  
No. ½, Wachchikuda Road,  
Akkaraipattu-07.  
**7<sup>th</sup> Respondent**  
**4<sup>th</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents**
  
8. Murugupillai Thatchanamoorthy,  
Ampara Road,  
No. ½, Wachchikuda Road,  
Akkaraipattu-7/2.  
**8<sup>th</sup> Respondent**  
**5<sup>th</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents**

**AND BETWEEN**

Subair Lafeer,  
No. 141/2, Aysha Street,  
Pallikudiyiruppu-02,  
Akkaraipattu.  
**2<sup>nd</sup> Respondent-Respondent-Appellant  
(2<sup>nd</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party Respondent)**

**Vs.**

1. Thanganayaki Mahadevan,  
No. 60, Kithangi Road,  
Kalmunai-01.  
**Petitioner-Respondent-Respondent**

**(1<sup>st</sup> named Respondent-Petitioner of  
the Party of the 1<sup>st</sup> Party  
Respondents)**

2. Officer in Charge,  
Police Station,  
Akkaraipattu.  
**Informant-Respondent-Respondent**

3. Mohamed Ismail Munasik,  
No. 17, Masjidul Rahman,  
Akkaraipattu-06.  
**3<sup>rd</sup> Respondent-Respondent-  
Respondent**  
**(3<sup>rd</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party  
Respondents)**

4. Subramanium Perinbarajah,  
No. 53, Wanniyaranar Street,  
Akkaraipattu- 8/1.  
**4<sup>th</sup> Respondent-Respondent-  
Respondent**  
**(1<sup>st</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents)**

5. Vinayagamoorthy Velumurugu,  
No. ½, Wachchikuda Road,  
Akkaraipattu-8.  
**5<sup>th</sup> Respondent-Respondent-  
Respondent**  
**(2<sup>nd</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents)**

6. Thangiah Danarajan,  
No. ½, Wachchikuda Road,  
Alayadivembu,  
Akkaraipattu.  
**6<sup>th</sup> Respondent-Respondent-  
Respondent**  
**(3<sup>rd</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents)**

7. Sundarajan Madan,  
Potkollar Street,  
No. ½, Wachchikuda Road,  
Akkaraipattu-07.  
**7<sup>th</sup> Respondent-Respondent-  
Respondent**  
**(4<sup>th</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents)**
8. Murugupillai Thatchanamoorthy,  
Ampara Road,  
No. ½, Wachchikuda Road,  
Akkaraipattu-7/2.  
**8<sup>th</sup> Respondent-Respondent-  
Respondent**  
**(5<sup>th</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents)**

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

**Counsel:** Radheet Ahamed for the 2<sup>nd</sup> Respondent-Respondent-  
Appellant in CA (PHC) 76/2015 (A)  
N.R. Sivendran with Renuka Udumulla and Vinojini  
Selvarajah for the 4<sup>th</sup> to 8<sup>th</sup> Respondent-Respondents.

**Written submissions** : 21.01.2022 for the Petitioner-Appellant  
**tendered on** 20.10.2020 for the 4<sup>th</sup> - 8<sup>th</sup> Respondents-Respondents-  
Respondents  
26.01.2022 for the 3<sup>rd</sup> Respondent-Respondent  
26.01.2022 for the 2<sup>nd</sup> Respondent-Respondent

**Argued on:** 17.11.2022

**Order delivered on** : 01.03.2023

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

**LANKA**

Officer in Charge,  
Police Station,  
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**Informant**

Court of Appeal Case No:  
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**Vs.**

1. Thanganayaki Mahadevan,  
No. 60, Kithangi Road,  
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2. Subair Lafeer,  
No. 141/2, Aysha Street,  
Pallikudiyiruppu-02,  
Akkaraipattu.
3. Mohamed Ismail Munasik,  
No. 17, Masjidul Rahman,  
Akkaraipattu-06.

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

1. Subramanium Perinbarajah,  
No. 53, Wanniyaranar Street,  
Akkaraipattu- 8/1.
2. Vinayagamoorthy Velumurugu,  
No. ½, Wachchikuda Road,  
Akkaraipattu.
3. Thangiah Danarajan,  
No. ½, Wachchikuda Road,  
Alayadivembu,  
Akkaraipattu.
4. Sundarajan Madan,  
Potkollar Street,  
No. ½, Wachchikuda Road,  
Akkaraipattu-07.
5. Murugupillai Thatchamoorthy,  
Ampara Road,  
No. ½, Wachchikuda Road,  
Akkaraipattu-7/2.

**Party of the 2<sup>nd</sup> Party Respondents**

**BETWEEN**

Thanganayaki Mahadevan,  
No. 60, Kithangi Road,  
Kalmunai-01

**Petitioner**

**1<sup>st</sup> named Respondent-Petitioner of  
the Party of the 1<sup>st</sup> Party  
Respondents**

**Vs.**

1. Officer in Charge,  
Police Station,  
Akkaraipattu.  
**Informant-Respondent**
  
2. Subair Lafeer,  
No. 141/2, Aysha Street,  
Pallikudiyiruppu-02,  
Akkaraipattu.  
**2<sup>nd</sup> Respondent**  
**2<sup>nd</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party Respondents**
  
3. Mohamed Ismail Munasik,  
No. 17, Masjidul Rahman,  
Akkaraipattu-06.  
**3<sup>rd</sup> Respondent**  
**3<sup>rd</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party Respondents**
  
4. Subramanium Perinbarajah,  
No. 53, Wanniyaranar Street,  
Akkaraipattu- 8/1.  
**4<sup>th</sup> Respondent**  
**1<sup>st</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party Respondents**
  
5. Vinayagamoorthy Velumurugu,  
No. ½, Wachchikuda Road,  
Akkaraipattu-8.  
**5<sup>th</sup> Respondent**

**2<sup>nd</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents**

6. Thangiah Danarajan,  
No. ½, Wachchikuda Road,  
Alayadivembu,  
Akkaraipattu.  
**6<sup>th</sup> Respondent**  
**3<sup>rd</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents**
  
7. Sundarajan Madan,  
Potkollar Street,  
No. ½, Wachchikuda Road,  
Akkaraipattu-07.  
**7<sup>th</sup> Respondent**  
**4<sup>th</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents**
  
8. Murugupillai Thatchanamoorthy,  
Ampara Road,  
No. ½, Wachchikuda Road,  
Akkaraipattu-7/2.  
**8<sup>th</sup> Respondent**  
**5<sup>th</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents**

**AND BETWEEN**

Mohamed Ismail Munasik,  
No.17, Masjidul Rahman Road,  
Akkaraipattu 06.  
**3<sup>rd</sup> Respondent-Respondent-Appellant  
(3<sup>rd</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party Respondent)**

**Vs.**

1. Thanganayaki Mahadevan,  
No. 60, Kithangi Road,  
Kalmunai-01.  
**Petitioner-Respondent-Respondent**



**(1<sup>st</sup> named Respondent-Petitioner of  
the Party of the 1<sup>st</sup> Party  
Respondents)**

2. Subai Lafeer,  
No.141/2, Aysha Street,  
Pallikudiyiruppu 02,  
Akkaraipattu

**2<sup>nd</sup> Respondent-Respondent-  
Respondent (2<sup>nd</sup> named  
Respondent-Respondent of the  
Party of the 1<sup>st</sup> Party Respondent**

3. Officer in Charge,  
Police Station,  
Akkaraipattu.

**Informant-Respondent-Respondent**

4. Subramanium Perinbarajah,  
No. 53, Wanniyaranar Street,  
Akkaraipattu- 8/1.

**4<sup>th</sup> Respondent-Respondent-  
Respondent**

**(1<sup>st</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents)**

5. Vinayagamoorthy Velumurugu,  
No. ½, Wachchikuda Road,  
Akkaraipattu-8.

**5<sup>th</sup> Respondent-Respondent-  
Respondent**

**(2<sup>nd</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents)**

6. Thangiah Danarajan,  
No. ½, Wachchikuda Road,  
Alayadivembu,  
Akkaraipattu.

**6<sup>th</sup> Respondent-Respondent-  
Respondent**

**(3<sup>rd</sup> named Respondent-Respondent of the Party of the 2<sup>nd</sup> Party Respondents)**

7. Sundarajan Madan,  
Potkollar Street,  
No. ½, Wachchikuda Road,  
Akkaraipattu-07.

**7<sup>th</sup> Respondent-Respondent-Respondent**

**(4<sup>th</sup> named Respondent-Respondent of the Party of the 2<sup>nd</sup> Party Respondents)**

8. Murugupillai Thatchanamoorthy,  
Ampara Road,  
No. ½, Wachchikuda Road,  
Akkaraipattu-7/2.

**8<sup>th</sup> Respondent-Respondent-Respondent**

**(5<sup>th</sup> named Respondent-Respondent of the Party of the 2<sup>nd</sup> Party Respondents)**

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

**Counsel:** A.L. Azath with M.I.M Riyaz Haleem Razeek for the 3<sup>rd</sup> Respondent-Respondent-Appellant in CA PHC 76/2015(B).

N.R. Sivendran with Renuka Udumulla and Vinojini Selvarajah for the 4<sup>th</sup> to 8<sup>th</sup> Respondent-Respondents.

**Written submissions tendered on** : 21.01.2022 for the Petitioner-Appellant  
20.10.2020 for the 4<sup>th</sup> - 8<sup>th</sup> Respondents-Respondents-Respondents  
26.01.2022 for the 3<sup>rd</sup> Respondent-Respondent  
26.01.2022 for the 2<sup>nd</sup> Respondent-Respondent

**Argued on:** 17.11.2022

**Order delivered on** : 01.03.2023

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

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Officer in Charge,  
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Court of Appeal Case No:  
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High Court (Rev) Kalmunai Case  
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**Vs.**

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No. 60, Kithangi Road,  
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2. Subair Lafeer,  
No. 141/2, Aysha Street,  
Pallikudiyiruppu-02,  
Akkaraipattu.
3. Mohamed Ismail Munasik,  
No. 17, Masjidul Rahman,  
Akkaraipattu-06.

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

1. Subramanium Perinbarajah,  
No. 53, Wanniyaranar Street,  
Akkaraipattu- 8/1.
2. Vinayagamoorthy Velumurugu,  
No. ½, Wachchikuda Road,  
Akkaraipattu.
3. Thangiah Danarajan,  
No. ½, Wachchikuda Road,  
Alayadivembu,  
Akkaraipattu.
4. Sundarajan Madan,  
Potkollar Street,  
No. ½, Wachchikuda Road,  
Akkaraipattu-07.
5. Murugupillai Thatchamoorthy,  
Ampara Road,  
No. ½, Wachchikuda Road,  
Akkaraipattu-7/2.

**Party of the 2<sup>nd</sup> Party Respondents**

**BETWEEN**

1. Thanganayaki Mahadevan,  
No. 60, Kithangi Road,  
Kalmunai-01

**Petitioner**

**1<sup>st</sup> named Respondent-Petitioner of  
the Party of the 1<sup>st</sup> Party  
Respondents**

**Vs.**

1. Officer in Charge,  
Police Station,  
Akkaraipattu.

**Informant-Respondent**

2. Subair Lafeer,  
No. 141/2, Aysha Street,  
Pallikudiyiruppu-02,  
Akkaraipattu.  
**2<sup>nd</sup> Respondent**  
**2<sup>nd</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party Respondents**
3. Mohamed Ismail Munasik,  
No. 17, Masjidul Rahman,  
Akkaraipattu-06.  
**3<sup>rd</sup> Respondent**  
**3<sup>rd</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party Respondents**
4. Subramanium Perinbarajah,  
No. 53, Wanniyaranar Street,  
Akkaraipattu- 8/1.  
**4<sup>th</sup> Respondent**  
**1<sup>st</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party Respondents**
5. Vinayagamoorthy Velumurugu,  
No. ½, Wachchikuda Road,  
Akkaraipattu-8.  
**5<sup>th</sup> Respondent**

**2<sup>nd</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents**

6. Thangiah Danarajan,  
No. ½, Wachchikuda Road,  
Alayadivembu,  
Akkaraipattu.  
**6<sup>th</sup> Respondent**  
**3<sup>rd</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents**
  
7. Sundarajan Madan,  
Potkollar Street,  
No. ½, Wachchikuda Road,  
Akkaraipattu-07.  
**7<sup>th</sup> Respondent**  
**4<sup>th</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents**
  
8. Murugupillai Thatchanamoorthy,  
Ampara Road,  
No. ½, Wachchikuda Road,  
Akkaraipattu-7/2.  
**8<sup>th</sup> Respondent**  
**5<sup>th</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents**

**AND BETWEEN**

Thanganayaki Mahadevan,  
No. 60, Kithangi Road,  
Kalmunai-01

**Petitioner -Appellant  
(1<sup>st</sup> named Respondent-Petitioner of  
the Party of the 1<sup>st</sup> Party  
Respondents)**

**Vs.**

1. Officer in Charge,  
Police Station,

Akkaraipattu.

**Informant-Respondent-Respondent**

2. Subair Lafeer,  
No.141/2, Aysha Street,  
Pallikudiyiruppu 02,  
Akkaraipattu

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

**(2<sup>nd</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party Respondent)**

3. Mohamed Ismail Munasik,  
No. 17, Masjidul Rahman,  
Akkaraipattu-06.

**3<sup>rd</sup> Respondent-Respondent-  
Respondent**

**(3<sup>rd</sup> named Respondent-Respondent of  
the Party of the 1<sup>st</sup> Party  
Respondents)**

4. Subramanium Perinbarajah,  
No. 53, Wanniyaranar Street,  
Akkaraipattu- 8/1.

**4<sup>th</sup> Respondent-Respondent-  
Respondent**

**(1<sup>st</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents)**

5. Vinayagamoorthy Velumurugu,  
No. ½, Wachchikuda Road,  
Akkaraipattu-8.

**5<sup>th</sup> Respondent-Respondent-  
Respondent**

**(2<sup>nd</sup> named Respondent-Respondent of  
the Party of the 2<sup>nd</sup> Party  
Respondents)**

6. Thangiah Danarajan,  
No. ½, Wachchikuda Road,  
Alayadivembu,  
Akkaraipattu.

**6<sup>th</sup> Respondent-Respondent-  
Respondent**

**(3<sup>rd</sup> named Respondent-Respondent of the Party of the 2<sup>nd</sup> Party Respondents)**

7. Sundarajan Madan,  
Potkollar Street,  
No. ½, Wachchikuda Road,  
Akkaraipattu-07.

**7<sup>th</sup> Respondent-Respondent-Respondent**

**(4<sup>th</sup> named Respondent-Respondent of the Party of the 2<sup>nd</sup> Party Respondents)**

8. Murugupillai Thatchanamoorthy,  
Ampara Road,  
No. ½, Wachchikuda Road,  
Akkaraipattu-7/2.

**8<sup>th</sup> Respondent-Respondent-Respondent**

**(5<sup>th</sup> named Respondent-Respondent of the Party of the 2<sup>nd</sup> Party Respondents)**

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

**Counsel:** N.M. Shaheid with M.A. Zaid for the Respondent-Petitioner-Appellant in Appeal No. 76/2015(C)  
N.R. Sivendran with Renuka Udumulla and Vinojini Selvarajah for the 4<sup>th</sup> to 8<sup>th</sup> Respondent-Respondents.

**Written submissions tendered on** : 21.01.2022 for the Petitioner-Appellant  
20.10.2020 for the 4<sup>th</sup> - 8<sup>th</sup> Respondents-Respondents-Respondents  
26.01.2022 for the 3<sup>rd</sup> Respondent-Respondent  
26.01.2022 for the 2<sup>nd</sup> Respondent-Respondent

**Argued on:** 17.11.2022

**Order delivered on** : 01.03.2023

**Prasantha De Silva, J.**

### **Judgment**

The Officer-in-Charge of the Police Station-Akkaraipattu had instituted case bearing No. 37912/PCA/13 in the Magistrate's Court of Akkaraipattu under and in terms of section 66(1)(a) of the Primary Courts' Procedure Act No. 44 of 1979 as there had been a dispute affecting land between the Party of the 1<sup>st</sup> Party Respondents and Party of the 2<sup>nd</sup> Party Respondents that had led to a serious breach of peace between them.

The Magistrate's Court had followed the procedure stipulated in section 66 of the Primary Courts' Procedure Act and allowed both parties to file affidavits, counter affidavits and documents followed by written submissions in order to conclude the inquiry.

On 17.06.2013, the learned Magistrate who was acting as the Primary Court Judge had delivered the Order declaring that the impugned land in dispute had been under the management and in possession of 4<sup>th</sup> - 8<sup>th</sup> Respondent-Respondent-Respondents [hereinafter referred to as the 4<sup>th</sup>,5<sup>th</sup>,6<sup>th</sup>,7<sup>th</sup>,8<sup>th</sup> Respondents] and that 4<sup>th</sup>-8<sup>th</sup> Respondents are entitled to possession in terms of section 68(3) of the Primary Courts' Procedure Act.

Being aggrieved by the said Order of the learned Magistrate, the 1<sup>st</sup> named Respondent-Petitioner of the Party of the 1<sup>st</sup> Part [hereinafter referred to as the Respondent-Petitioner], namely Thanganayaki Mahadevan, had invoked the revisionary jurisdiction of the Provincial High Court in case bearing No. HC/KAL/REV/95/2013 seeking to have the said Order of the learned Magistrate revised.

Thereafter, the learned High Court Judge having heard the oral arguments of parties supported by written submissions had delivered the Order dated 01.04.2015 affirming the Order of the learned Magistrate dated 17.06.2013 and refusing the application for revision of the said Respondent-Petitioner, Thanganayaki Mahadevan.

It appears that 2<sup>nd</sup> named Respondent-Respondent of the Party of the 1<sup>st</sup> Party Respondent namely Subair Lafeer, captioned as 2<sup>nd</sup> Respondent-Respondent-



Appellant [hereinafter referred to as the 2<sup>nd</sup> Appellant] has preferred this Appeal bearing Number CA (PHC) 76/2015 (A) against the said Order of the High Court.

The 3<sup>rd</sup> named Respondent-Respondent of the Party of the 1<sup>st</sup> Party Respondent namely, Mohamed Ismail Munasik captioned as 3<sup>rd</sup> Respondent-Respondent-Appellant [hereinafter referred to as the 3<sup>rd</sup> Appellant] has also preferred Appeal bearing No. CA(PHC) 76/2015(B) against the said Order of the High Court.

The position taken up by the 4<sup>th</sup> - 8<sup>th</sup> Respondent-Respondent-Respondents was that 2<sup>nd</sup> and 3<sup>rd</sup> Appellants are not entitled to prefer Appeals to the Court of Appeal, since they have not invoked the revisionary jurisdiction of the High Court against the Order of the learned Magistrate dated 17.06.2013. Thus, the maintainability of the said appeals preferred by the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants was challenged by way of a preliminary objection. The 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondent-Respondents had taken up the position that if 2<sup>nd</sup> and 3<sup>rd</sup> Appellants were aggrieved by the said Order of the learned Magistrate, they should have moved in revision to have the said Order revised by filing separate applications for revision or by joining as parties the revision application already filed by the Respondent-Petitioner-Appellant [hereinafter referred to as the 1<sup>st</sup> Appellant] namely, Thanganayaki Mahadevan, in HC/KAL/REV/95/2013.

In the present case the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants had neither filed separate applications nor named themselves as joint Petitioners in the said revision application filed in the High Court of Kalmunai by the said 1<sup>st</sup> Appellant. It is seen that they have slept over their legal rights, and thereby guilty of laches.

In **Gunasekera and Another vs Abdul Latiff [1995 (1) Sri.L.R 1 at page 235]**, it was held :

“Laches itself means slackness or negligence or neglect to do something which by law a man is obliged to do. It also means unreasonable delay-in pursuing a legal remedy whereby a party forfeits the benefit upon the principle *vigilantibus non dormientibus jura subveiunt*. The neglect to assert ones rights or the acquiescence in the assertion of adverse rights will have the effect of barring a person from the remedy which he might have had if he resorted to it in proper time. When it would be practically unjust to give a

remedy either because the party has by his conduct done that which might fairly be regarded as equal to waiver of it or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were to be afterwards asserted, in either of these cases lapse of time and delay are most material.” (At page 341)

In the case of, *Liyanage & Another vs Ratnasiri - Divisional Secretary, Gampaha & Others* [2013] 1 SRI.L.R, Supreme court recognized the maxim, *Vigilantibus non dormientibus jura subveniunt*, which means law assists only those who are vigilant and not those who sleep on their rights. It is the responsibility of the individual to be aware of their rights and to take the necessary steps to protect them. Accordingly, individuals who are not vigilant in protecting their rights may not be able to rely on law to assist them.

The 2<sup>nd</sup> and 3<sup>rd</sup> Appellants have neither joined the revision application in the High Court nor initiated their own applications by way of revision. Therefore, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants are guilty of laches and they have slept over their legal rights without providing a proper explanation for doing so. The 2<sup>nd</sup> and 3<sup>rd</sup> Appellants are therefore not entitled to come before this court now and file an appeal to the Judgement of the High Court as they have acted as if they waived off their right to proceed with invoking revisionary jurisdiction of the High Court, which also indicates that they are satisfied with the decision of the Magistrate’s court.

Since the learned High Court Judge has affirmed the Order of the learned Magistrate, if Court of Appeal accepts the appeals made by the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants against the Order of the High Court, it amounts to an appeal preferred against the Order of the learned Magistrate exercising jurisdiction in terms of section 66 of the Primary Courts’ Procedure Act, which does not provide a right of appeal. Hence, it is my view that 2<sup>nd</sup> and 3<sup>rd</sup> Appellants are precluded from filing petitions of appeal against the Order of the High Court exercising revisionary jurisdiction against the Order made under Part VII of the Primary Courts’ Procedure Act No.44 of 1979.

Therefore, we are not inclined to entertain the appeals made by the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants.

The 1<sup>st</sup> Appellant namely, Thanganayaki Mahadevan, captioned as Petitioner-Respondent-Appellant, being aggrieved by the said Order of the learned Magistrate, had made a revision application to the High Court and had preferred appeal bearing number CA PHC 76(2015(C) against the Order of the learned High Court Judge that affirmed the Order made by the learned Magistrate who was acting as a Primary Court Judge.

Since this appeal emanates from an Order of the learned High Court Judge of the Provincial High Court of Kalmunai exercising revisionary jurisdiction, the Court of Appeal is empowered to evaluate the correctness of the exercise of revisionary jurisdiction by the Provincial High Court and it is not a task before this Court to consider an appeal against an Order made under and in terms of Section 66 of the Primary Courts' Procedure Act.

It was emphasized by *Ranjith Silva J.* in the case ***Nandawathi and another Vs. Mahindasena [(2009) 2 SLR 218]***;

“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 revision application of the Petitioner-Appellant [1<sup>st</sup> Appellant] was that the Petitioner-Appellant [1<sup>st</sup> Appellant] had not urged exceptional grounds to have the revisionary jurisdiction by the Provincial High Court exercised. It is trite law that revisionary powers can be considered and exercised only when there are exceptional circumstances pleaded by the Petitioner.

The attention of Court was drawn to revision application dated 12<sup>th</sup> July 2013 filed in the Provincial High Court of Kalmunai and the only exceptional ground pleaded in paragraph 33 of the application reads as follows;

“33. The above-described error in law and fact by the learned Magistrate of Akkaraipattu constitute exceptional circumstances which warrant the

intervention of your Lordships' Court to set aside the Order of the learned Magistrate, Akkaraipattu delivered on the 17.06.2013 as the learned Magistrate has erroneously concluded that 4<sup>th</sup> to 8<sup>th</sup> Respondents are entitled to possess the land in dispute.”

It is to be noted that there is no other averment in the revision application of the Petitioner-Appellant's [1<sup>st</sup> Appellant] pleading or indicating any exceptional circumstances except for the aforesaid averment. However, the mere existence of exceptional circumstances itself would not allow this Court to invoke its revisionary jurisdiction. In order to maintain a revision application, exceptional circumstances should be precisely and expressly averred in the petition. Thus, the ground mentioned in paragraph 33 of the application cannot be considered an exceptional ground to invoke the revisionary jurisdiction of High Court.

In ***Urban Development Authority Vs. Ceylon Entertainments Ltd. CA 1319/2001*** Court of Appeal minute dated 05.04.2002 *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”.

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

“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 B.L.R [2004] Vol. X Part II P. 60SC***,

“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.”

Although there is no right of appeal against an 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 was 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 Court, the aggrieved party can challenge the legality of an Order but not the correctness of an Order.

It was emphasized by *Obeysekara, J.* in the case of *Aluthhewage Harshani Chandrika and others Vs. Officer in Charge and others [CA PHC 65/2003- C.A.M. 21.04.2020]*;

“The Court of Appeal has to look into the matter whether the learned High Court Judge has properly exercised his duty to ascertain any injustice caused to a party or whether there is a miscarriage of justice occurred against the Order of the learned Magistrate and not that the Court of Appel is empowered to correct the errors made by the learned Magistrate.”

In the instant case, the learned Magistrate has determined who was in possession of the disputed land two months prior to the date on which the information was filed and who is entitled to the possession of the portion of land in dispute. These were affirmed by the learned High Court Judge. As such, it is seen that 1<sup>st</sup> Respondent-Petitioner-Appellant has not established a miscarriage of justice or that a great injustice was caused to the 1<sup>st</sup> Appellant by the impugned Order of the learned High Court Judge.

It was emphasized by Jayasinghe J. in the case of *Sunil Chandra Kumara Vs. Veloo [2001] 3 Sri L R 91* that

“Revision is a discretionary remedy; it is not available as of right. This power that flows from Art. 138 is exercised by the Court of Appeal, on application made by a party aggrieved or *ex mero motu*, this power is available even where there is no right of appeal. The Petitioner in a Revision application only seeks the indulgence of Court to remedy a miscarriage of justice. He does not assert it as a right. Revision is available unless it is restricted by the constitution or any other law”.

It was held in the case ***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”.

The decisions mentioned above emphasize that existence of exceptional circumstances is a pre-condition for the exercise of revisionary powers. In the instant case, the Petitioner has not specifically pleaded or established exceptional circumstances warranting the exercise of revisionary powers.

As 1<sup>st</sup> Party - 1<sup>st</sup> Respondent-Petitioner-Appellant has failed to disclose exceptional circumstances for the learned High Court Judge to exercise revisionary jurisdiction, we see no reason to interfere with the Order of the learned High Court Judge dated 01.04.2015 that dismissed the revision application of 1<sup>st</sup> Respondent-Petitioner (1<sup>st</sup> Appellant).

Hence, Appeals bearing No. CA PHC 76/2015(A) and CA PHC 76/2015(B) and CA PHC 76/2015(C) are dismissed with costs fixed at Rs.50,000/- each.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

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

**JUDGE OF THE COURT OF APPEAL**