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

In the matter of an application for revision in terms of provisions contained in Article 154(P) of the Constitution of the Democratic Socialist Republic of Sri Lanka, read together with the provisions contained in Provincial High Court Special Provisions Act No.19 of 1990.

Officer-in-Charge,
Police Station,
Kalutara South

Complainant

CA (PHC) Appeal No:
76/2016

HC of Kalutara (Rev Application) No:
HCRA/16/2012

MC of Kalutara: 42/11

Vs.

1. Pilippuwaduge Indrani Monika
   Ihala Noboda, Naboda

Party of the 1st Part

2. Pinsith Perera
   No.74, Old Road, Kalutara South

Party of the 2nd Part

3. Kalawail Pathirage Somwathie,
   Alias Soma Pathirana
   Pangirimanna Watte, Duwa Temple Road,
   Kalutara South

Party of the 3rd Part

4. Kalapuge Dona Chandrani Jayathilake,
   Government Rubber Plant Nursery Quarters,
   Kithulpe,
   Kuruwita

Party of the 4th Part

5. Kalapuge Dona Vijitha Sandya Kumari Jayatilake,
   No.51, Gangaboda Road, Palatota,
   Kalutara South

Party of the 5th Part

AND BETWEEN

1. Kalawail Pathirage Somwathie,
Alias Soma Pathirana
Pangirimanna Watte, Duwa Temple Road,
Kalutara South

Party of the 3rd Part-Petitioner

2. Kalapuge Dona Chandrani Jayathilake,
Government Rubber Plant Nursery Quarters,
Kithulpe,
Kuruwita

Party of the 4th Part – Petitioner

3. Kalapuge Dona Vijitha Sandya Kumari Jayatilake,
No.51, Gangaboda Road, Palatota,
Kalutara South

Party of the 5th Part -Petitioner

VS

Officer-in-Charge,
Police Station,
Kalutara South

Complainant Respondent

Pilippuwaduge Indrani Monika
Ihala Noboda, Naboda

1st Party Respondent

Pinsith Perera
No.74, Old Road, Kalutara South

2nd Party Respondent

AND NOW BETWEEN

1. Kalawail Pathirage Somwathie,
Alias Soma Pathirana
Pangirimanna Watte, Duwa Temple Road,
Kalutara South

Party of the
3rd Part–Petitioner-Petitioner

2. Kalapuge Dona Chandrani Jayathilake,
Government Rubber Plant Nursery Quarters,
Kithulpe,
Kuruwita

Party of the 4th Part–Petitioner-Petitioner

3. Kalapuge Dona Vijitha Sandya Kumari Jayatilake,
No.51, Gangaboda Road, Palatota,
Kalutara South

Party of the 5th Part-Petitioner-Petitioner

VS

Officer-in-Charge,
Police Station,
Kalutara South

Complainant-Respondent-Respondent

Pilippuwaduge Indrani Monika
Ihala Noboda, Naboda

1st Party-Respondent- Respondent

Pinsith Perera
No.74, Old Road, Kalutara South

2nd Party-Respondent-Respondent

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

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

Counsel: Ranjan Suwandaratne, PC. with Yasoda Dharmaratne AAL and Y. P. Mathugama AAL for the Petitioner- Petitioner- Appellants.

Saliya Pieris, PC. with Thanuka Nandasiri AAL for the 2nd Party-Respondent-Respondent.

	Both Counsel agree to dispose this matter by way of written submissions.
Written Submissions: filed on	05.12.2022 for the 3rd, 4th, and 5th Party-Petitioner- Petitioners 22.03.2021 for the 2nd Party-Respondent-Respondent.
Delivered on:	29.03.2023

Judgment

The Officer-in-Charge of Police Station Kalutara South had filed information on 30.08.2011 in the Magistrate's Court of Kalutara in case bearing No. 42/11 in terms of Section 66 of the Primary Courts' Procedure Act No.44 of 1979 (hereinafter referred to as 'the Act') against the Party of the 1st Part and Party of the 2nd Part on the basis of a breach of peace threatened or likely to be threatened between the Parties.

The learned Magistrate who was acting as the Primary Court Judge had followed the procedure stipulated in the Act and issued notice on the Party of the 1st Part and Party of the 2nd Part. Thereafter, the Party of the 3rd Part, Party of the 4th Part, and Party of the 5th Part intervened in the instant case.

The learned Magistrate having inquired into the matter had held that the disputed land which bears assessment No. 47 Gangabada Road, Kalutara was in possession of the Party of the 2nd Part-Respondent at the time the information was filed under section 66 of the Primary Courts' Procedure Act and that Party of the 2nd Part Respondent is entitled to continue the possession of the disputed land.

Being aggrieved by the said order of the learned Magistrate dated 02.02.2012, the Parties of the 3rd, 4th and 5th Petitioners had invoked the revisionary jurisdiction of the Provincial High Court of the Western Province holden in Kalutara by way of revision application bearing No. HCRA/16/2012 seeking to have the said order of the learned Magistrate revised or set aside. However, the learned High Court Judge had affirmed the Order of the learned Magistrate and dismissed the application of the said Party of the 3rd ,4th ,5th Party-Petitioners. Being dissatisfied with the said dismissal of the application by the learned High Court Judge, Party of the 3rd ,4th and 5th Party-Petitioner- Petitioners(Appellants) [hereinafter 'the '3rd, 4th and 5th Petitioner-Appellants'] have preferred this appeal.

It is relevant to note that after the filing of the information in the Magistrate's Court, the learned Magistrate being satisfied himself that there was a threat or likelihood of a breach of peace had issued notice on the Parties and followed the procedure under Part VII of the Act.

Furthermore, under section 114(d) of the Evidence Ordinance court can presume judicial acts to have been regularly performed. As such, it is presumed that the learned Magistrate has rightfully determined there was a breach of peace or a breach of peace was imminent by Parties.

In the case ***Aluthhewage Harshani Chandrika and others Vs. Officer in Charge and others [CA PHC 65/2003- C.A.M. 21.04.2020]*** it was emphasized by Obeysekara J. that*:*

> "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 Court of Appeal is empowered to correct the errors made by the learned Magistrate."

In the instant case, the learned Magistrate has to determine under section 68(1) of the Act who was in possession of the disputed land on the date on which the information was filed and who is entitled to possession of the portion of land in dispute or whether any person has been forcibly dispossessed from the land in dispute within a period of two months immediately before the date on which the information was filed, as such a person should be restored to possession of the disputed land if so. The learned Magistrate has held that Party of the 2nd Party-Respondent-Respondent was in possession of the disputed land on the date on which the information was filed and that he is entitled to the possession of the land in dispute. It is to be noted, the learned High Court Judge has stated in his order dated 26.07.2016 that the learned Magistrate has considered and analyzed the evidence placed before him when he determined Part of the 2nd Party-Respondent-Respondent had been in possession of the land in dispute.

It was the contention of the Appellants that they succeeded the possession of the land in dispute from their predecessor namely Arthur Jayathilake who is the late husband of the 3rd Appellant and the father of the 4th and 5th Appellants.

It is in evidence that the said Arthur Jayathilake had a timber mill in the land in dispute called "Sunethra Mills" since 1965. The said Arthur Jayathilake had renounced the title and all claims of ownership to the land in issue as per the Supreme Court order dated 22.06.1993.

It is to be observed that the learned Magistrate, upon considering the evidence placed before Court has stated in his order dated 02.02.2012 that Appellants have failed to reasonably explain how they came to possession of the land in dispute. The Appellants had taken up the position that they gave the land in dispute to one Vijitha Damayanti Liverra Tennakoon to have possession of the land and to use the land for various purposes of cultivation from 01.01.2007 onwards.

However, the learned Magistrate had held that the said Vijitha Damayanti Liverra Tennakoon failed to produce evidence to substantiate her possession of the land in dispute that bears assessment No.43, Riverside Road. It is relevant to note that documents marked and produced as K and M with the original affidavits are in relation to a land that bears assessment No.51, Riverside Road and is not related to the land in dispute.

The learned Magistrate has analyzed and evaluated the evidence available to him and come to the correct findings of fact and rightly held that Appellants and Party of the 1st Party-Respondents have failed to establish they were or any of them were in possession of the land in dispute at the time of which the information was filed or that they have been dispossessed from the land in dispute within a period of two months immediately before the date on which the information was filed.

*In **Krishnamoorthy Sivakumar vs. Pathima Johara Packer [CA (PHC) 122/18 C.A.M 27.09.2022]*** De Silva, J. elucidated the purpose behind Part VII of the Primary Courts Procedure Law. It essentially is to prevent a breach of peace and evidently not to embark on a protracted trial investigating the title. Thus, if the Appellant wishes to establish his legal rights to the disputed portion of land, it is both fitting and proper to invoke the civil jurisdiction of a competent court rather than preferring an appeal and/or an application to the Court of Appeal. It was further held that the Primary Courts' Procedure Act No.44 of 1979 stipulates "no appeal shall lie against any determination or Order under this Act" to prevent prolonged and protracted hearings.

It is interesting to note that in the case of ***Punchi Nona Vs. Padumasena and Others [1994] 2 SLR 117***, it was held that the Primary Court exercising special jurisdiction under Section 66 of the Primary Courts' Procedure 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 Primary Courts' Procedure Act has not granted the legal competency to investigate and ascertain the ownership or title to the disputed rights 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 a breach of peace and not to embark on a protracted trial investigating title when deciding the matter in dispute.

Section 74(1) of the said Act, stipulates;

> "(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 hold an inquiry under this part to explain the effect of these Sections to the persons concerned in the dispute."

The learned Magistrate had stated in his Order that

> "නිසි බලය ඇති අධිකරණය තීන්දු ප්‍රකාශයෙන් හෝ ..... බලය යටතේ හැර 2වන පාර්ශවයට ලබා දී ඇත භුක්ති විද්නිමේ අය්තිවසිකමට ඇති විය හැකි සියලු බාධාවකින් මෙයන් තහනම් කරමි.

However, the aggrieved parties in the instant case have not invoked the civil jurisdiction of the District Court to have their legal ownership of the land in dispute adjudicated but invoked the revisionary jurisdiction of the Provincial High Court of the Western Province holden in Kalutara instead.

In this instance, it is worthy to note the opinion formulated by Justice Ranjith Silva in the case ***Nandawathie and others Vs Mahindasena [2009(2) SLR 218]*** which held:

> "When an Order of a Primary Court Judge is challenged by way of revision in the High Court, the High Court can examine 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".

If a party is aggrieved by the judgment of the Court of Appeal, he/she is entitled to prefer an appeal to the Supreme Court. However, any appeal stemming from a provisional order under section 66 of the Primary Courts' Procedure Act will be rendered ineffectual as the real remedy

lies in having the civil rights adjudicated in the District Court since orders made under section 66 of the Primary Courts' Procedure Act are temporary and preventive in nature. Hence, parties should be directed to have their rights resolved in the correct forum for the purpose of establishing possession which will prevent both duplicity and waste of time.

I quote ***Krishnamoorthy Sivakumar vs. Pathima Johara Packer [CA (PHC) 122/18 C.A.M 27.09.2022]*** where De Silva, J. held:

> "It is my view that the Primary Courts' Procedure Act No. 44 of 1979 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 an actual sense, the suitable step is to have the 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 final adjudication of their legal rights pertaining to the land in question. This will enable us to witness an efficient administration of justice in our Court system.

In view of the afore-cited Judgment, we are not supposed to consider this as an appeal preferred against the Order of the Magistrate's Court. We are of the view that the task before this Court is to ascertain whether this appeal emanates from an Order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction. Thus, the Court of Appeal is empowered to evaluate the correctness of the exercise of revisionary jurisdiction by the Provincial High Court. The Provincial High Courts too should be mindful when exercising revisionary jurisdiction in respect of applications made against the Orders of the Magistrate's Court and should consider these as revision applications and not as appeals.

It is trite law that revisionary jurisdiction is an extraordinary remedy which can be exercised when there is any injustice or a miscarriage of justice caused to the aggrieved party.

Perusing the Order dated 26.07.2016 by the learned High Court Judge, it was held that no exceptional circumstances exist to revise the order of the learned Magistrate dated 02.02.2012

The 3rd, 4th and 5th Petitioner-Appellants have not substantiated that there is a failure of justice or any prejudice caused to them by the order of the learned Magistrate to invoke the revisionary jurisdiction of High Court which shocks the conscience of Court. Thus, the learned High Court Judge has been correct in holding against the said 3rd, 4th and 5th Petitioner-Appellants and in dismissing their application for revision.

In view of the foregoing reasons, we see no reason to interfere with the said orders of the learned High Court Judge and the learned Magistrate.

Hence, this appeal stands dismissed with cost 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