

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

**LANKA**

In the matter of an application in terms of Article 154G of the Constitution and High Court of the Province (Special Provisions) Act No. 19 of 1990.

Officer-in-Charge  
Police Station,  
Welipenna.

**Plaintiff**

Court of Appeal Application No:  
**CA (PHC) 131/2013**

High Court of Kalutara Revision  
Application No: HC 19/11 Rev

Magistrate's Court of Matugama  
Case No: 66990/10

**Vs.**

1. Duwage Kularathna,  
Manana, Navuththuwa.
2. Fernando Rosalin,  
Budu Gedara Watta, Keeranthidiya,  
Navuththuwa.
3. Kalinga Lisi Nona  
Budu Gedara Watta, Keeranthidiya,  
Navuththuwa.
4. Maddage Mahindarathna,  
Budu Gedara Watta, Keeranthidiya,  
Navuththuwa.

**1<sup>st</sup> Party**

5. Kalinga Ranasingha
6. Kalinga Baby Nona
7. Kalinga Somapala
8. Kalinga Ariyadasa
9. Anagipura Agnus
10. Kalinga Karunawathi

All of Keeranthidiya, Navuththuwa.

**Intervient 1<sup>st</sup> Party**

Agampodidurage Somapala alias  
Remiyal,  
Keeranthidiya, Navuththuwa.

**2<sup>nd</sup> Party**

**AND**

Agampodidurage Somapala alias  
Remiyal,  
Keeranthidiya, Navuththuduwa.  
**2<sup>nd</sup> Party-Petitioner**

**Vs.**

1. Duwage Kularathna,  
Manana, Navuththuduwa.
2. Fernando Rosalin,  
Budu Gedara Watta, Keeranthidiya,  
Navuththuduwa.
3. Kalinga Lisi Nona  
Budu Gedara Watta, Keeranthidiya,  
Navuththuduwa.
4. Maddage Mahindarathna,  
Budu Gedara Watta, Keeranthidiya,  
Navuththuduwa.

**1<sup>st</sup> Party-Respondents**

5. Kalinga Ranasingha
6. Kalinga Baby Nona
7. Kalinga Somapala
8. Kalinga Ariyadasa
9. Anagipura Agnus
10. Kalinga Karunawathi

All of Keeranthidiya, Navuththuduwa.  
**Intervenient 1<sup>st</sup> Party-Respondents**

11. Officer-in-Charge  
Police Station,  
Welipenna.

**Plaintiff-Respondent**

12. Hon. Attorney General

**Respondent**

**AND NOW**

Agampodidurage Somapala alias  
Remiyal,  
Keeranthidiya, Navuththuduwa.  
**2<sup>nd</sup> Party-Petitioner-Appellant**

**Vs.**

1. Duwage Kularathna,  
Manana, Navuththuduwa.

2. Fernando Rosalin,  
Budu Gedara Watta, Keeranthidiya,  
Navuththuduwa.
3. Kalinga Lisi Nona  
Budu Gedara Watta, Keeranthidiya,  
Navuththuduwa.
4. Maddage Mahindarathna,  
Budu Gedara Watta, Keeranthidiya,  
Navuththuduwa.

**1<sup>st</sup> Party-Respondent-Respondents**

5. Kalinga Ranasingha
6. Kalinga Baby Nona
7. Kalinga Somapala
8. Kalinga Ariyadasa
9. Anagipura Agnus
10. Kalinga Karunawathi

All of Keeranthidiya, Navuththuduwa.

**Intervient 1<sup>st</sup> Party-Respondent-  
Respondents**

11. Officer-in-Charge  
Police Station,  
Welipenna.

**Plaintiff-Respondent-Respondent**

12. Hon. Attorney General  
**Respondent-Respondent**

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

**Counsel:** Laknath Seneviratne for the 2<sup>nd</sup> Party-Petitioner-  
Appellant.  
Viran Fernando for the 1<sup>st</sup> Party-Respondent-Respondents.

Both parties agree to dispose this matter by way of written submissions.

Written Submissions 30.07.2020 by the 2<sup>nd</sup> Party-Petitioner-Petitioner.  
tendered on: 01.02.2023 by the 1<sup>st</sup> Party-Respondent-Respondents.

Decided on: 23.02.2023

**Prasantha De Silva, J.**

### **Judgment**

This is an appeal emanating from the Order of the learned High Court Judge dated 08.08.2013 affirming the Order of the learned Magistrate dated 24.05.2011 that held against the 2<sup>nd</sup> Party-Petitioner-Appellant.

It appears that 1<sup>st</sup> Party-Respondent-Respondents [hereinafter referred to as the Respondents] had made a complaint to the Welipenna Police Station on 23.10.2010 against the 2<sup>nd</sup> Party-Petitioner-Appellant [hereinafter referred to as the Appellant] stating that the Appellant along with two others had entered the land in dispute and attempted to clear the same and take control over the property.

Consequently, the Officer-in-Charge of the Police Station Welipenna had filed an information in terms of Section 66 (1) (a) of the Primary Courts' Procedure Act No.44 of 1979. The learned Magistrate who was acting as the Primary Court Judge, after having inquired into the matter had delivered the Order on 24.05.2011, in terms of Section 68 (3) of the Primary Courts' Procedure Act in favour of the 1<sup>st</sup> Party-Respondents restoring their possession to the land in dispute.

Since there is no right of appeal conferred on the aggrieved party under the Primary Courts' Procedure Act against an Order of a learned Magistrate, the 2<sup>nd</sup> Party Respondent-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of the Western Province holden in Kalutara. The learned High Court Judge too has affirmed the findings of the learned Magistrate.

Being aggrieved by the said Order of the learned High Court Judge, the 2<sup>nd</sup> Party Respondent-Petitioner-Appellant [hereinafter referred to as the Appellant] has preferred this appeal seeking to have the said Order of the learned Magistrate as well as the Order of the learned High Court Judge set aside.

In the case of *Jayasekarage Bandulasena and Others Vs. Galla Kankanamge Chaminda Kushantha and Others CA (PHC) 147/2009 C.A.M 19.10.2017*] Surasena J. emphasized that it would be relevant to bear in mind that the appeal before this Court is an appeal against an Order pronounced by the Provincial High Court in exercising its revisionary jurisdiction. Thus, the task before this Court is not to

consider an appeal against the Primary Court Order, but to consider an appeal in which an Order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction is sought to be impugned.

When perusing the Order of the learned High Court Judge, it is seen that the learned High Court Judge has considered the evidence placed before the learned Magistrate and come to the conclusion that the learned Magistrate had analyzed and evaluated the evidence placed adduced before him and come to the correct findings of law and facts and held with the 1<sup>st</sup> Party Respondent-Respondents in this appeal.

It appears that the learned High Court Judge has observed an availability of an alternative remedy for the Appellant in the instant case. However, the Appellant had invoked the revisionary jurisdiction of the Provincial High Court of Kalutara.

In this respect, Court draws the attention to the case of ***Devi Property Development [Pvt] Ltd. And Another Vs. Lanka Medical [Pvt] Ltd. CA 518/2001 C.A.M. 20.06.2001*** where *Udalagama J.* emphasized that revision is an extraordinary jurisdiction vested to be exercised under exceptional circumstances, if no other remedy is available.

The learned High Court Judge has observed that Appellant in this appeal had not established exceptional circumstances in the High Court to have the Order of the learned Magistrate dated 24.05.2011 revised.

The revisionary jurisdiction of the High Court can be invoked against the Order of the learned Magistrate only when there is a miscarriage of justice or there's any injustice caused to the party concerned that shocks the conscience of Court. The Appellant had failed to establish that a miscarriage of justice or any injustice was caused to the Appellant by the Order of the learned Magistrate. As a result, the learned High Court Judge had held that Appellant in this appeal has not established exceptional circumstances to invoke the revisionary jurisdiction of the High Court to have the Order of the learned Magistrate dated 24.05.2011 revised.

Therefore, the learned High Court Judge was right when he refused to intervene with the Order of the learned Magistrate.

Since the learned High Court Judge has observed that the impugned Order of the learned Magistrate is well founded, we see no reason to interfere with the Order of the learned Magistrate dated 24.05.2011 and Order of the learned High Court Judge dated 08.08.2013.

Hence, the appeal is dismissed with cost.

Appeal dismissed.

**JUDGE OF THE COURT OF APPEAL**

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

I agree.

**JUDGE OF THE COURT OF APPEAL**