

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

In the matter of an application for revision from the Orders of the learned High Court Judge of the Central Province [holden in Kandy] dated 27.03.2017 and 11.04.2017 in case No. Rev/112/2013 under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the provisions of the High Court of the Provinces [Special Provisions] Act No. 19 of 1990.

Officer in Charge,
Police Station,
Sigiriya.

Complainant

Court of Appeal Revision Application No:
CA (PHC) APN 117/2017

High Court of Kandy Case No:
Rev.112/2013

Magistrate's Court of Dambulla Case No:
55472

Vs.

1. Imbulana Bandarage Tissa
Sudarshana Perera,
Wild Grass Nature Resort,
Kumbukkandanwala,
Sigiriya.

2. Ekanayaka Mudiyanseilage Neil
Bandara,
No. 143, Kumbukkandanwala,
Mahakapuyayawatta,
Kimbissa.

Respondents

AND

Ekanayaka Mudiyanseilage Neil
Bandara,
No. 143, Kumbukkandanwala,
Mahakapuyayawatta,
Kimbissa.

2nd Respondent-Petitioner

Vs.

Officer in Charge,
Police Station,
Sigiriya.

Complainant-Respondent

Imbulana Bandarage Tissa
Sudarshana Perera,
Wild Grass Nature Resort,
Kumbukkandanwala,
Sigiriya.

1st Respondent-Respondent

AND

Sarath Andrahennadi,
No. 26, Thurunusawiyagama,
Pallekele,
Kundasale.

Petitioner

Vs.

Officer in Charge,
Police Station,
Sigiriya.

**Complainant-Respondent-
Respondent**

Imbulana Bandarage Tissa
Sudarshana Perera,
Wild Grass Nature Resort,
Kumbukkandanwala,
Sigiriya.

**1st Respondent-Respondent-
Respondent**

Ekanayaka Mudiyanse Lage Neil
Bandara,
No. 143, Kumbukkandanwala,
Mahakapuyayawatta,
Kimbissa.

**2nd Respondent-Petitioner-
Respondent**

AND NOW BETWEEN

Sarath Andrahennadi,
No. 26, Thurunusawiyagama,

Pallekele,
Kundasale.

Petitioner-Petitioner

Vs.

Officer in Charge,
Police Station,
Sigiriya.

**Complainant-Respondent-
Respondent-Respondent**

Imbulana Bandarage Tissa
Sudarshana Perera,
Wild Grass Nature Resort,
Kumbukkandanwala,
Sigiriya.

**1st Respondent-Respondent-
Respondent-Respondent**

Ekanayaka Mudiyanse Lage Neil
Bandara,
No. 143, Kumbukkandanwala,
Mahakapuyayawatta,
Kimbissa.

**2nd Respondent-Petitioner-
Respondent-Respondent**

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

Counsel: Razeen Sulaiman with Nithi Murugesu and Association for
the Petitioner-Petitioner.
Kuwera De Zoysa P.C with Kamran Aziz for the 1st
Respondent-Respondent.

Both parties agreed to pursue this matter by way of Written Submissions.

Written Submissions 01.02.2022 by the 1st Respondent-Respondent-
Tendered on: Respondent-Respondent.

18.04.2022 by the Petitioner-Petitioner.

Decided on: 12.01.2023

Prasantha De Silva, J.

Order

This is an application by way of revision filed against the Order made by the learned High Court Judge of Kandy on 27th March 2017 dismissing the revision application bearing No. Rev 112/2013 made against the Order of the learned Magistrate, who was acting as the Primary Court Judge exercising jurisdiction in terms of Section 66 of the Primary Courts' Procedure Act No. 44 of 1979 in case bearing No. 55472 in the Magistrate's Court Dambulla.

It appears that the 1st Respondent-Respondent-Respondent [hereinafter referred to as the 1st Respondent] had made a complaint to the Sigiriya Police Station, against the 2nd Respondent-Petitioner-Petitioner who is the Manager of the Mahakapuyaya Estate [hereinafter referred to as the 2nd Respondent] for obstructing access to the land in question.

Consequently, Sub-Inspector Gunasekara of the Police Station Sigiriya had visited the scene for an inspection. Thereafter, the Officer in Charge of the Police Station Sigiriya had instituted action bearing No. 55472 by filing an information in terms of Section 66 of the Primary Courts' Procedure Act No. 44 of 1979, on 13th June 2013 making the 1st Respondent and 2nd Respondent as parties.

The learned Magistrate having inquired into the dispute had made an Order on 17th September 2013 confirming the possession of 1st Respondent and had directed to handover the disputed portion of land to the 1st Respondent.

Being aggrieved by the said Order, the 2nd Respondent-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of the Central Province holden in Kandy. However, the learned High Court Judge having considered the pleadings and written submissions of the parties, had delivered the Order on 27th March 2017 dismissing the revision application of the 2nd Respondent-Petitioner.

Being aggrieved by the said Order of the learned High Court Judge dated 27th March 2017, the Petitioner who was the successor of the 2nd Respondent-Petitioner in the capacity of Manager of the Mahakapuyaya farm, had moved that he be added as the Petitioner for the purpose of appealing against the Order of the learned High Court

Judge. However, it was rejected *in limine* by the learned High Court Judge by Order dated 11th of April 2017.

Consequently, the Petitioner-Petitioner [hereinafter referred to as the Petitioner] had moved to invoke the revisionary jurisdiction of this Court seeking to set aside the Orders made by the learned High Court Judge dated 27th March 2017 and 11th April 2017 and also the Order dated 17th September 2013 of the learned Magistrate of Dambulla.

It is pertinent to note that the learned Magistrate decided the 1st Respondent had been in possession of the disputed portion of land two months prior to the date on which the information was filed in terms of Section 68 (1) and 68 (3) of the Primary Courts' Procedure Act and held that the 1st Respondent is entitled to the possession of the disputed land.

In this instance, it is submitted that in view of Section 74 (2) of the Primary Courts' Procedure Act, it does not provide provision for right of appeal against the Order of the Primary Court, which states;

“An appeal shall not lie against any determination or order under this part.”

Right of appeal is a statutory right which is available not as of a right and that can be taken away by specific terms. Section 74 (2) prohibits appeals from Orders made in terms of Section 66 of the Primary Courts' Procedure Act. However, the revisionary jurisdiction of the High Court can be invoked in a situation where great injustice has been caused to the aggrieved party or any miscarriage of justice has occurred by the Order of the Primary Court Judge.

Moreover, Article 138 of the Constitution read with Article 154 (3) (b) has given High Court the appellate and revisionary jurisdiction in respect of orders given by the Magistrate's Court and the Primary Court.

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.

Hence, it is seen that although Part VII of the Primary Courts' Procedure Act does not provide a right of appeal against the Orders made under Section 66 of the Primary Courts' Procedure Act, by operation of law, an aggrieved party is entitled to prefer an appeal to the Court of Appeal against the Order of the High Court which was made against the Order of the learned Primary Court Judge exercising jurisdiction in terms of Section 66 of the Primary Courts' Procedure Act.

However, it appears that the Petitioner who was not a party to the Magistrate's Court case and the High Court revision application had preferred an appeal and later a revision application against the Order made by the learned High Court Judge. Apparently, the Petitioner has invoked the revisionary jurisdiction of this Court.

Since revision is a discretionary remedy, the appellate Court will not exercise its revisionary powers when there is an alternative remedy available to the aggrieved party.

The Order dated 17th September 2013 made by the learned Magistrate who was acting as the Primary Court Judge is a provisional order, made until the rights of the parties are adjudicated by a competent civil Court. The learned Magistrate had handed over the possession of the land in dispute to the 1st Respondent and had directed parties to resolve the matter in a competent jurisdiction of a civil Court.

It was revealed in the pleadings of the Petitioner that Padmasiri Muthumala happens to be the owner of Lot No. 414 in village plan bearing No. 510 of the Surveyor General and also the owner of the entire land namely Mahakapuyaya Estate farm and he had instituted action bearing No. L/135 in the District Court of Dambulla against the purported employer of the 1st Respondent in the instant case on or about 16th June 2015. It appears that the District Judge of Dambulla had issued only notice of interim injunction against the 1st Respondent in the first instance and no enjoining order was issued.

Subsequently, the learned District Judge had made an Order dismissing the application for interim injunction on the 30th of August 2018. It is noteworthy that the said order had been canvassed in the Civil Appellate High Court of the Central Province holden in Kandy.

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 a preventive action and make a provisional order pending the final adjudication of 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 breach of the 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.”

However, it is seen that the employer of the 2nd Respondent-Petitioner had resorted to the best remedy available to him to resolve the dispute pertaining to the land in dispute in case bearing No. 55472 Magistrate's Court Dambulla by instituting action bearing No.135/L in the District Court of Dambulla. In such circumstances, the Appellate Court will not exercise its revisionary powers when there is an alternative remedy available for the parties to resolve their dispute.

It is submitted that revisionary jurisdiction of Court is an extraordinary jurisdiction which can only be invoked at the discretion of Court and Court would exercise such discretion only when exceptional circumstances exist.

The Petitioner had filed the impugned revision application on 8th August 2017 against the Order of the learned High Court Judge dated 27th March 2017. Although the Petitioner has indicated in paragraph 13 (a)-(f) of the petition that exceptional circumstances exist for Court to exercise its powers of revision, it lacks the ingredients needed for such ground to be considered as an exceptional circumstance that shocks the conscience of Court to interfere with the said Orders made by the learned High Court Judge as well as the learned Magistrate.

It was held in the case of *Rasheed Ali Vs. Mohamed Ali and Others [1981] 1 SLR 262* that powers of revision could be used only in exceptional circumstances. Exceptional circumstances did not mean or does not mean a wrong order made by a Judge or wrong reasons given for the order by the Judge. Exceptional circumstances mean when a Judge is biased or corrupt or when there has been a fundamental breach of principles of natural justice.

In the case of *Dharmaratne and another Vs. Palm Paradise Cabanas Ltd. and Others [2003] 3 SLR 24*, Amarathunga, J. observed that;

“Existence of exceptional circumstances is the process by which the Court selects the cases in respect of which the extraordinary method of rectification should be adopted, if such a selection process is not there, revisionary jurisdiction of this court will become a gateway of every litigant to make a second appeal in the garb of a revision application or to make an appeal in situations where the legislature has not given a right of appeal.”

In any event, it is clear that for Court to exercise revisionary jurisdiction against the order challenged, there must have occasioned a failure of justice, manifestly erroneous which goes beyond an error or defect or irregularity that an ordinary person would instantly react to it and which would shock the conscience of Court.

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 this respect, it is submitted that 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 was entitled to the possession of the portion of land in dispute. These were affirmed by the learned High Court Judge.

It is apparent that the Petitioner in the instant revision application has not substantiated that there is a miscarriage of justice or that any injustice was caused to the Petitioner by the Orders of the learned Magistrate and the leaned High Court Judge. It is relevant to note that the Petitioner has not established any exceptional grounds warranting the exercise of revisionary powers.

In view of the aforesaid reasons, we see no reason to interfere with the Order of the learned High Court Judge dated 27.03.2017.

Hence, the impugned application is dismissed with cost.

JUDGE OF THE COURT OF APPEAL

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

JUDGE OF THE COURT OF APPEAL