

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

In the matter of an Appeal under Article 154P (6) of the Constitution read with Section 11(1) of the High Court of the Provinces (Special Provisions) Act No.19 of 1990.

Court of Appeal
Case No: **CA(PHC)162/2017**

PHC of Sabaragamuwa (holden in
Rathnapura)
Case No: Rev 29/2014

Magistrate Court of Rathnapura
Case No: 90616

Officer in charge
Miscellaneous complaints section
Police Station of Rathnapura
Complainant

Vs

Vithanage Don Dharmasena Vithanage,
No 42, Gorokgoda,
Rathnapura.

1st Party Respondent

Kadawatha Arachchilage Ananda
No 42, Gorokgoda,
Rathnapura.

2nd Party Respondent

AND

Kadawatha Arachchilage Ananda
No 42, Gorokgoda,
Rathnapura.

2nd Party Respondent-Petitioner

Vs

Vithanage Don Dharmasena Vithanage
No 42, Gorokgoda,
Rathnapura.

1st Party Respondent- Respondent

Officer in charge
Miscellaneous complaints section
Police Station of Rathnapura

Complainant- Respondent

AND NOW BETWEEN

Kadawatha Arachchilage Ananda
No 42, Gorokgoda,

Rathnapura

2nd Party Respondent-Petitioner-
Petitioner

Vs.

Vithanage Don Dharmasena Vithanage
No 42, Gorokgoda,
Rathnapura.

1st Party Respondent- Respondent-
Respondent

Officer in charge
Miscellaneous complaints section
Police Station of Rathnapura.

Complainant- Respondent
-Respondent

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

Counsel: D.D.K Katugampola AAL for the 2nd Party Respondent-Petitioner-
Petitioner.
J.M Wijebandara AAL and Chamodi Dayananda AAL for the 1st Party
Respondent-Respondent.

Written Submissions: Written submissions filed on 20/05/2022 by 2nd Party Respondent-
filed on: Petitioner-Petitioner.
Written submissions filed on 07/07/2022 by 1st Party Respondent-
Respondent-Respondent

Delivered on: 02.05.2023

Prasantha De Silva, J.

Judgment

This appeal emanates from the order made by the learned High Court Judge of the Sabaragamuwa Province holden in Rathnapura exercising revisionary jurisdiction.

It appears that the officer in charge of the Rathnapura police station had filed an information in terms of section 66 1 (a) of the Primary Court Procedure Act No 44 of 1979 pursuant to

the complaint made by the 1st party Respondent against the 2nd party Respondent for obstructing the existing roadway used by the 1st party Respondent to access his house.

The learned Magistrate who was acting as the Primary Court Judge having inquired about the matter, had held against the 2nd party Respondent directing not to obstruct the 1st party Respondent's right of way providing access to his house.

Being aggrieved by the said order, the 2nd party Respondent-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Sabaragamuwa holden in Rathnapura.

The learned High Court Judge by order dated 20. 07.2017 had dismissed the revision application of the 2nd party Respondent-Petitioner on the grounds that 2nd party Respondent-Petitioner is guilty of laches and also that no exceptional circumstances were established by the 2nd party Respondent-Petitioner warranting the intervention of court by way of revision.

According to Section 74 (2) of the Primary Code Procedure Act, no right of appeal is provided against an order made in terms of Section 66 of the said act.

Nevertheless, if there is an injustice caused to a party or any miscarriage of justice, the aggrieved party is allowed to invoke the revisionary jurisdiction of the High Court. In this backdrop the Court of Appeal has to look into the matter of whether the learned High Court judge has properly exercised his duty to ascertain whether any injustice caused to a party or whether there is a miscarriage of justice occurred by the order of the learned magistrate. In view of the judgement in *Aluthewage Harshini Chandrika and others Vs. Officer in Charge ... and others C.A. PHC 65/2003- C.A.M 21.04.2020* the Court of Appeal is not empowered to correct the errors made by the learned magistrate.

Justice Ranjit Silva opined in the case of *Nandawathi and other Vs Mahindasoma [2005 (2) S.L.R 218]* 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 reevaluate the evidence led in the main case”.

It is observable in paragraph 10 of the revision application dated 28. 05. 2014 filed by the 2nd party Respondent-Petitioner-Petitioner (Appellant) in the Provincial High Court of Sabaragamuwa holden in Rathnapura that 2nd party Respondent-Petitioner-Petitioner

(Appellant) has attempted to plead certain exceptional grounds to set aside the Order made by the learned Magistrate. However, the mere existence of exceptional circumstances itself would not allow this court to invoke its revisionary jurisdiction. Thus, to invoke the revisionary jurisdiction, exceptional circumstances should be precisely and expressly averred in the revision petition.

In the instant case the learned High Court Judge had observed that the findings of the learned Magistrate were correct. Whereas, the learned Magistrate had determined that the 1st party Respondent-Respondent had been using the disputed roadway and he is entitled to use it to access his house. The learned Magistrate has also held that the 2nd party Respondent-Petitioner (Appellant) had not proved that the impugned roadway had not been used by the 1st party Respondent-Respondent.

Therefore, it is apparent that the 2nd party Respondent-Petitioner-Petitioner (Appellant) had not substantiated his contentions, thus failing to prove any miscarriage of justice or any injustice caused to him.

It was held in the case *Athurupana Vs. Premasinghe B.L.R [2004] Vol. X Part II P. 60*,

“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.”

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”.

In view of the afore-cited judgments, it should be noted that the existence of exceptional circumstances is a precondition for exercising revisionary powers of this court. In the instant case, the 2nd party Respondent-Petitioner-Petitioner (Appellant) had not established the existence of exceptional circumstances warranting the learned High Court Judge to exercise revisionary powers.

In view of the foregoing reasons, it the learned High Court Judge has affirmed the order dated 24.02.2014 of the learned Magistrate. As no miscarriage of justice or any injustice has been caused to the 2nd party Respondent-Petitioner-Petitioner (Appellant) the learned High Court

Judge had dismissed the application of the 2nd party Respondent-Petitioner-Petitioner (Appellant).

Therefore, we see no reason to interfere with the order dated 20.07.2017 of the learned High Court Judge and the order of the learned Magistrate dated 24.02. 2014.

As such, the appeal is dismissed with costs fixed at LKR. 25,000/-.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL