

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) 51/ 2018

PHC of Sabaragamuwa Province
(holden in Ratnapura)
Case No: RA 41/2015

Magistrate's Court:
Case No: 63111

1. Godakawela Kankanamlage Sunil Jayarathne
2. Pussallage Jinadasa
3. Pussallage Sumanawathi
4. Pussallage Janenona
5. Kapuge Punchi Mahaththaya
6. Daulkarage Somawathi Niyangama, Godakawela.

PETITIONERS

Vs.

1. Maddegoda Vidaanelage Jaysinghe
Near to Niyangama School, Godakawela
2. Weediya Kapuraalalagee Heennilame
In front of the school, Niyangama, Godalawela.

RESPONDENTS

AND NOW BETWEEN

1. Maddegoda Vidaanelage Jayasinghe
Near to Niyangama School, Godakawela
2. Weediya Kapuraalalagee Heennilame
In front of the school, Niyangama, Godalawela.

RESPONDENTS-PETITIONERS

1. Godakawela Kankanamlage Sunil Jayarathne
2. Pussallage Jinadasa
3. Pussallage Sumanawathi
4. Pussallage Janenona
5. Kapuge Punchi Mahaththaya
6. Daulkarage Somawathi Niyangama, Godakawela.

PETITIONER-RESPONDENTS

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RESPONDENTS-PETITIONERS-APPELLANTS

Vs.

1. Godakawela Kankanamlage Sunil Jayarathne
2. Pussallage Jinadasa
3. Pussallage Sumanawathi
4. Pussallage Janenona
5. Kapuge Punchi Mahaththaya
6. Daulkarage Somawathi Niyangama, Godakawela.

PETITIONER- RESPONDENT-
RESPONDETNIS

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

Counsel: J.P. Gamage A.A.L with Chamara Fernando A.A.L for the Respondent-Petitioner-Appellants.
D.D.K. Kotugampola A.A.L for the Respondents.

Written Submissions filed on: Respondent-Petitioner-Appellants filed written submissions on 20/03/2023.
Petitioner-Respondent-Respondents filed written submissions on 14/12/2023.

Delivered on: 15.05.2023

Prasantha De Silva J.

Judgment

This is an appeal emanating from an order of the Provincial High Court of the Sabaragamuwa Province holden at Ratnapura.

It appears that the 1st – 6th Petitioners, being the Complainants had filed information in terms of Section 66(1)(b) of the Primary Court Procedure Act No. 44 of 1979 in the Magistrate's Court of Palmadulla in the case bearing no. 63111 against the 1st and 2nd Respondents.

The learned Magistrate who was acting as the Primary Court Judge having satisfied that there was a breach of peace threatened or likely to be threatened due to a dispute over a roadway, issued notice on the 1st and 2nd Respondents.

It was alleged by the Petitioners that both Respondents had obstructed the roadway which was used by the Petitioners and their predecessors for more than 70 years to go to their cultivated lands and houses. The portion of the disputed road was seized and narrowed by erecting concrete poles by the Respondents.

The learned Magistrate had taken up the matter for inquiry and allowed parties to file Affidavits and Counter Affidavits with annexed documents and also written submissions.

It was the position taken up by the Respondents that they had not obstructed the impugned roadway and had stated that the Petitioners had never used a roadway as referred to in their affidavit and the Petitioners had only used a footpath.

The learned Magistrate delivered the Order on 15.09.2015 in favor of the Petitioners and directed the Respondents to remove all obstructions caused by them.

Being aggrieved by the said Order, the 1st and 2nd Respondent–Petitioners had moved in Revision to the Provincial High Court of Sabaragamuwa holden in Ratnapura seeking to revise or set aside the said Order of the learned Magistrate.

Apparently, the learned High Court Judge having considered the Revision application, held against the 1st and 2nd Respondent–Petitioners and affirmed the Order of the learned Magistrate dated 15.09.2015.

The 1st and 2nd Respondent – Petitioner - Appellants (hereinafter sometimes referred to as the “Appellants”), being dissatisfied with the said Order of the learned High Court Judge, had preferred this appeal praying to set aside the Order dated 04.01.2018 by the learned High Court Judge and the Order dated 15.09.2015 of the learned Magistrate,

It is noteworthy that the Appellants have prayed for a declaration that 1st – 6th Petitioner – Respondent– Respondents are entitled to use the disputed roadway as a footpath. Therefore, the dispute among the parties is relating to a roadway which is in existence.

As such, the learned Magistrate had correctly dealt with the matter and decided in terms of Section 69(1) of the Primary Court Procedure Act.

In terms of Section 69(1) of the Primary Court Procedure Act, it is the duty of the Primary Court Judge to determine as to who is entitled to the right which is the subject of the dispute and make an Order under Section 69(2).

It is observable that the learned High Court Judge had properly evaluated and analyzed the evidence placed before the learned Magistrate.

It is stated in the Order of the learned High Court Judge:

“ වග උත්තරකරුවන් විසින් 2015.04.01 වන දින පොලිසියට කරන ලද පාරක ආරවුලකට අදාළ පැමිණිල්ලට අදාළව පොලිසිය විසින් ඉදිරිපත් කර ඇති නිරීක්ෂණ සහ දළ සැලැස්ම කෙරෙහි අවධානය යොමු කරමි.

...

එකී නිරීක්ෂණවලට අනුව අනාවරණය වී ඇත්තේ මෙම ආරවුලට අදාළ පාර කාලයක් තිස්සේ භාවිතා කරමින් සිටි ඇති බවට පෙනෙන්නට ඇති බවත් කිරිඹුදියන්සේ යන අයගේ වැට මායිමේ සිට අඩි 8ක පමණ ප්‍රමාණයේ කොටසක් පාරට ඉතිරි කර අලුතින් වැටක් ගැසීම සඳහා කම්බි කනු සිටවා ඇති බවටය. ඉදිරිපත් කර ඇති දළ සැලැස්මේ E අක්ෂරයෙන් කලින් තිබූ වැට මායිම සඳහා කර ඇති අතර F අක්ෂරයෙන් අලුතින් සිටුවා ඇති කම්බි කණු පෙන්වා ඇත. තවද පැරණි තිබූ ගල් වල මුල් කොටස් E අක්ෂරයෙන් (එනම් කලින් තිබූ වැට මායිම) පෙන්වා ඇත. ඒ අනුව එකී පොලිස් නිරීක්ෂණවලට අනුව පැහැදිලි වන්නේය කාලයක සිට භාවිතා කරමින් තිබූ පාර පටු කරමින් පෙන්සම්කරුවන් විසින් අලුතින් කම්බි වැටක් ඉදිකර ඇති බවටය.

තවද එකී නිරීක්ෂණ සටහන් වලට අමතරව 2015.04.22 වන දින ද පොලිසිය විසින් නැවත ආරවුලට භාෂිත ස්ථානය නිරීක්ෂණය කර ඇති අතර එකී නිරීක්ෂණ සටහන් සමග දළ සැලැස්මක් ඉදිරිපත් කර ඇති අතර අධිකරණය එම නිරීක්ෂණ සහ දළ සැලැස්ම කෙරෙහි අවධානය යොමුකරන අතර එම නිරීක්ෂණ සටහන් යොදා ඇත්තේ මුලින් නිරීක්ෂණ සටහන් කරන නිලධාරී නොව වෙනත් නිලධාරියකු බවට ද පැහැදිලි වේ.

එකී නිරීක්ෂණ සටහන් වලට අනුව ආරවුලට භාෂිත පාර කාලයක සිට භාවිතා කරන පාරක් බවට අනාවරණය වී ඇති බවට සඳහන් කර ඇති අතර , තවද ඉඩමේ මායිමට මැනකදී අලුතෙන් කම්බි කණු වැටක් ඉදිකර ඇති බවට සඳහන් කර ඇත .එකී නිරීක්ෂණ වල දළ සැලැස්මේ E අක්ෂරයෙන් පැරණි වැට මායිම පෙන්වා ඇති අතර F අක්ෂරයෙන් අලුතින් ඉදිකර ඇති වැට මායිම පෙන්වා ඇත .ඒ අනුව එකී නිරීක්ෂණ සහ දළ සැලැස්මවල අනුව බැට මායිමක් ඉදිකර වග උත්තරකරුවන් විසින් කාලයක සිට භාවිතා කරමින් සිටි පාර අවහිර කොට කටු කර ඇති බවට තහවුරු වේ.”

Therefore, it is noteworthy that the learned Magistrate had come to the correct findings of fact and law and had come to the correct conclusion that the disputed roadway had been used by the Respondents for a long period of time and the Appellants had interrupted the Petitioner-Respondents-Respondents [hereinafter referred to as Respondents] right of way by erecting concrete poles and thereby, narrowed the disputed roadway to a footpath.

As such, the learned High Court Judge has affirmed the order of the learned Magistrate and held that no exceptional circumstances existed for the Appellants to invoke the Revisionary jurisdiction of the Provincial High Court of Sabaragamuwa holden in Ratnapura and dismissed the revision application of the Appellants.

Hence, we see no reason for us to interfere with the Order dated 15.09.2015 of the learned Magistrate and the Order dated 04.10.2018 of the learned High Court Judge,

Therefore, the appeal is dismissed with costs fixed at Rs. 25,000/-.

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

I agree.

JUDGE OF THE COURT OF APPEAL

JUDGE OF THE COURT OF APPEAL