

---

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

---

In the matter of Appeal under and in terms of 154P(6) of the Constitution of Democratic Republic of Sri Lanka against an Order of the Provincial High Court of the Eastern Province holden in Batticaloa made in Revision Application No: HCB/Rev/548/09.

Officer in-Charge,  
Police Station,  
Kaluwanchikudi.

**Complainant**

Court of Appeal Case No:  
**CA (PHC) 02/2017**

**Vs.**

PHC of Central Province holden in  
Kandy Case No: Rev 16/2014

MC Gampola  
84560

1. Maheswaran Ramanyamma,  
No. 49, Pillaiyar Kovil Road,  
Kallady,  
Batticaloa.
2. Kathaimuttu Yogamma of Main  
Street,  
Main Street,  
Munaitheevu.

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

**AND**

1. Palasundaram Vasuni,  
Main Street,  
Periyaporaitheevu,  
Poraitheevu.
2. Palasundaram Yogeswaran,  
Vavikarai Street,  
Kaluwanchikudi.

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

**AND NOW BETWEEN**

**Vs.**

1. Palasundaram Vasuni,  
Main Street,  
Periyaporaitheevu,  
Poraitheevu.
2. Palasundaram Yogeswaran,  
Vavikarai Street,  
Kaluwanchikudi.

**2<sup>nd</sup> Party-Respondent-Petitioners**

**Vs.**

1. Maheswaran Ramanyamma,  
No. 49, Pillaiyar Kovil Road,  
Kallady,  
Batticaloa.
2. Kathaimuttu Yogamma of Main  
Street,  
Main Street,  
Munaitheevu..

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

**AND NOW BETWEEN**

Delpawita Koralage Ajith  
Gunawardena,  
No. 800/4, Jayamalpura,  
Gampola.

**2<sup>nd</sup> Respondent-  
Petitioner-Appellant**

**Vs.**

Wewala Walauwe Saliya  
Dissanayake,  
23 C, Dolasbage Road,  
Sinhapitiya,  
Gampola

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

Officer in-Charge,  
Police Station,  
Gampola.

Complainant-Respondent-  
Respondent

Rev. Danture Dhammananda Thero,  
Chief Incumbent,  
Rajamaha Vihara, Niyamgampaya,  
Gampola.

3<sup>rd</sup> Respondent-  
Petitioner-Respondent

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

Counsel: Shayamal A. Collure AAL with P. S. Amarasinghe AAL instructed by  
A. P. Jayaweera AAL for the 2<sup>nd</sup> Respondent-Petitioner-Appellant  
Sumedha Mahawanniarachchi AAL and Nishan Balasuriya instructed  
by Indika Weerasinghe for the 1<sup>st</sup> Respondent-Respondent-  
Respondent

Written Submissions: Written submissions filed on 17/10/2022 by 2<sup>nd</sup> Respondent-  
filed on Petitioner-Appellant  
Written submissions filed on 7/10/2020 by 1<sup>st</sup> Respondent-  
Respondent-Respondent

Delivered on: 14.07.2023

**Prasantha De Silva J.**

**Judgement**

This is an appeal emanating from the Provincial High Court of the Central Province holden in Kandy.

The officer-in-charge of the Miscellaneous Complaints Branch of the Police Station of Gampola initiated proceedings on 16.01.2014 in the Magistrate's Court of Gampola by filing an information under section 66(1)(a) of the Primary Court Procedure Act. No 44 of 1979.

According to the said information the 1<sup>st</sup> Respondent had lodged a complaint on 01.01.2014 that the 2<sup>nd</sup> Respondent had been constructing a building obstructing the access road to a

shop owned by the 1<sup>st</sup> Respondent at no 04/1, Station Road, Gampola. As the Parties had not arrived at a settlement, there was a likelihood of breach of peace being threatened between them, which led the Police to initiate proceedings in the Magistrate court of Gampola. Consequently, the 3<sup>rd</sup> Respondent intervened in the said case no 30/01/2014.

After filing of Affidavits, counter affidavits and the documents the learned Magistrate who was acting as a Primary Court Judge allowed Parties to file Written Submissions.

On 17.07.2014 the learned Magistrate delivered the order in favour of the 1<sup>st</sup> Respondent determining that the 1<sup>st</sup> Respondent is entitled to use a 7 feet wide road and accordingly ordered that all obstructions except for the concrete columns in the impugned strip of land to be removed.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents being aggrieved by the said order invoked the revisionary jurisdiction of the Provincial High Court of the Central Province holden at Kandy, seeking to revise or set aside the said order of the learned Magistrate.

The learned High Court Judge having inquired the matter and held against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent-Petitioners on the premise that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent-Petitioners had not substantiated that there is any miscarriage of justice or any error of law or fact warranting the revision of the said order by the learned Magistrate.

The 2<sup>nd</sup> Respondent-Petitioner-Appellant being aggrieved by the said order of the learned High Court Judge had preferred this appeal seeking relief prayed in the prayer to the Petition of Appeal.

According to the material placed before the Magistrate Court, it appears that the dispute is in respect of the access roadway to the 1<sup>st</sup> Respondent-Respondent-Appellant [hereinafter sometimes referred to as the 1<sup>st</sup> Respondent] shop premises depicted in plan bearing no 12996 prepared by K.M.H. Navaratne Licensed Surveyor.

The position of the 1<sup>st</sup> Respondent is that the width of the said access-road was 7 feet. Contrary to this, Appellant and the 3<sup>rd</sup> Respondent-Respondent-Respondent contended that it was only 4 feet wide.

It was brought to the notice of Court that the 1<sup>st</sup> Respondent had instituted action in the District Court of Gampola against the Appellant and two others regarding the same issue.

The learned District Judge who was functioning as the Primary Court judge as well as the Magistrate, had issued an interim injunction on 04.06.2014 against the Appellant and one Sampath Jagoda restraining them from effecting any construction whatsoever that would

obstruct the access-road in dispute. On the same day the learned District Judge made an order adding the 3<sup>rd</sup> Respondent-Respondent-Respondent as a party to the said District Court action.

As such, the learned Magistrate had come to the conclusion that although concreted segment of the road is 4 feet wide, before the construction commenced the Respondent had been using a '7 feet wide' road way.

Being aggrieved by the said order of the learned Magistrate, the Appellant had filed a revision application in the Provincial High Court of the Central Province holden in Kandy.

The learned High Court Judge has refused the revision application of the Appellant on the ground that the order of the Primary Court Judge does not disclose any grounds of failure of justice or any error of law or fact warranting the revision of the same.

Subsequently the Appellant has preferred this appeal to the Court of Appeal against the order of the learned Provincial High Court Judge dated 05.01.2017.

The Appellant contended that the indenture of lease being no 4058 [1R1] and plan bearing 12998 [1R2] do not indicate that Respondent is entitled to a common right to use a 7 feet wide access road to the shop premises. It is to be observed that, the said 1R1 and 1R2 do not indicate the width of the roadway as 4 feet wide.

It is imperative to note that the Appellant does not deny the access road to the Respondent's shop premises. Nevertheless, denies the width of the road. Therefore, the only question to be determined by this Court is whether the Respondent has been using a '4 feet' wide roadway or a '7 feet' wide road way.

In this instance court draws the attention to the case of *Nandawathie and Another Vs Mahindasena [2009] S.L.R. 218* cited by the learned counsel for the Respondent where it was held that,

(1) 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 corrections of that order.

(2) On appeal to the Court of Appeal the Court of Appeal should not under the guise of the appeal attempt to re-hear or re-evaluate the evidence led and decide on the facts which are entirely and exclusively falling within the domain of the jurisdiction of the Primary Court.

(3) Orders given by the Primary Court should be executed or implemented expeditiously as possible without undue delay unless there is a stay order currently in operation there should be no automatic stay of proceedings for whatever reason otherwise that would negate and frustrate the very purpose for which that provisions were enacted.

Ranjith Silva J in the above case has held 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 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 rehear or re-evaluate the evidence led in the main case."*

As such, it is not the duty of this court to re-hear and re-evaluate the evidence in the instant case. The duty of the Court of Appeal is to consider whether the learned Provincial High Court Judge had failed to identify the existence or lack thereof of exceptional circumstances which would allow him to exercise revisionary jurisdiction. This should be done within the ambit of the material placed before the learned Magistrate court by considering whether there is an error in the application of the law.

It is observable in light of the evidence placed before the learned Magistrate, there was no building at the construction site prior to Appellant commencing construction work and when he started construction only the access road got obstructed.

According to the 1<sup>st</sup> Respondent, he has been using a 10 feet wide access road. Therefore, it is reasonable to presume that the Respondent had been using a 7 feet wide road way to access his shop premises as done by the learned Magistrate court after a careful evaluation of the facts.

It should also be noted that under section 69 of the Primary Court Procedure Act [reproduced below], duty of the Primary Court is to determine whether a person is entitled to a right which is the subject of the dispute. In the instant case, there is no dispute as to the existence of the right to the access roadway of the Respondent. Moreover, It is not the duty of the learned Primary Court judge to conduct a protracted inquiry into the subject matter of the dispute in detail. It is sufficient for a primary court judge to consider the evidence placed before him and reach a conclusion on the facts before him.

*Section 69: (1) Where the dispute relates to any right to any land or any part of a land, other than the right to possession of such land or part thereof, the Judge of the Primary Court shall determine as to who is entitled to the right which is the subject of the dispute and make an order under subsection (2).*

As such, the learned Magistrate has analysed and evaluated the evidence placed before him and has come to the correct findings of fact and law and decided that the Respondent is entitled to use a '7 feet' wide roadway.

Hence, the learned High Court Judge held that since there is no miscarriage of justice or any injustice caused to the Appellant, there is no reason to revise or set aside the impugned order of the learned Magistrate.

Therefore, we see no reason for us to interfere with the order of the learned Magistrate dated 17.07.2014 and the order dated 05.01.2017 by the learned High Court Judge. Hence this appeal stands dismissed.

*The Appeal is dismissed without costs.*

**JUDGE OF THE COURT OF APPEAL**

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

I agree.

**JUDGE OF THE COURT OF APPEAL**