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

In the matter of an Appeal made under and in terms of Section 11 of the High Court of the Provinces (special provinces) Act No. 19 of 1990 read with Article 154P(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CA(PHC) 94/2018

PHC of Sabaragamuwa holden in
Ratnapura Case No: RA 43/15

M.C Balangoda Case No:
54771 (Section 66)

Officer In Charge
Police Station,
Balangoda.

Plaintiff

Vs

1. Nishshanka Ralalage Nalini
   Premalatha,
   Batuwatta,
   Rathmalwinna.

1st Party

2. Walakada Muhandiramlage
   Lionel Dharmasiri,
   Batuwatta,
   Rathmalwinna.

2nd Party

AND NOW

Walakada Muhandiramlage Lionel
Dharmasiri
Batuwatta,
Rathmalwinna.

2nd Party-Petitioner

Vs.

Nishshanka Ralalage Nalini
Premalatha,
Batuwatta,

Rathmalwinna.

1st Party-Respondent

AND NOW BETWEEN

Walakada Muhandiramlage Lionel Dharmasiri,
Batuwatta,
Rathmalwinna.

2nd Party-Petitioner-Petitioner

Vs.

Nishshanka Ralalage Nalini Premalatha,
Batuwatta,
Rathmalwinna.

1st Party-Respondent-Respondent

Before:	Prasantha De Silva, J. K.K.A.V. Swarnadhipathi, J.
Counsel:	Isuru Somadasa AAL with Shashiranga Sooriyapatabendi AAL for the 2nd Party Petitioner-Petitioner (Appellant). Anurudda Liyanage AAL, for the 1st Party Respondent-Respondent.
Written Submissions: filed on	Written submissions filed on 13/03/2023 by 2nd Party Petitioner-Petitioner (Appellant). Written submissions filed 17/01/2023 by the 1st Party Respondent-Respondent.
Delivered on:	29.08.2023

Prasantha De Silva J.,

Judgment

The Officer in charge of Police Station Balangoda had filed an information 12.05.2012 in terms of Section 66 of the Primary Court Procedure Act No. 44 of 1979 in the case bearing No. 54771 (Section 66) at the Magistrate Court of Balangoda. It was informed that since there was a dispute between the 1st and the 2nd Parties in relation to a land, it is likely to result in a breach of the peace.

The Learned Magistrate who was acting as the Primary Court Judge having inquired the matter following the procedure stipulated in Part VII of the Primary Court Procedure Act, concluded the same on 22.09.2015 in favour of the 1st Party Respondent declaring that the 1st Party is entitled to possession of the disputed land. Further, it was held that the 2nd Party should not disturb the peaceful possession of the 1st Party to the land in dispute.

Being aggrieved by the said decision of the learned Magistrate, the 2nd Party-Petitioner has invoked the revisionary jurisdiction of the Provincial High Court of the Sabaragamuwa Province holden in Ratnapura in case bearing no R A 43/2015.

After hearing the matter, the Learned Provincial High Court Judge affirmed the order of the Learned Magistrate and held that the 2nd Party-Petitioner had not established the required possession and therefore the 1st Party-Respondent is entitled to the possession of the land in dispute until the matter is resolved by a competent court.

Accordingly, the instant appeal was filed by the 2nd Party-Petitioner-Petitioner (Appellant) before the Court of Appeal against the said order of the Learned Provincial High Court Judge.

In this regard, the court is cognizant of the decision in ***Bandulasena and others vs. Galla Kankanamge Chaminda Kushantha and others CA PHC No. 147/2009 [CA minutes of 27.09.2017],*** where it was held that,

"It would be relevant to bear in mind that the appeal before this Court is an appeal against a judgment 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."

It is also noteworthy that, according to Section 74(2) of the Primary Court Procedure Act, no Appeal shall lie against any determination under Part VII of the Primary Court Procedure Act.

As such the right given to prefer an appeal to the Court of Appeal against the Order made by the Provincial High Court exercising revisionary jurisdiction against the order of the Primary Court made under Section 66 of the Primary Court Procedure Act is by operation of law.

It was held in the case of ***Nandawathi and another vs. Mahindasena [(2009) 2 SLR 218]***,

"When an Order of a Primary Court Judge is challenged by way of revision in the High Court, the High Court can exercise only question the legality of that Order and not the correction of that Order".

It was emphasized by *Ranjith Silva J.* that,

"I am of the opinion that this particular right of appeal in the circumstance: 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 re-evaluate evidence led in the main case".

According to the said dicta by Ranjith Silva J., the Court of Appeal is not supposed to consider this as an appeal preferred against the Order of the Magistrate's Court. The task before this Court is to ascertain whether this appeal emanates from an Order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction. Thus, the Court of Appeal is empowered to

evaluate the correctness of the exercise of the revisionary jurisdiction by the Provincial High Court. Similarly, the Provincial High Courts must also be cautious when exercising revisionary jurisdiction in respect of the applications made against the Orders of the Magistrate's Court and should take care to consider such applications as revision applications and not appeals.

As such, this court draws its attention to the findings of the Learned Provincial High Court Judge which states that,

> *"2වන පාර්ශවය විසින් ඉදිරිපත් කර ඇති 2 ව 4 දරන පිඹුරේ කැබලි අංක 4 දරන කොටස බුක්ති විඳින බවට සඳහන් කර ඇති නමුත් එම කැබලි අංක 4 දරණ කොටස එකී පිඹුර ප්‍රකාරව බෙදා වෙන් කර ගන්නා ලද බවට සඳහන් වුවත් එසේ බෙදා වෙන් කර ගෙන බුක්ති විඳි බවට තහවුරු වී නොමැති බව උගත් මහේස්ත්‍රාත්තුමා විසින්ද නිවැරදි නිගමනයකට පැමිණ ඇති බවට සඳහන් කරමි."*
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> *"ඒ අනුව 2වන පාර්ශවය විසින් සඳහන් කරනු ලබන එම ගොඩනැගිලි ස්ථිර ගොඩනැගිලි බවට කිසිදු අනාවරණය වීමක් නොමැති අතර ආරවුල් සහගත ගොඩනැගිල්ල කොන්ක්‍රීට් කණු යොදා තහඩු සෙවිලි කර ඇති අළුතින් ඉදිකර ඇති තාවකාලික මඩුවක් බවට අධිකරණයට අනාවරණය වන අතර 1 ව 4 සහ 1 ව 5 ලෙස ඉදිරිපත් කර ඇති ඡායා රූප මගින්ද ඒ බවට වැඩිදුරටත් තහවුරුව ඇත."*
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> *"තවද පොලිසිය විසින් ඉදිරිපත් කර ඇති නිරීක්ෂන සටහන් වල හෝ දළ සැලැස්මෙහි පදිංචිව සිටින ගොඩනැගිල්ලක් හෝ කාර්මික වැඩපලක් ඇති බවට කිසිදු අනාවරණය වීමක් සිදුව නොමැති අතර, තාවකාලිකව මඩුවක් ඇති බවට පමණක් ඒ තුලින් අනාවරණය වීමක් සිදුව ඇත."*
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> *"ඒ අනුව මුලින් නොතිබූ ගොඩනැගිල්ලක් සෑදීමට උත්සහ කිරීම හේතුකොට ගෙන මෙම ආරවුලු - උද්ගත වී ඇති බවට පැහැදිලි ලෙස අනාවරණය වීමක් සිදුව ඇති අතර ආරවුලට භාජිත දේපලේ කිසිදු භුක්තියක්ද තිබී නොමැති බවටද ඒ අනුව තහවුරුව ඇත."*

Accordingly, the Learned Provincial High Court Judge has analysed and evaluated the evidence placed before the learned Magistrate by the 1st Party-Respondent as well as the 2nd party-

petitioner. Since the 2nd Party-Petitioner had failed to establish possession from the evidence placed before the Magistrate's court, the Learned Provincial High Court Judge had affirmed the order of the learned Magistrate.

The 2nd Party-Petitioner-Petitioner (Appellant) [hereinafter sometimes referred to as the Appellant] had not substantiated that he was in possession of the disputed land, two months immediately before the date of filing of the information or that he was forcibly dispossessed from the disputed portion of land.

It is worthy to note that although the Appellant had invoked the Revisionary Jurisdiction of the Provincial High Court of Sabaragamuwa holden in Ratnapura, the Appellant has not established that a grave injustice had been caused or that a miscarriage of justice had been caused to the Appellant which shocks the conscience of Court to exercise revisionary jurisdiction of the Provincial High Court. Thus, it is imperative to note that the Appellant had not substantiated that exceptional circumstances existed to invoke the revisionary jurisdiction of the Provincial High Court of Sabaragamuwa Province holden at Ratnapura.

In this respect, the court draws attention to the case of ***Bank of Ceylon vs. Kaleel and Other [2004] (1) S.L.R 284,*** where it was held that,

> *"...to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which is beyond an error or defect of irregularity that an ordinary person instantly react to it… the order complained of is of such a nature which would have shocked the conscience of the court."*

Further, in the case of ***Sunil Chandrakumara vs. Veloo [2001] (3) S.L.R 91***, *Jayasinghe J.* emphasized that,

> *"Revision is a discretionary remedy; it is not available as of right. This power that flows from Article 138 of the constitution is exercised by the Court of Appeal on an application*

made by a party aggrieved or ex mere moto, this power is available even when there is no right of appeal.

The Petitioner in a revision application only seeks the indulgence of the Court to remedy a miscarriage of justice. He does not assert it as a right. Revision is available unless it is restricted by the constitution or any other law."

In view of the afore cited Judicial dictums, it clearly shows that the Appellant in this appeal had failed to adequately establish the existence of exceptional circumstances resulting in a miscarriage of justice for the revision application to succeed at the Provincial High Court.

As such, the Appellant cannot use the power of revision in lieu of an appeal. Therefore, it manifests that the revision application filed by the Appellant is not tenable in law. Thus, I hold that the Learned Provincial High Court Judge has very correctly affirmed the Order of the Learned Magistrate dated 22.09.2015 and dismissed the revision application of the 2nd Party-Petitioner-Petitioner (Appellant). Therefore, we see no reason for us to interfere with the order of the Learned Provincial High Court Judge dated 12.06.2018 and we affirm the same.

Hence, this Appeal preferred by the 2nd Party-Petitioner-Petitioner (Appellant) is dismissed with tax cost.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL