

IN THE COURT OF APPEAL OF THE D. MOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for an Appeal against the Judgment dated 14.10.2005 in Case No. H.C. Revision 225/2003 in the High Court of the Provinces of the Western Province (Holden at Colombo).

Court of Appeal Case No:
CA (PHC) No. 251/2005

PHC of Western Province Holden in
Colombo Case No:
HCRA 225/2005

Kaduwela Primary Court Case No:
72717

1. R. J. Siriweera,

2. L. J. Siriweera,

Both of

845/10, Dodangahahena,
Gothatuwa New Town.

Complainant Party of the First Part

Vs.

1. Dinesh Liyanage
D9, Kandawatta Road,
Battaramulla.
2. Gunasena Gamwara of
Kandawatta, Battaramulla.
3. Errol Kuruppu of
Oruwalpitiya Road, Athurugiriya.
4. G. H. Buddhadasa of
Vihara Mawatha, Subhootipura,
Battaramulla.

Respondent Party of the Second Part

AND

1. T. M. Jayaratne of
1/60, Kandawatta Road,
Battaramulla.
2. Piyasiri Ilamperuma of
No.47, Kandawatta Road,
Battaramulla.
3. M. Dharmadasa Perera of

- 68A, Kandawatta Road,
Battaramulla.
4. R. Jayatissa of
673/C/1, Kandawatta Road,
Battaramulla.
 5. W. R. Jayatissa of
673/C/1, Kandawatta Road,
Battaramulla.
 6. R. A. Sangadhasa Perera of
673/1, Kandawatta Road,
Battaramulla.
 7. P. J. Lesley Fernando of
673/N/3/1, Kandawatta Road,
Battaramulla.
 8. L. D. Pemmawadu of
81, Kandawatta Road,
Battaramulla.
 9. A. D. D. Swarnakeerthi of
673/E/5, Kandawatta Road,
Battaramulla.
 10. M. D. Chitra Swarnalatha Jayanthi
of 42/1, Kandawatta Road,
Battaramulla.
 11. K. K. Perera of
673/O/1, Kandawatta Road,
Battaramulla.
 12. N. A. N. Neil Perera of
673/O/1, Kandawatta Road,
Battaramulla.
 13. L. P. Jayanoris of
674, Kandawatta Road,
Battaramulla.
 14. H. A. Upananda Perera of
70/O1, Kandawatta Road,
Battaramulla.
 15. S. A. D. Susantha of
673/P/7B, Kandawatta Road,
Battaramulla.

16. W. A. James Perera of
673/P/7E, Kandawatta Road,
Battaramulla.

17. H. M. Nimal Samarasekara of
673/C/2A, Kandawatta Road,
Battaramulla.

Intervient-Respondents

AND NOW

1. R. J. Siriweera,

2. L. J. Siriweera,

Both of 845/ 10, Dodangahahena,
Gothatuwa New Town.

Complainant Party of the First Part
Petitioners

Vs

1. Dinesh Liyanage
D9, Kandawatta Road,
Battaramulla.

2. Gunasena Gamwara of
Kandawatta, Battaramulla.

3. Errol Kuruppu of
Oruwalpitiya Road, Athurugiriya.

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Respondent Party of the Second Part
Respondents

AND

1. T. M. Jayaratne of
1/60, Kandawatta Road,
Battaramulla.

2. Piyasiri Ilamperuma of

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673/P/7B, Kandawatta Road,
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16. W. A. James Perera of
673/P/7E, Kandawatta Road,
Battaramulla.

17. H. M. Nimal Samarasekara of
673/C/2A, Kandawatta Road,
Battaramulla.

**Intervenient-Respondent-
Respondents**

AND NOW BETWEEN

1. R. J. Siriweera,

2. L. J. Siriweera,

Both of 845/ 10, Dodangahahena,
Gothatuwa New Town

**Complainant Party of the First Part
Petitioner-Petitioners**

Vs.

1. Dinesh Liyanage
D9, Kandawatta Road,
Battaramulla.

2. Gunasena Gamwara of
Kandawatta, Battaramulla.

3. Errol Kuruppu of
Oruwalpitiya Road, Athurugiriya.

4. G. H. Buddhadasa of
Vihara Mawatha, Subhootipura,
Battaramulla.

**Respondent Party of the Second Part
Respondent-Respondents**

AND

1. T. M. Jayaratne of

- 1/60, Kandawatta Road,
Battaramulla.
2. Piyasiri Ilamperuma of
No.47, Kandawatta Road,
Battaramulla.
 3. M. Dharmadasa Perera of
68A, Kandawatta Road,
Battaramulla.
[Deceased]
- 3A. Lalith Perera of
68A, Kandawatta Road,
Battaramulla.
4. R. Jayatissa of
673/C/1, Kandawatta Road,
Battaramulla.
 5. W. R. Jayatissa of
673/C/1, Kandawatta Road,
Battaramulla.
 6. R. A. Sangadhasa Perera of
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 7. P. J. Lesley Fernando of
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 12. N. A. N. Neil Perera of

673/O/1, Kandawatta Road,
Battaramulla.

13. L. P. Jayanoris of
674, Kandawatta Road,
Battaramulla.
[Deceased]

13A. Jepin Nona Tennakoon
Kankanamlage of 674, Kandawatta
Road, Battaramulla

14. H. A. Upananda Perera of
70/O1, Kandawatta Road,
Battaramulla.

15. S. A. D. Susantha of
673/P/7B, Kandawatta Road,
Battaramulla.

16. W. A. James Perera of
673/P/7E, Kandawatta Road,
Battaramulla.

17. H. M. Nimal Samarasekara of
673/C/2A, Kandawatta Road,
Battaramulla.

Intervient-Respondents- Respondent-
Respondents

Before: **Prasantha De Silva, J.**

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

Counsel: Dr. Sunil Cooray AAL with Diana Rodrigo AAL for the Complainant
Party of the First Part Petitioner-Petitioners

Rajeev Amarasuiya AAL with Ruvindu Bandara AAL, S. Nanayakkara
AAL and Yohani Yohara AAL for the 1st and 2nd Respondent Party of the
Second Part Respondent-Respondents

Written Submissions: Written Submissions filed on 12.09.2019 and 02/05/2023 by the
filed on Complainant Party of the First Part Petitioner-Petitioners

Written Submissions filed on 24/01/2023 and 02.05.2023 by the 1st and 2nd Respondent Party of the Second Part Respondent-Respondents

Delivered on: 31.08.2023

Prasantha De Silva J.,

Judgment

The Complainant Party of the First Part, R. J. Siriweera and K. J. Siriweera had filed an information by way of a Plaint on 18.03.2002 in terms of Section 66(1)(b) of the Primary Court Procedure Act No. 44 of 1979 at the Primary Court of Kaduwela in the Case bearing No. 72717 against the Respondent Party of the Second Part namely, Dinesh Liyanage and Others.

After supporting the Application, the learned Magistrate issued an Interim Order against the Respondents and issued notice to the 1st to 17th Respondents.

The genesis of this matter relates to a dispute over a land which is two perches in extent, where there was a well existing till 1999 which was abandoned. Thereafter, it remained a bare land.

The said land, two perches in extent was created by virtue of a sub-division and blocking out of a larger estate called Mount Leo Estate.

The learned Magistrate who was acting as the Primary Court Judge inquired into the matter and dismissed the case of the Complainant Party of the First Part and dissolved the Interim Order.

Being aggrieved by the said Order, the Complainant Party of the First Part Petitioners had invoked the Revisionary Jurisdiction of the Provincial High Court of Western Province holden in Colombo in Case bearing No. HCRA 225/2005.

After the filing of the objections by the Party of the Second Party Respondents, both parties filed their respective Written Submissions and thereafter the learned Provincial High Court Judge delivered the Order on 14.10.2015 upholding the Order of the learned Magistrate and dismissing the Revision Application of the Complainant of the First Part-Petitioner.

Consequently, the Complainant of the First Part Petitioner-Appellant [hereinafter referred to as the Appellants] had preferred an Appeal to the Court of Appeal seeking to set aside the Order made by the learned Provincial High Court Judge dated 14.10.2005 and the Order of the learned Primary Court Judge dated 27.08.2002.

It is noteworthy that the learned High Court Judge in his Order analysed and evaluated the evidence placed before the learned Magistrate and had come to the findings that the two perch land in question had been possessed and used in common by all parties. Thus, the Appellant had not been in exclusive possession of the land in question. Furthermore, the Appellants have not possessed it to the exclusion of the others, and nor have they derived any right in terms of section 66 of the Primary Courts Procedure Act.

The learned Provincial High Court Judge has essentially confirmed the reasoning of the learned Magistrate and affirmed the Order, which concluded that all parties are entitled to common possession of the two perch disputed land until the matter is decided by a competent court.

Hence, if the Appellants have the legal right to claim the two perch land, the Appellants should have instituted action in a Civil Court to determine their rights, nevertheless, they have not taken any interest in civil litigation. Thus, it can be presumed that the Appellants are trying to grab the portion of land in dispute to their land which is 18.8 perches in extent., making use of the provisions of the Primary Court Procedure Act.

It is significant to note that the Appellant had not shown any injustice being caused to them by the Order of the learned Magistrate nor did any miscarriage of justice occur for the Appellants to invoke the revisionary jurisdiction of the Provincial High Court of Colombo against the Order of the learned Magistrate.

In view of the aforesaid reasons, I hold that the learned Provincial High Court Judge has very correctly affirmed the Order of the learned Magistrate and dismissed the revision application of the party of the First Part Petitioner-Petitioner(Appellants).Therefore, we see no reason to interfere with the Order of the learned Provincial High Court Judge dated 14.10.2005 and the Order of the learned Magistrate dated 27.08.2007.

Hence, the appeal is dismissed with tax costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL