

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

C.A. (PHC) No.16/2012

PHC Kegalle No.3817/Rev

Henapola Kade Watte Gedara Somapala Ranasinghe
Kosgolla, Hettimulla.
Buluruppa.

Pradeep Ranasinghe
Kosgolla, Hettimulla.
Buluruppa.

2nd & 3rd Respondents-Petitioners-Appellants

Vs.

Ambalakandalage Piyadasa Sandamali.
Buluruppa. Hettimulla.

1st Respondent-Respondent-Respondent

Hewayalage Premarathna

Lankapurage Edmon

Jayalath Purayalage Suneetha Rohini

Rambadi Devage Rejina

Thala Gedara Godayalage Sriyalatha
All of

Kosgolla,
Hettimulla.
Buluruppa.

Ihala Gedara Godayalage Dharamathilake
No. C122, Walawwatta.
Buluruppa. Hettimulla.

Petitioners-Respondents-Respondent

C.A. (PHC) No.16/2012

PHC Kegalle No.3817/Rev.

BEFORE : A. W. A. SALAM, J. &

SUNIL RAJAPAKSHE, J.

COUNSEL : Appellant absent and unrepresented.

Neyomal Somathilaka for the 1st
Respondent.

Neville Abeyratne with Ajith Lal Kumara for
the petitioner-respondent-respondent.

ARGUED AND

DECIDED ON : 26th July 2013

A.W.A.SALAM, J.

This appeal has been preferred against the judgment of the learned High Court judge who having been called upon to exercise the revisionary jurisdiction over an order made by the Magistrate's Court dismissed the revision application and affirmed the order of the Magistrate. The revision application in the High Court had been filed by the 2nd and 3rd party respondent petitioner in that court. In these proceedings they are referred to as the 2nd and 3rd party respondent-petitioner-appellants.

The order that was impugned in the revision application before the High Court stems from a dispute over a right of way. The

proceedings in the Magistrate's court had commenced with the 1st respondent-petitioner-respondent complaining to court in terms of Section 66(1)(a) of the Primary Court Procedure Act, by way of an affidavit of the existence of a dispute relating to land by reason of which the breach of the peace was threatened or likely. After the inquiry the learned Magistrate held *inter alia* that the right of way complained of has been narrowed by the appellants by constructing a parapet wall along the right of way shown in plan 106/A produced as P3.

The existence of the right of way has been admitted by all the parties. Further, in his statement to the police the appellant has admitted the construction of the parapet wall and went on to state that if the width of the road has been narrowed down he would demolish the same so as to render the width of the right of way to fall in line with P3. Above all that the police in dealing with state of the disputed land has clearly referred to the parapet wall as of a recent construction which obstructs the right of way. Taking all these matters into consideration the learned Magistrate has come to the finding that the construction complained of had deprived the 1st respondent respondent's use of the right of way as shown in plan P3 which is also a violation of the settlement entered in to between the parties concerned before the Conciliation Board. The certificate of settlement is produced marked 1V1.

In the circumstances, the Magistrate had thought it fit to declare the petitioner-respondent-respondents entitled to use the right of way in terms of Section 69. Further, as he is empowered by law he ordered the demolition of the parapet wall which was the subject of complaint in the Magistrate's Court. Against that order 2nd and 3rd respondent-respondent-petitioner filed a revision application which was dismissed by the High Court and the 2nd and 3rd respondent-respondent-appellants have preferred the present appeal to this Court against the said dismissal.

The learned High Court judge having given her mind to the circumstances which influenced the learned Magistrate to make the determination under Section 69 of the Primary Court Procedure Act has come to the conclusion that the said order of the Magistrate is flawless and in any event the 2nd and 3rd respondent-respondent- appellant has not set out exceptional circumstances to invoke the revisionary jurisdiction of the High Court. This appeal in fact is not against the order of the Magistrate but against the judgment of the learned High Court Judge. We are in agreement with High Court Judge when she has stated in the impugned judgment that the 2nd and 3rd respondent-petitioner-appellants to the revision application have failed to establish exceptional circumstances to invoke the revisionary jurisdiction of that Court.

As such we do not see any ground to vary the judgment of the High Court Judge. The reasoning adopted by the learned High Court judge is quite consistent with law. Therefore we proceed to dismiss this appeal subject to costs.

JUDGE OF THE COURT OF APPEAL

SUNIL RAJAPAKSHE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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