

**N THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

An Appeal against the order dated 2nd
September 2003 by the Learned High
Court Judge of Hambantota.

Vijitha Rohana Ramasundera,
393, Dutugemunu Mawatha,
Kirindagama, Kirinda,
Tissamaharama.

Petitioner

CA (PHC) 242/2003
Case No. H.C.A. 121/2001

VS.

1. Galvatumbe Desanayakege
Desanayake,
C/O. Aluth Gedera,
Valipothewela,
Ranakeliya.
- 2 Assistant Commissioner of
Agrarian Development,
Hambantota.

Respondents

AND

Vijitha Rohana Ramasundera,
393, Dutugemunu Mawatha,
Kirindagama, Kirinda,
Tissamaharama.

Petitioner-Appellant

VS.

1. Galvatumbe Desanayakege
Desanayake,
C/O. Aluth Gedera,
Valipothewela,
Ranakeliya.
2. Assistant Commissioner of
Agrarian Development,
Hambantota.

Respondent – Respondent

**BEFORE : W.M.M. Malinie Gunaratne, J. and
P.R. Walgama, J.**

COUNSEL : Parties are absent and unrepresented.

Decided on : 12.01.2016

Malinie Gunaratne, J.

The Appellant in this Appeal has sought to impugn the Judgment of the learned High Court Judge of Hambantota dated 02.09.2003, wherein the learned High Court Judge had dismissed the Petition of the Appellant.

The Appellant had instituted the said Petition No.121/2001 in the High Court of Hambantota, seeking to quash by way of a Writ of Certiorari the document dated 04.09.2001 marked as "P 5" issued by the 2nd Respondent, Agrarian Commissioner of Agrarian Development Hambantota.

The facts as tersely stated in the above Petition are as follows:

One S.D. David Silva was the owner of the land called "Oluwala" Kumbura and the Appellant is the Anda Cultivator of the land. The said S.D. David Silva died in 1986 and title was devolved on his wife R.H. Podinona. As the Anda Cultivator, Appellant was cultivating the said land under the said R.H. Podinona.

By a letter dated 04.07.2001 (marked as P 3) the Appellant had been asked to appear before the Agrarian Development Assistant Commissioner for an inquiry under Section 7(7) of the Agrarian Development Act No.46 of 2000. At the inquiry only a statement was recorded. Thereafter he received a letter dated 21.10.2001 (P 5) informing him to quit the land, described in the schedule, within 30 days.

It was averred that the inquiry that was held was not in respect of the land that he was cultivating.

Further it was averred that the Appellant was not heard and thereby the rules of natural justice have not been complied with. Therefore the Appellant had moved to quash the Order dated 02.09.2003, marked as P5, by way of a Writ of Certiorari. In contesting the above suit the Respondents had filed their objections and sought to dismiss the Appellant's Petition on the reasons mentioned in their objections.

The learned High Court Judge had dismissed the Petition. Being aggrieved by that judgment the Appellant has preferred this Appeal praying for the annulling of the said Judgment and praying for the relief prayed for in the Petition filed in the High Court of Hambantota.

Although the case was scheduled for argument on 13.11.2014, the parties were absent and unrepresented. Accordingly notices were issued on the parties and the case was fixed once again for argument for 26.01.2015, and finally 08.05.2015; the parties were absent and unrepresented.

On examining the Petition filed by the Appellant, it is stated in Para 14 of the Petition, as follows:

“The Appellant states that there is a substantial question of law to be heard before this Court”.

Accordingly, the Appellant had to comply with the Rule 4(2) of the Court of Appeal (Procedure for Appeals from High Courts) 1988. The Rule 4(2) reads as follows:

4(2) “Where the Appeal is on a matter of law the petition shall contain a statement of the matter of law to be argued and shall bear a certificate by an Attorney-at-Law that such matter of law is a fit question for adjudication by the Court of Appeal”.

It is relevant to note that there is no such certificate and further the grounds of Appeal in the Petition of Appeal was not stated. As such the view of this Court is that there is no proper Petition of Appeal to adjudicate before this Court.

Be that as it may, on perusal of the entirety of the judgment of the learned High Court Judge, it is apparent that he has taken into consideration the submissions made by both parties and has come to the correct conclusion in dismissing the Petitioner's Petition.

Hence, I do not see any error in which the learned High Court Judge has considered the facts and the way in which he has applied the law in this instance.

It is relevant to note, that except the reasons given by the learned High Court Judge, this Court has noted the following defects of the Petition filed in the High Court.

- (i) The necessary parties had not been cited as the Respondents. (Specially, in the Petition that the Petitioner had claimed the Anda rights under the deceased R.D. Podinona. But her heirs had not been cited as Respondents).
- (ii) All the material facts had not been disclosed fully and fairly (at the time of filing the Petition, an application had been made to the Magistrate's Court, by the 2nd Respondent to eject the Petitioner. That fact had not been disclosed).
- (iii) To mislead the Court the Petitioner had filed a purported copy of a petition filed in the Court of Appeal along with his Petition. A copy had been sent to the 2nd Respondent also. (It is relevant to note that there is no number given to that petition, and it is not a certified copy issued by the Court of Appeal).

For the reasons stated above, the Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

P.R.Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed.