

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

In the matter of an appeal in terms of section 154(P) of the Constitution of the Democratic Socialist Republic of Sri Lanka. Read with the Article 138 of the constitution of the Democratic Republic of Sri Lanka.

In the matter of an application in terms of section 66(1) of the Primary Courts Procedure Act No.44 of 1979.

**Court of Appeal Application
No. C A (PHC) 129/2004
Kalawana Circuit Magistrate Courts 1763
High Court Ratnapura
Case No.HCR/RA 07/2004**

Officer in Charge
Police Station, Kalawana

PETITIONER

VS

1. Handuwalage Ruwani Nissansala
2. Handuwalage Sugathapala
3. Kuttapitiyage Mallika

Weddagala North, Weddagala,
Kalawana.

RESPONDENTS

1. Handuwalage Sugathapala

2. Kuttapitiyage Mallika

Weddagala North, Weddagala,
Kalawana.

2nd, 3rd RESPONDENT-PETITIONERS

VS.

Handuwalage Ruwani Nissansala
Weddagala North, Weddagala.
Kalawana.

1st RESPONDENT- RESPONDENT

Now By and Between

1. Handuwalage Sugathapala

2. Kuttapitiyage Mallika

Weddagala North, Weddagala,
Kalawana

2nd, 3rd RESPONDENT-PETITIONER-APPELLANT

Vs.

Handuwalage Ruwani Nissansala

Weddagala North, Weddagala,
Kalawana

1st RESPONDENT-RESPONDENT-RESPONDENT

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

**COUNSEL : S.Gunawardena for the 1st Party Respondent-
Respondent
Appellants absent and are unrepresented.**

Argued on : 04/03/2015

Decided on : 01.06.2015

Malinie Gunaratne, J.

Pursuant to an information filed by Kalawana Police in terms of Section 66 of the Primary Court Procedure Act the learned Primary Court Judge of Kalawana held an inquiry into the dispute between 2nd, 3rd Respondent – Petitioners – Appellant (hereinafter referred to as the Appellants) and 1st Respondent-Respondent-Respondent (hereinafter referred to as the Respondent) in respect of the land called Batahena, held that the respondent was in possession of the land in dispute on the date of filing the information and accordingly prohibited any interference by the appellants.

Dissatisfied with that order the appellants filed an application in revision in Ratnapura High Court which was dismissed on 10/05/2004. Thereafter they invoked the appellate jurisdiction of this Court seeking to set aside the order of the High Court Ratnapura dated 10/05/2004. However, it is relevant to note that the petition of appeal do not contain any material to show that the order of the learned High Court Judge is wrong and not valid in law. It is significant to note that the appellants have not sought to set aside

the order dated 19/12/2002 made by the learned Primary Court Judge of Kalawana. Hence, the order of the Primary Court Judge would prevail in favour of the respondent and against the appellants.

This appeal was taken up for hearing in the absence of the appellants on 04/03/2015. Learned Counsel for the Respondent contented, since the appellants have not asked any substantive relief from this Court, the petition of appeal is bad in law and has to be dismissed in limine.

It is pertinent to note that the pleadings of the appellants are in total disarray and are ambiguous giving rise to the conclusion that draftsman of the pleadings was totally negligent and confused as to whether the relief should be sought in what form or what forum. The petition of appeal appears to be a mixture of a Petition of Appeal and a Petition in Revision application.

In a petition of appeal of this nature the pleadings should not be ambiguous but specific. The negligence on the part of the draftsman of pleadings should amount to the disadvantage of the appellant and the petition of appeal must be dismissed on this ground alone.

In the above circumstances this appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed.