

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

In the matter of an Application for Revision
in terms of Articles 154 P (3) (b) of the
Constitution to be read with the Provisions
of the High Court of the Provisions (Special
provisions) Act No. 19 of 1990.

Malcolm Chandrasiri Bandara
Additional Director,
Ministry of Plantation Industries –
Monitoring Division,
Ministry of Plantation Industries,
Colombo.

Applicant

Case No: CA (PHC) 121/06

Vs.

Opanayakage Sampath,
Nugepola,
Gallella.

Respondent

AND

Opanayakage Sampath,
Nugepola,
Gallella.

Respondent – Petitioner

Vs.

01. Malcolm Chandrasiri Bandara
Additional Director,
Ministry of Plantation Industries –
Monitoring Division,
Ministry of Plantation Industries,
Colombo.

Applicant – Respondent

01 A. Abhayananda Dias
Additional Director,
Ministry of Plantation Industries –
Monitoring Division,
Ministry of Plantation Industries,
Colombo.

Substituted – Applicant – Respondent

AND NOW

Opanayakage Sampath,
Nugepola,
Gallella.

Respondent – Petitioner – Appellant

Vs.

01 A. Abhayananda Dias
Additional Director,
Ministry of Plantation Industries –
Monitoring Division,

Ministry of Plantation Industries,
Colombo.

Substituted - Applicant -
Respondent - Respondent

Before : P.R.Walgama, J

: L.T.B. Dehideniya, J

**Counsel : Chathura Galhena with Manuja Gunawardhana for the
Resopondent - Petitioner - Appellant.**

**: D. Peiris Vissundera with Asela Rajapaksha for the sub.
Applicant - Respondent - Respondent.**

Argued on : 08.02.2016

Decided on: 17.06.2016

CASE- NO- CA (PHC)- 121-2006- JUDGMENT- 17.06.2016

P.R.Walgama, J

The Defendant-Petitioner -Appellant (in short the Appellant) preferred the instant appeal, and impugned the order of the Learned High Court Judge dated 11.05.2006, made in the case bearing No. HCR- 38/99, in the High Court of Province, holden at Ratnapura.

The facts unspooled in the petition of appeal surfaced thus;

The Applicant- Respondent instituted action against the Appellant in the Magistrate Court of Ratnapura in terms of Section 5 of the State lands Recovery of Possession Act to recover the land in issue from the Appellant and moved for an order, ejecting the Appellant from the said land.

In pursuant to the launching of the said application the Learned Magistrate, made order dated 13.08.1998, ejecting the Appellant from the suit land.

Being aggrieved by the order of the Learned Magistrate, the Appellant made an application in revision to the High Court of Ratnapura, to have the said impugned order set aside -vacate.

It was the primary bone of contention of the Appellant that the person who instituted action in the Magistrate Court was not the Competent Authority, as he was the Deputy Director of the Management Supervision Division of the Ministry of Plantation Industries. The Section 18 of the State Lands (Recovery of Possession) Act has defined the "Competent Authority" as thus;

" In this Act, unless the context otherwise requires "competent authority" used in relation to any land means the Government Agent, an Additional Government Agent or an Assistant Government Agent of the district in which the land is situated and, includes," the categories which was recognised by the amendment to the above Act in 1993 by Act No. 60 of 1993.

In refusing the application of the Petitioner- Appellant, the Learned High Court Judge had observed that in the Magistrate

Court, although he had taken objections but had failed established why the order for ejection should not be issued. Therefore it is contended by the Respondent that the Appellant had never raised the above objection and further more the Appellant was not in a position to establish that he had permit or a valid legal document to prove his title to the subject land. Besides the Learned High Court Judge was of the view that the Appellant has not adduced exceptional circumstances, which warrants, the High Court to exercise the revisionary jurisdiction, to resolve the matter in issue.

In opposing the above contention of the Appellant, the counsel for the Respondent, categorically asserts that the Appellant had never taken up the issue that the quit notice had been issued by a person who does not come under the category of 'authorised person', and therefore he cannot raised any objection as to the afore said issue in the appeal. In addition to the afore said it is also reiterated by the counsel that the quit notice was filed by the government officer specifically authorised by the body corporate to do so, and it is stated that the subject matter is the Janatha Estate Development Board and not Hapugastena Estate Ltd.

It is intensely relevant to note that the suit land is a State land and the Provincial High Court has no jurisdiction to make any order regarding a State Land, as such right is vested with the Centre, as per Judicial pronouncement in the case of Solimuttu Rasu, and the 13th Amendment to the Constitution.

Hence in the said back drop this Court is of the view that the Appellant's application to this Court is devoid of merits and should stand dismissed.

Accordingly appeal is dismissed subject to a cost of Rs. 5000/

Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J
I agree,

JUDGE OF THE COURT OF APPEAL