

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

In the matter of an Appeal under Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 9 of the High Courts of the Provinces (Special Provisions) Act Bi. 19 of 1990.

**Officer-in-Charge**

Police Station, Galle.

**Case No: CA (PHC) 236/2005**

**Plaintiff**

Galle High Court Revision

Application No. 336/2003

**-vs-**

Galle Magistrate Court

Case No. 8342

**1. M.S.M. Rifai**

No. 21, Middle Road,

Fort, Galle.

**1<sup>st</sup> Party**

**2. D.S. De Silva Wijayasiri**

**Gunawardena,**

No. 19 B, Rampart Street,

Fort, Galle.

**2<sup>nd</sup> Party**

**3. Manager**

Lanka Commercial Bank  
(Commercial Bank)

**3<sup>rd</sup> Party**

**AND**

**M.S.M. Rifai**

No. 21, Middle Road,  
Fort, Galle.

**1<sup>st</sup> Party – Petitioner**

**1. Officer-in-Charge**

Police Station, Galle.

**Plaintiff – Respondent**

**2. D.S. De Silva Wijayasiri**

**Gunawardena,**  
No. 19 B, Rampart Street,  
Fort, Galle.

**2<sup>nd</sup> Party – Respondent**

**3. Manager**

Lanka Commercial Bank  
(Commercial Bank)

**3<sup>rd</sup> Party – Respondent**

**AND NOW BETWEEN**

**M.S.M. Rifai**

No. 21, Middle Road,

Fort, Galle.

**1<sup>st</sup> Party – Petitioner –  
Appellant**

**1. Officer-in-Charge**

Police Station, Galle.

**Plaintiff – Respondent –  
Respondent**

**2. D.S. De Silva Wijayasiri**

**Gunawardena,**

No. 19 B, Rampart Street,

Fort, Galle.

**2<sup>nd</sup> Party – Respondent –  
Respondent**

**3. Manager**

Lanka Commercial Bank

(Commercial Bank)

**3<sup>rd</sup> Party – Respondent –  
Respondent**

**Before : P.R.Walgama, J**

**: L.T.B. Dehideniya, J**

**Counsel : Lasitha Kanuwanarachchi for 1<sup>st</sup> Party –  
Petitioner – Appellant.**

**: J.C. Weliamuna with Pasindu Silva for 2<sup>nd</sup> Party  
- Respondent - Respondent.**

**Argued on : 23.02.2016**

**Decided on: 30.06.2016**

CASE- NO- CA (PHC)- 236/ 2005- JUDGMENT-30.06.2016

**P.R.Walgama, J**

This appeal is brought by the Appellant against the decisions of the Learned High Court Judge and the Learned Magistrate accordingly.

The background facts that turned out to be relevant, appear from what follows;

The Officer in Charge of the Police Station Galle instituted action in the Magistrate Court of Galle in case bearing No. 8342, in terms of Section 66 (1) of the Primary Court Procedure Act No. 44 of 1979, by filing an information of a land dispute which will culminate to the breach of the peace.

In the said information the following facts were reported;

The dispute between the 1<sup>st</sup> party Respondent and the 2<sup>nd</sup> party Respondent, began with the opening of an entrance by the 2<sup>nd</sup> Party -Respondent, to the passage, supposed to be claimed by the 1<sup>st</sup> Party - Respondent as a part of his land. The stance of

the 2<sup>nd</sup> Party – Respondent is that the disputed strip of land was used as a path to clear sewage of the respective properties. Further it is stated by the 2<sup>nd</sup> Party Respondent that the said strip of land belonged to the State and therefore the Appellant cannot claim the ownership of the disputed passageway.

Therefore it is asserted by the 2<sup>ND</sup> Party – Respondent that disputed passage way was used by him to have access to his house from the rear side , and had admitted that some renovations were effected, and the gate therein was re fixed accordingly.

In analyzing the facts of the case the Learned Magistrate was of the view that the 1<sup>st</sup> Party- Respondent- Petitioner- Appellant has not proved the fact that the disputed passageway was used exclusively by him. Further it was the observation of the Learned Magistrate that the windows of the house of the 2<sup>ND</sup> Respondent, are opened towards the passage. If the said passage was a private land belonging to the Appellant, the Respondent would have not have had the windows opened towards the passage way. Therefore it was concluded by the Learned Magistrate that the 2<sup>nd</sup> Party Respondent, had been using the said disputed strip of land.

It was also noted by the Learned Magistrate, that although the Appellant has stated that the gate was

locked by him and the key of the gate was with him, but nevertheless he had not said so in his statement to the police, and as such the Learned Magistrate was of the view that the statement of the Appellant is not trustworthy.

From the facts surfaced above the Learned Magistrate was of the view that the disputed strip of land had been used in common by both parties.

Being aggrieved by the said order of the Learned Magistrate, the 1<sup>st</sup> Party -Respondent- Petitioner-Appellant, moved in revision to the High Court to have the said order vacated.

The Learned High Court Judge having considered the reasons adduced by the Learned Magistrate in his order, had unequivocally agreed with him and had dismissed the revision application of the 1<sup>st</sup> Party- Petitioner- Appellant's application accordingly.

In the above setting the Learned High Court Judge was of the view that there is no exceptional reasons adduced by the Petitioner- Appellant for the High Court to exercise the Revisionary jurisdiction to vacate or set aside the impugned order of the Learned Magistrate, and upheld the same.

Being aggrieved by the said order of the Learned High Court Judge, the Petitioner- Appellant has

appealed to this Court to have the said orders set aside or vacate.

When the impugned orders of the Learned High Court Judge and the Learned Magistrate viewed in the said back drop, this Court is compelled to arrive at the irresistible conclusion that the Appellant's application is devoid of merit and should stand dismissed subject to a costs of Rs 5000/.

**JUDGE OF THE COURT OF APPEAL**

L.T.B. Dehideniya, J

I agree,

**JUDGE OF THE COURT OF APPEAL**