

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

In the matter of an appeal against
judgment of Provincial High Court
exercising its revisionary jurisdiction.

C A (PHC) / 126 / 2008

Provincial High Court of

Southern Province (Galle)

Case No. 574 / 2006

Kottawa Magistrate's Court

Case No. 24449

1. Udalamaththa Gamage,
Karunadasa,
Weliwitigoda,
Udumalagala,
Ihala Nakiyadeniya.

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2. Lokunarangodage Dias,

Udumalagala,

Ihala Nakiyadeniya.

3. U G Jayasinghe,

Udumalagala,

Ihala Nakiyadeniya.

1st 2nd AND 3rd RESPONDENT -

PETITIONER - APPELLANTS

-Vs-

1. Hawpe Liyanage Ranjith Keerthilal

Priyadarshana,

Duwawatte,

Udumalagala,

Ihala Nakiyadeniya.

PETITIONER - 1st RESPONDENT

- 1st RESPONDENT

2. U G Piyasena,
Udumalagala,
Ihala Nakiyadeniya.

4th RESPONDENT -

RESPONDENT - RESPONDENT

3. Sirisena Jayawickrama,
Delgahawatte,
Ihala Nokiyadeniya
Nakiyadeniya.

5th RESPONDENT -

RESPONDENT - RESPONDENT

4. Indika Lokunarangoda,
Duwewatte,
Udumalagala,

Ihala Nakiyadeniya,

Nakiyadeniya.

6th RESPONDENT -

RESPONDENT - RESPONDENT

Before: P. Padman Surasena J (P C/A)

K K Wickremasinghe J

Counsel; Mahinda Nanayakkara with Nandasiri Galloluwa for the 1st 2nd
and 3rd Respondents - Petitioner - Appellants.

Saliya Peiris PC with Danushka Rahubadda for the Respondents.

Argued on : 2017 - 10 - 20

Decided on : 2018 - 02 - 27

JUDGMENT**P Padman Surasena J**

Petitioner - Respondent - Respondent (hereinafter sometimes referred to as 1st Respondent) had filed the information relevant to this case in the Primary Court under section 66 (1) (b) of the Primary Court Procedure Act No. 44 of 1979 (hereinafter referred to as the Act). 1st and 2nd Respondent - Petitioner Appellants (hereinafter sometimes referred to as 1st and 2nd Appellants) have been named as Respondents in the said information. The 1st Respondent in the said information has alleged that the 1st and 2nd Appellants had forcibly cut a road across his land.

Learned Primary Court Judge having inquired into the complaint contained in the said information, by his order dated 2006-10-03 , had held that the 1st and 2nd Appellants has not proved that they are entitled to the impugned right of way.

Being aggrieved by the said order of the learned Primary Court Judge, the Appellant had made a revision application in the Provincial High Court of Southern Province holden in Galle urging the Provincial High Court to revise the order of the learned Primary Court Judge.

The Provincial High Court after hearing parties, by its judgment dated 2008-10-30 had refused the said application for revision and proceeded to dismiss it. The Provincial High Court has taken the view that there is no basis to interfere with the learned Magistrate's order.

It is against that judgment that the Appellant has filed this appeal in this Court.

Arguments advanced on behalf of the Appellant are based on factual positions taken up by them in the Primary Court. This is confirmed when one peruses the contents of the written submission filed on their behalf.

According to section 74 of the Act an order of the Primary Court Judge under part VII of the Act shall not prejudice any right or interest in any land which any person may establish in a civil suit. Indeed the Appellants had taken up the position at the very beginning that they would take steps to vindicate their rights in Court. It is to be noted that the learned Provincial High Court Judge had also taken this position into consideration when he decided to dismiss the revision application filed by the Appellants.

This Court in the case of Jayasekarage Bandulasena and others V Galla Kankanamge Chaminda Kushantha and others¹ held that the right of appeal provided by law to this Court in cases of this nature would only empower this Court to evaluate the correctness of the exercise of the revisionary jurisdiction by the Provincial High Court. This Court also held in that case that such an appeal could not be converted to an appeal against a Primary Court Order.

This Court observes that in the instant case also it is the revisionary jurisdiction, which the Provincial High Court was called upon to exercise.

¹ C A (PHC) / 147 / 2009 decided on 2017-09-27.

Thus, it is the view of this Court that there had been no basis for the Provincial High Court to interfere with the conclusion of the learned Primary Court Judge, as there are ample reasons to satisfy itself with its legality and propriety as required by section 364 of the Code of Criminal Procedure Act No. 15 of 1979.

The Supreme Court in the case of Ramalingam V Thangarajah², which had interpreted the above provision of law. It is as follows;

“ On the other hand, if the dispute is in regard to any right to any land other than right of possession of such land, the question for decision, according to section 69 (1), is who is entitled to the right which is subject of dispute. The word “entitle” here connotes the ownership of the right. The Court has to determine which of the parties has acquired that right, or is entitled for the time being to exercise that right. In contradistinction to section 68, section 69 requires the Court to determine the question which party is entitled to the disputed right preliminary to making an order under section 69 (2).”

² 1982 (2) Sri. L R 693.

It is the view of this Court that the Respondents have failed to prove to the satisfaction of Court that they are entitled to the impugned roadway.

In these circumstances and for the foregoing reasons this Court decides to dismiss this appeal as this Court sees no merit in it. The Respondent is entitled to the costs.

Appeal is dismissed with costs.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL