

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

IN THE MATTER OF AN APPEAL UNDER THE PROVISIONS OF SECTION 9 OF THE PROVINCIAL HIGH COURTS (SPECIAL PROVISIONS) ACT NO. 19 OF 1990 READ TOGETHER WITH THE PROVISIONS OF ARTICLE 154(G) OF THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

Officer-in-Charge  
Police Station, Panadura.

**Complainant**

Case No. CA (PHC) 100/2005

Panadura High Court  
Revision Application No. 36/2012

Panadura Magistrate's Court  
Case No. 12300

**Vs.**

1. Lindamulage Konsi Silva
2. Widanagamage Sisira Kumara De Mel

Both at –  
No. 7/30, Meda Para, Thalpitiya North.

3. Kanattage Edwin Fernando
4. Kapurupattinilage Karunawathie

Both at –  
No. 7/30, Meda Para, Thalpitiya North.

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

1. K. David Fernando
2. Wathiyage Wimalawathie

Both at –  
No. 7/30, Meda Para, Thalpitiya North.

3. Wathiyage Abepala  
Welhengoda, Devinuwara.

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

**AND BETWEEN**

1. K. David Fernando
2. Wathiyagie Wimalawathie

Both at –

No. 7/30, Meda Para, Thalpitiya North.

3. Wathiyage Abepala  
Welhengoda, Devinuwara.

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

**Vs.**

1. Lindamulage Konsi Silva
2. Widanagamage Sisira Kumara De Mel

Both at –

No. 7/30, Meda Para, Thalpitiya North.

3. Kanattage Edwin Fernando
4. Kapurupattinilage Karunawathie

Both at –

No. 7/30, Meda Para, Thalpitiya North.

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

**AND NOW BETWEEN**

1. Lindamulage Konsi Silva
2. Widanagamage Sisira Kumara De Mel

Both at –

No. 7/30, Meda Para, Thalpitiya North.

3. Kanattage Edwin Fernando
4. Kapurupattinilage Karunawathie

Both at –

No. 7/30, Meda Para, Thalpitiya North.

**1<sup>st</sup> Party-Respondents-Appellants**

**Vs.**

1. K. David Fernando
2. Wathiyage Wimalawathie

Both at –

No. 7/30, Meda Para, Thalpitiya North.

3. Wathiyage Abepala  
Welhengoda, Devinuwara.

**2<sup>nd</sup> Party-Petitioners-Respondents**

**Before:** K.K. Wickremasinghe J.

Janak De Silva J.

**Counsel:**

H.P. Banagala for 1<sup>st</sup> Party Respondents-Appellants

Harendra Perera for the 2<sup>nd</sup> Party Petitioners-Respondents

**Written Submissions tendered on:**

1<sup>st</sup> Party Respondent-Respondent-Respondent on 25.09.2018

**Decided on:** 28.10.2019

**Janak De Silva J.**

This is an appeal against the order of the learned High Court Judge of the Western Province holden in Panadura dated 20.04.2005.

The Wadduwa Police instituted proceedings in the Magistrates Court of Panadura in the above styled application in terms of section 66(1)(a) of the Primary Courts Procedure Act (Act). The report stated that there was a dispute affecting a right of way between the 1<sup>st</sup> Party Respondents-Appellants (Appellants) and the 2<sup>nd</sup> Party Petitioners-Respondents (Respondents).

After due inquiry the learned Magistrate held that the Appellants were entitled to the right of way and made order accordingly. Aggrieved by the said order the Respondents moved in revision to the High Court of the Western Province holden in Panadura where it was set aside and order was made in favour of the Respondents. Hence this appeal.

When this matter was taken up for argument parties agreed to dispose it by way of written submissions.

The Respondents brought to the notice of Court that the Respondents had filed an action in the District Court of Panadura bearing no. 1672/L where a declaration of title to the land in dispute was sought in addition to orders preventing the Appellants from entering into the said land. The Appellants made across-claim for a right of way which is the same issue that was before both the Magistrate Court and High Court. The learned Additional District Judge dismissed both the action of the Respondents and the cross-claim of the Appellants.

On this basis the Respondents now submit that the Appellants cannot maintain the present appeal.

Section 69(2) of the Act enables the Primary Court Judge to make order declaring that any person specified therein shall be entitled to any such right in or respecting the land or in any part of the land as may be specified in the order until such person is deprived of such right by virtue of an order or decree of a competent court and prohibit all disturbance or interference with the exercise of such right by such party other than under the authority of an order or decree as aforesaid. In *Ramalingam v. Thangarajah* [(1982) 2 Sri.L.R. 693 at 699] Sharvananda J. (as he was then) stated 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).”** (emphasis added)

In *Kanagasabai v. Mylwaganam* (78 N.L.R. 280] Sharvananda J. (as he was then) held that the pendency of a civil suit in respect of the right in question is no bar to action being taken under section 62 of the Administration of Justice Law (analogous to section 66 of the Act). However, he also held (at page 283):

“Section 62 of the Administration of Justice Law confers special jurisdiction on a Magistrate to make orders to prevent a dispute affecting land escalating and causing a breach of the peace. The jurisdiction so conferred is a quasi-criminal jurisdiction. The primary object of the jurisdiction so conferred on the Magistrate is the prevention of a breach of the peace arising in respect of a dispute affecting land. The section enables the Magistrate temporarily to settle the dispute between the parties before the Court and maintain the status quo until the rights of the parties are decided by a competent civil Court.” (emphasis added)

Section 74(1) of the Act clarifies this position in stating:

“An order under this Part shall not affect or prejudice any right or interest in any land or part of a land which any person may be able to establish in a civil suit; and it shall be the duty of a Judge of a Primary Court who commences to hold an inquiry under this Part to explain the effect of these sections to the persons concerned in the dispute.”

The Act was intended to prevent any breach of peace arising as a result of any dispute affecting land. It does not in any way seek to preserve final orders made by both the Primary Court and a civil court on the rights of parties on the same issue.

The dispute as to the right of way claimed by the Appellants was put in issue in the civil action, District Court of Panadura case no. 1672/L, by way of cross-claim which was dismissed. The Appellants have not preferred any appeal against the said judgment. In any event, moment the cross-claim was dismissed by the District Court the alleged right of way claimed by the Appellants stands rejected by a competent civil court.

The Appellants are now seeking to resurrect the order made in their favour by the learned Magistrate on the right of way in order to overcome its rejection by a civil court. That is not permitted by law.

For the foregoing reasons, I see no reason to interfere with the order of the learned High Court Judge of the Western Province holden in Panadura dated 20.04.2005 which is now in any event overshadowed by the judgment in District Court of Panadura in case no. 1672/L. That judgment was delivered on 01.09.2014 but yet the Appellants chose to maintain this appeal which is a matter to be taken into consideration with regard to costs.

I hold that the Appellants cannot maintain this appeal and dismiss it with costs fixed at Rs. 50,000/=.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal