

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

In the matter of an appeal under Article 154 (G)  
of the Constitution of the Democratic Socialist  
Republic of Sri Lanka read with the provisions  
of the Act No. 19 of 1990

Court of Appeal Case No:  
**CA (PHC) 174/2014**  
HC Nuwara-Eliya Case No:  
**HC/NE/REV/ 30/2013**  
MC Walapane Case No: **51352**

Mahagamagedara Somarathna,  
Dampawala,  
Pannala,  
Keerthibandarapura.

**Respondent-Petitioner-Appellant**

-Vs-

Thennakoon Mudiyanseelage Rajanayaka,  
Dampawala,  
Pannala,  
Keerthibandarapura.

**Petitioner-Respondent-Respondent**

Amuwaththe Gedara Jayasinghe,  
Wewala, Pannala,  
Keerthibandarapura.

**Intervenient Respondent-  
Respondent-Respondent**

**Before :** A.L. Shiran Gooneratne J.

**&**

**Mahinda Samayawardhena J.**

**Counsel :** Harendra Perera for the Appellant.

Reshaal Serasinghe with Lasodha Siriwardena for the  
Respondent.

**Written Submissions:** By the Petitioner-Respondent-Respondent on  
24/01/2019

By the Respondent-Petitioner-Appellant on 27/09/2019

**Argued on :** 30/09/2019

**Judgment on :** 01/11/2019

**A.L. Shiran Gooneratne J.**

The Petitioner-Respondent-Respondent (referred to as the Respondent), instituted proceedings under Section 66(1) (b) of the Primary Courts Procedure Act No. 44 of 1979, (referred to as the Act) in the Magistrates Court of Walapane, against the Respondent-Petitioner-Appellant (referred to as the Appellant), claiming that the Appellant had obstructed his right of way over the property owned by the Appellant described as a, b and c in document marked P2. The learned Magistrate by order dated 11/10/2013, held that the Respondent has a right of way over the disputed land. The Appellant filed a revision application to set

aside the said order in the High Court of Nuwara-Eliya, where the learned High Court Judge by order dated 13/10/2014, dismissed the said application. The Appellant is now seeking to canvass the said order dated 13/10/2014.

The corpus to the disputed roadway claimed by the Respondent has been clearly identified as Lots a, b and c in document marked P2. In order to ascertain the prescriptive right of the Respondent, the learned Magistrate has considered document marked P3, in which the Grama Niladhari of the area has stated that the Respondent has used the disputed roadway to reach his land, which has been clearly identified. The learned Magistrate has drawn attention to witness evidence recorded by the investigating police officer marked P4 and P5, where it is stated that the Respondent had used the disputed roadway for well over 20 years. Witness statement marked P6, also confirms the use of the roadway by the Respondent.

Having taken into consideration the information, affidavits and documents filed by the respective parties and the facts of the case the learned Magistrate has correctly held that the question in issue need to be determined in terms of Section 69 of the Act, in order to decide the right of access to the land.

In *Ramalingam v. Thangarajaha*, (1982) 2 SLR 693, the Court held that,

*“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)."*

A right of way to be acquired on prescriptive rights were discussed in ***Thambapillai v. Nagamanipillai*** 52 NLR 225, where it was held that;

*"it is a pre-requisite to the acquisition of a right of way by prescription that a well-defined and identifiable course or track should have been adversely used by the owner of the dominant tenement for over ten years."*

In ***Kandaiah v. Seenitamby*** 17 NLR 29, it was held that;

*"the evidence to establish a prescriptive right of way must be precise and definite. It must relate to a define track and must not consist of proof of mere straying across open land at any point which is at the moment most convenient."*

The contention of the Respondent is that, as shown in documents marked IV5 and IV5 b, there are 3 alternate roads that can be used by the Respondent to reach his land. The learned Magistrate having considered the said documents has come to a correct finding that the said documents in no way proved that the Respondent did not use a roadway over the land of the Appellant or that the Appellant used an alternate road.

It is noted that a right of way could be acquired both on the grounds of prescription and on necessity. The affidavits filed of record, witness statements and the documents clearly establish that the Respondent filed the present action to acquire prescriptive rights to the roadway which gives access to his land and it is on that basis the learned Magistrate determined that the Respondent has acquired the right of way by prescriptive user.

In all the above circumstances, I do not find any irregularity to overturn the order of the learned High Court Judge and therefore, the said order is affirmed.

Application dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**Mahinda Samayawardhena, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**