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

In the matter of an appeal under Articles 154 (P) (6) and 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka and the Provisions of Act No. 19 of 1990.

Korale Gedara Upali Kumara Abeyrathne,
Kivulpane, Molagoda.

CA/ PHC No: 148/2018 — Petitioner
HC Kegalle Revision: 5398/ 18
MC Kegalle Case No: 14754/PC/ 18

Vs.

1. Kehelpannala Ralalage Upali Mahinda Kempitiya, Kivulpane, Molagoda.

2. Kehelpannala Ralalage Anura Tissa Kempitiya, No. 42D, Kivulpane, Molagoda.

Respondents

AND

1. Kehelpannala Ralalage Upali Mahinda Kempitiya, Kivulpane, Molagoda.

2. Kehelpannala Ralalage Anura Tissa Kempitiya, No. 42D, Kivulpane, Molagoda

Respondent-Petitioners

Vs.

Korale Gedara Upali Kumara Abeyrathne,
Kivulpane, Molagoda.

Petitioner-Respondent

AND NOW BETWEEN

1. Kehelpannala Ralalage Upali Mahinda Kempitiya, Kivulpane, Molagoda.

2. Kehelpannala Ralalage Anura Tissa Kempitiya, No. 42D, Kivulpane, Molagoda

Respondent-Petitioner-Appellants

Vs.

Korale Gedara Upali Kumara Abeyrathne, Kivulpane, Molagoda.

Petitioner-Respondent-Respondent

Before:	Damith Thotawatte, J. K.M.S. Dissanayake, J.
Counsel:	Ms. L.M.C.D. Bandara instructed by Ms. J.M.S.U.K. Jayalath for the 1st Respondent-Petitioner-Appellant. Kasun Chamara Munasinghe instructed by Navodh Hewage for the Petitioner-Respondent-Respondent.
Argued:	16-07-2025
Written submissions tendered on:	16-01-2024 By the 1st Respondent-Petitioner-Appellant. 28-11-2023, 05-08-2025 By the Petitioner-Respondent-Respondent
Judgement Delivered on:	09-09-2025

D. Thotawatte, J.

The Petitioner-Respondent-Respondent (hereinafter sometimes referred to as the "Respondent") privately filed information by an affidavit dated 8th March 2018 under

Section 66(1)(b) of the Primary Courts' Procedure Act No. 44 of 1979 (hereinafter sometimes referred to as the "PCPA"), in the Magistrate Court of Kegalle alleging that the Respondent-Petitioner-Appellants (hereinafter sometimes referred to as the "Appellants") had, on 4th and 5th March 2018, unlawfully obstructed a 15-foot-wide roadway running through the Appellant's lands "Dangolla" and "Thunmuduna" which the Respondent claims to have utilized for more than a decade to access his family's land known as "Kapukotuwa Hena", thereby precipitating the risk of a breach of the peace between the parties.

The Respondent has explicitly claimed prescriptive rights over this roadway and sought, inter alia, removal of the obstruction. The learned Magistrate issued notice on the 1st Appellant, with the 2nd Appellant subsequently intervening as a party to the case. Thereafter, all parties have filed affidavits and attachments supporting and opposing the respective positions.

The Appellants, although accepting that the Respondent's mother owns Lot No. 01 of "Kapukotuwa Hena", denied the existence of any such right as described by the Respondent and maintained that the roadway traversing "Dangolla" and "Thunmuduna" undivided lands belonging to the Appellants' family were intended solely for the use of family members. Appellants had further asserted that the Respondent's mother's property was accessible by an alternative roadway. The Appellants had also contended that there was no likelihood of a breach of the peace, as the police inquiring into a complaint by the Respondent had not filed information in court, reflecting the absence of an actual breach of the peace.

The learned Magistrate, acting as the Primary Court Judge, after the conclusion of the inquiry, had delivered the Order on 24th July 2018, granting reliefs prayed by the Respondent, declaring that the Petitioner (Respondent in the instance case) is entitled to the right of way for the time being and ordering the Appellants to remove all obstacles.

Being dissatisfied with the order of the learned Magistrate of Kegalle, the Appellants invoked the revisionary jurisdiction of the High Court of Kegalle by petition dated 30th July 2018. On 09th August 2018, the High Court dismissed their application in limine, holding that no exceptional circumstances existed to justify intervention. Aggrieved by the said order of the Learned High Court Judge of Kegalle, the Appellants had preferred the instant appeal challenging both the Primary Court and High Court orders to the Court of Appeal.

The main grounds upon which the Appellants preferred the revision application to the High Court of Kegalle are as follows:

1. Jurisdictional Error
   Whether the learned Primary Court Judge acted within the ambit of Section 66(1)(b) of the Primary Courts' Procedure Act, No. 44 of 1979, in entertaining the Respondent's private information and proceeding to make orders in the absence of a police report confirming a likelihood of breach of the peace.

2. Absence of a Proper Prayer
   The learned Judges of the Primary Court and the High Court erred in law in granting relief not prayed for by the Respondent, who had merely sought removal of the obstruction, without claiming any right of way or a right in the nature of servitude under Section 69 of the said Act.

3. Lack of Locus Standi
   The Respondent in the Primary Court had no locus standi to maintain the application, as the alleged dominant tenement was owned by his mother, and he neither claimed nor instituted proceedings as her representative.

4. Failure to Consider Evidence and Objections
   The learned Judges failed to properly evaluate the preliminary objections, affidavits, and submissions filed by the Appellants, disregarded the document marked "X", and failed to address the position relating to the alternative access.

The Appellant has based his Appeal to the Court of Appeal on substantially the same grounds as above together with the additional ground that the learned High Court Judge erred in failing to appreciate that the cumulative effect of the errors (as perceived by the Appellant) listed in paragraph 12 of the petition submitted to the High Court, which constituted exceptional circumstances warranting the exercise of revisionary jurisdiction.

Jurisdictional Error

The Appellants contend that the police, having investigated, did not file information and had observed no obstruction, which would indicate there was no likelihood of a breach of the peace, and as such, the learned Magistrate did not have jurisdiction to entertain the respondent's application. However, jurisprudence recognises that the jurisdiction of the

Primary Court is not ousted by police inaction. In ***Velupillai and Others v. Sivanathan,***[1]it was observed that when private information is filed without a police report, the Magistrate should proceed cautiously, but nevertheless has jurisdiction. Thus, the absence of a police report does not negate jurisdiction, though it heightens the duty of scrutiny. However, the "heightened duty of scrutiny" in the observation appears to be referable to **section 62 of the Administration of Justice Law**, where the Magistrate's jurisdiction depended on his own satisfaction that a dispute was likely to cause a breach of the peace.

His Lordship Justice Samayawardana traced the statutory evolution in ***Jayasinghe and Others*** **vs.** ***Loku Bandara.***[2] Under Section 62 of the Administration of Justice Law No.44 of 1973, which is comparable to Section 66 of the PCPA, Jurisdiction was conferred only if the Magistrate himself had "reason to believe" a breach of the peace was likely.

> Inquiries into disputes affecting lands.
>
> 62 (1) Whenever a Magistrate, on information furnished by any police officer or otherwise, **has reason to believe that the existence of a dispute affecting any land** situated within his jurisdiction is likely to cause a breach of the peace, he may issue a notice –
>
> (a) fixing a date for the holding of an inquiry into the dispute; and
>
> (b) requiring every person concerned in the dispute to attend at such inquiry and to furnish to the court, on or before the date so fixed, a written statement setting out his claim in respect of actual possession of the land or the part in dispute and in respect of any right which is the subject of the dispute.
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> (emphasis is mine)

Without this belief, jurisdiction did not arise. However, in subsection (2) of Section 66 of the PCPA (which replaced section 62 of the Administration of Justice Law), expressly states that once information is filed, "the Primary Court shall have and is hereby vested

[1](1993) 1 SLR 123
[2][2019] 2 SLR 202/ CA PHC-76-2018

with jurisdiction to inquire into, and make a determination or order…." The Key difference under the present law is that whoever files the information, the Magistrate is automatically vested with jurisdiction to inquire into and determine the matter; there is no requirement for the Magistrate to independently assess whether a breach of the peace is threatened.

Further, in *Jayasinghe and Others* vs. *Loku Bandara,*[3]His Lordship Justice Samayawardana, addressing the appellant's preliminary objection on jurisdiction, has stated:

"Breach of the peace does not mean fisticuffs, grievous hurt or attempted murder. It is sufficient if there is a present fear that there will be a breach of the peace stemming from the dispute unless the Court takes control of the matter".

In *Ananda Sarath Paranagama* V *Dhammadhinna Sarath Paranagama and others,*[4] the Court also reiterated Bonser C.J.'s dictum in *Perera* v. *Gunathilake*[5], stressing that Courts must discourage the resort to force in the assertion of civil rights, since even minor quarrels can escalate to serious violence:

> "In a country like this, any attempt of parties to use force in the maintenance of their rights should be promptly discouraged. Slight brawls readily blossom into riots with grievous hurt and murder as the fruits. It is, therefore, all the more necessary that Courts should be strict in discountenancing all attempts to use force in the assertion of such civil rights."

Considering the facts and circumstances of this case, I am satisfied that there existed a real likelihood of a breach of the peace at the time the Magistrate issued summons on the appellant pursuant to the first information filed by the Respondent.

Absence of a Proper Prayer

It is the position of the Appellant that the Respondent, in his prayer in the information submitted to the Magistrate's Court, had not expressly requested a declaration that he is entitled to the specific right; the learned Magistrate could not have made an order stating that the Respondent is entitled to the right of way.

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[3]*Supra*
[4]CA PHC APN 117/2013. C.A.M 07.08.2014
[5](1900) 4 NLR 181

The Appellants submit that, in the absence of a prayer under Section 69(1) of the PCPA, the Primary Court lacked competence to order the removal of obstructions under Section 69(2). Reliance was placed on the observation of Her Ladyship Madawala, J. In ***H.A. Prasanji Thusitha Kumara Dias & N.L.D.G. Uthika Dias vs Hettiarachchige Dias & Jasinthu Hewage Kalyanawathie Dias,***[6]where the Magistrate erred in ordering restoration of possession when such relief was not sought. In support of this position, the Appellant has further cited ***Surangi*** vs ***Rodrigo***,[7] a divorce case. However, in "Surangi", the basis was that Section 40(e) of the Civil Procedure Code requires the plaint to contain a demand for the relief claimed.

While the general rule is that courts cannot grant relief outside the prayer, Sri Lankan jurisprudence does recognise limited exceptions, particularly where:

1. Incidental or consequential relief is necessary to give full effect to the main relief sought.
2. Equity and justice demand intervention, even if the precise wording of the prayer does not cover it.

However, this proposition has since been revisited. In ***Eshan Abeywickrama Danapala v. Kalupahana Mesthrige Ariyasena and Another,***[8]His Lordship Justice Janak de Silva clarified that, in applications under Section 66(1)(b) of the PCPA, it is not incumbent upon the petitioner to specifically pray for restoration of possession. The statutory duty imposed on the Magistrate includes determining and declaring the party entitled to possession, irrespective of whether the relief is expressly prayed for.

Commenting on the decision in ***Dias and another*** v. ***Dias and another***[9], His Lordship Justice Janak de Silva has stated;

> *"…with the greatest respect to their lordships in Dias and another v. Dias and another (supra), I hold that in a private information filed under Section 66(1)(b) of the Act it is not incumbent on the petitioner to specifically pray*

[6]*H.A. Prasanji Thusitha Kumara Dias & N.L.D.G. Vthika Dias v. Hettiarachchige Dias &Jasinthu Hewage Kalyanawathie Dias*, (Short citation - ***Dias and another*** v. ***Dias and another***) CA Rev. Appl. No. 63/2016, C.A.M. 12.08.2016
[7][2003] 3 SLR 035
[8]CA PHC 215/2015, C.A.M 31.01.2020
[9]*supra*

for restoration to possession. That is a relief that the learned Primary Court Judge is under a statutory duty to consider and grant after due inquiry.".

In keeping with the reasoning that goes back to ***Ramalingam*** v. ***Thangarajah***[10] and ***Kanagasabai*** v. ***Mylvaganam***[11], Her Ladyship Murdu N.B. Fernando, PC. J (as she was then) stated in ***R.Malkanthi Silva*** v. ***L.G.R.N. Perera***[12]:

> "Thus, I have no hesitation in holding that the scheme embodied in Part VII of the Primary Courts' Procedure Act is geared to achieve the object of prevention of a breach of the peace. The action taken by a Magistrate is purely preventive in nature. The orders made by the Magistrate is a stop-gap step and provisional, pending final adjudication before a competent civil court with regard to the rights of the parties."

Confirming that the function of the Primary Court under Part VII of the PCPA is essentially preventive and not dependent upon technical pleading. Thus, the absence of a specific prayer does not, in my view, vitiate the jurisdiction or competence of the Primary Court under Section 66 of the PCPA to determine possession or a right.

Lack of Locus Standi

In the application to the High Court of Kegalle, the Appellants had challenged the Lack of Locus Standi of the Respondent on the grounds that the Respondent, being the owner of the dominant tenement, is a prerequisite to initiate proceedings in an action for right of way. In the written submissions filed by the Appellant dated 16th January 2014, the Appellant is relying on and quoting from ***Velupillai*** v. ***Subasinghe and another***[13] has submitted that "...It is submitted that a servitude cannot be granted by any other than the owner of a servient tenement, nor acquired by any other than by him who owns the adjacent tenement... "

Velupillai v. ***Subasinghe and another*** is a civil case under principles of Roman-Dutch law as applied in Sri Lanka, specifically dealing with praedial servitudes and the right of a lessee to claim or acquire a servitude by prescription or necessity.

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[10][1982] 2 S L R 693
[11]78 NLR 280
[12]SC/APPEAL 181/2010 S.C.M 23.07.2024
[13](1956) 58 NLR 385

The jurisdiction established by Section 66 of the PCPA is preventive and regulatory rather than adjudicatory in the sense of finally determining ownership. The Court's role is to ensure peace and order in society while leaving substantive civil rights to be determined by competent civil courts. By contrast, praedial servitudes are substantive real rights in property law, attached to a dominant tenement and burdening a servient tenement. Section 66 of the PCPA and praedial servitudes under Roman-Dutch law are grounded in different legal regimes.

In *Nimalasena Jayakody* v. *Mallikaratne and Others*[14], it was held that the relevant inquiry is not one of servitude as recognised under Roman-Dutch property law, but with regard to whether there exists a dispute affecting land as defined in Section 75 of the PCPA, which includes disputes over rights "in the nature of a servitude." As such, the notion that there exists a requirement to establish ownership or prescriptive title is misconceived.

This challenge by the Appellant appears to arise from a persistent effort to merge concepts belonging to two distinct branches of law, which would undermine the purpose for which the PCPA was enacted. As such, the contention of the Appellant that the Respondent lacks "Locus Standi" is unattainable.

Failure to Consider Evidence and Objections

The allegation that the learned Judges failed to properly evaluate preliminary objections and affidavits is unfounded. It is evident that both the Primary Court and the High Court correctly considered the pleadings and affidavits in light of the preventive purpose of Part VII of the PCPA. The High Court's duty in considering the revision application was limited to examining the legality of the Primary Court's order, not to rehear or re-evaluate evidence in detail.[15]

The contention that such evidence was disregarded cannot stand in view of the recorded reasoning of both Courts. The position of the Appellants that the Courts erred in disregarding document "X" is devoid of merit, as it was belatedly introduced at the stage of final submissions without being mentioned in the affidavits. The Primary Court rightly rejected it as inadmissible, as allowing its inclusion would have prejudiced the Respondent.

[14] C.A. (PHC) 152/2007, C.A.M 26.08.2014

[15] *Nandawathie and another* v. *Mahindasena*[2009] 2 SLR 218

The Appellant has further argued that the learned Magistrate and the learned High Court Judge have not considered the existence of an alternate road access to the Respondent's mother's land. However, such arguments pertain to substantive civil rights, such as when claiming a servitude of necessity and thus fall outside the preventive and provisional scope of Section 74 of the PCPA. Questions of alternative access or servitude of necessity are for District Court adjudication, not for Primary Court proceedings.

In *R. Malkanthi Silva* v*. Perera (deceased) and others*,[16] the Appellant likewise argued that the Respondent had other roadways. The Supreme Court, while not expressly ruling on the necessity issue, upheld recognition of the Respondent's right of way, implicitly affirming that the existence of alternative access does not defeat such entitlement.

Exceptional Circumstances

In *Aysha Hameed and others* Vs*. Mohomed Mohideen Shaul Hameed and others*[17]*,* His Lordship Prasantha De Silva, J. has stated:

> "It is trite law that revision is an extraordinary jurisdiction vested in Appellate Courts, which can be exercised under exceptional circumstances, if no other remedy is available. Since revision is a discretionary remedy, it will not be available unless the application discloses circumstances which shock the conscience of Court.
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> It has been held in the case *Rustom* Vs *Hapangama* [1978-1979 2 SLR 225] that court can intervene by way of a revision even where right of appeal is available but the revisionary jurisdiction can only be invoked under exceptional circumstances. … … … and as to what such exceptional circumstances are is dependent on the facts of each case."

In the instant case, the Appellant is relying upon the cumulative effect of the perceived defects in the orders of the subordinate courts. The Appellant has been unable to establish any Jurisdictional Error, Illegality, miscarriage of justice, unreasonableness, abuse of process or a Violation of natural justice; as such, the learned High Court Judge was correct in ruling that the Appellant had failed to establish the required exceptional circumstances justifying the intervention of the High Court.

In my view, the learned Magistrate and the learned High Court Judge are justified in their conclusions, and thus, I do not see merit in any of the grounds urged by the learned

[16]SC Appeal 181/2010, S.C.M. 23.07.2024
[17]CPA 13/2021 C.A.M 02.03.2023

Counsel for the Appellant to interfere with the decision of the learned Magistrate of Kegalle or the learned High Court Judge of Kegalle. I accordingly affirm the order of the learned Magistrate of Kegalle dated 24th July 2018 and the judgment of the learned High Court Judge of Kegalle dated 09th August 2018 and dismiss the appeal with costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal