

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

CA (PHC) 74/2013

PHC Puttalam HCR 19/2009

Primary Court of Puttalam Case No.
31907/09/P

In the matter of an Appeal under Article 154P (6) against judgment delivered in HCR 19/2009; Magistrate Court Case No. 31907/09/P in the Magistrate Court of Puttalam.

In the Magistrates Court

1. Abuthahir Mohamed Nuwaize,
2. Mohamed Ismail Suresh,
Both of at No. 154/1, 5th Cross Street,
Puttalam.

Party of 1st Part

Vs.

1. Puttalam Salt Producers' Welfare Society Limited, of Mannar Road, Puttalam.
2. A.L. Baihathy (Chairman)
3. A.M. Barakath (Vice Chairman)
4. A.R.A.Latheef (Secretary)
5. A. Faaiz (Assistant Secretary)
6. A.M. Razulsha (Treasurer)
7. B.M. Nizam (Manager)
8. M.N.M. Shafin,
9. M.W.M. Aazik,
10. A.N.S. Nizar,
11. A.N.A. Simaak,
12. A.N.M.Numaan,

13. N.A.C. Saleem,
14. M.T. Noorul Amin,
15. K.I. Illiyas,
16. M.H.M. Amrin,
17. A.B. Afrik,
18. B.I.M. Jiffry,
19. I.N.H.M. Ajmal Roshan,
20. B.M. Uvais, and
21. A.M. Haleem, the 2nd to 21st named persons being Committee members and members of the 1st named Puttalam Salt Producers Welfare Society Limited, all of Mannar Road, Puttalam.

Parties of the 2nd Part

IN THE HIGH COURT

1. Abuthahir Mohamed Nuwaize,
2. Mohamed Ismail Suresh,
Both of at No. 154/1, 5th Cross Street,
Puttalam.

Party of 1st Part- Petitioners

Vs.

1. Puttalam Salt Producers' Welfare Society Limited, of Mannar Road, Puttalam.
2. A.L. Baihathy (Chairman)
3. A.M. Barakath (Vice Chairman)
4. A.R.A. Latheef (Secretary)
5. A. Faaiz (Assistant Secretary)

6. A.M. Razulsha (Treasurer)
7. B.M. Nizam (Manager)
8. M.N.M. Shafin,
9. M.W.M. Aazik,
10. A.N.S. Nizar,
11. A.N.A. Simaak,
12. A.N.M. Numaan,
13. N.A.C. Saleem,
14. M.T. Noorul Amin,
15. K.I. Illiyas,
16. M.H.M. Amrin,
17. A.B. Afrik,
18. B.I.M. Jiffry,
19. I.N.H.M. Ajmal Roshan,
20. B.M. Uvais, and
21. A.M. Haleem, the 2nd to 21st named persons being Committee members and members of the 1st named Puttalam Salt Producers Welfare Society Limited, all of Mannar Road, Puttalam.

Parties of the 2nd Part- Respondents

AND NOW, IN THE COURT OF APPEAL

1. Abuthahir Mohamed Nuwaize,
2. Mohamed Ismail Suresh,
Both of at No. 154/1, 5th Cross Street,
Puttalam.

Party of 1st Part- Petitioner-Appellants

Vs.

1. Puttalam Salt Producers' Welfare Society Limited, of Mannar Road, Puttalam.
2. A.L. Baihathy (Chairman)
- 2a. A.N.A.A. Ali Simak (President)
3. A.M. Barakath (Vice Chairman)
- 3a. B.H.P. Hazari (Vice President)
4. A.R.A. Latheef (Secretary)
- 4a. A.H. Sajeen (Secretary)
5. A. Faaiz (Assistant Secretary)
- 5a. A.A.R.M. Farsan (Assistant Secretary)
6. A.M. Razulsha (Treasurer)
- 6a. A.R.M. Aslam (Treasure)
7. M.N.M. Shafin,
8. A.N.M. Numaan,
9. A.C. Batcha Marikkar, (New Committee member)
10. A.H.M. Haziell, (New Committee member)
11. A.P. Samzeer, (New Committee member)
12. B.H.P Hazri (New Committee member)

of Puttalam Salt Producers Welfare Society Limited, all of Mannar Road, Puttalam.

**Parties of the 2nd Part- Respondent-
Respondent- Respondents**

Before: **Damith Thotawatte, J.**
K.M.S. Dissanayake, J.

Counsels: Dr. Sunil Coorey with Sudharshani Coorey and Neminda Kariyawasam for the Appellants.
Sumedha Mahawanniarachchi with N. Balasooriya for the Respondents.

Argued: 20.11.2025

Written submissions tendered on: 30.06.2020 by Parties of the 2nd Part Respondent-Respondent-Respondents.
08.11.2018 by Party of the 1st Part – Petitioner – Appellants.

Judgment Delivered: 27.02.2026

Thotawatte, J.

Introduction

This appeal is directed against the judgment dated 21 June 2013 pronounced in favour of the Parties of the 2nd Part Respondent-Respondent-Respondents (hereinafter sometimes referred to collectively as the “Respondents”) by the learned Judge of the Provincial High Court of the North Western Province holden in Puttalam, exercising revisionary jurisdiction, whereby the learned High Court Judge affirmed the order dated 25 August 2009 made by the learned Magistrate of the Magistrate’s Court of Puttalam, acting as the Primary Court Judge under Part VII of the Primary Courts’ Procedure Act, No. 44 of 1979 (hereinafter sometimes referred to as the “PCP Act”), refusing to grant relief to the Party of the 1st Part Petitioner- Appellants on the basis that they have failed to prove the existence of a right in the nature of a servitude.

Relationship between the parties

The Appellants are private salt-pan owners/operators in Puttalam who were engaged in the manufacture of salt and who claimed access to brine water for that purpose. The Respondents consist principally of the Puttalam Salt Producers' Welfare Society Limited, a society registered under the Societies Ordinance, together with its office-bearers and committee members. The Society had been granted an annual permit by the State (through the Divisional Secretary) to obtain and distribute brine water from State salterns over a large extent of land, subject to conditions regulating the maintenance and management of the brine water channels.

The relationship between the parties was therefore not one of co-ownership or shared proprietary interest in land, but rather a functional and regulatory relationship arising from the Society's role as a permit-holder and distributor of brine water and the Petitioners' position as recipients or users of that water, whether as members, former members, or non-members of the Society.

Background

The dispute that culminated in the instant case arose when the Petitioners alleging that the Respondents, acting through the Society, had obstructed or closed a brine water channel supplying water to the Petitioners' salt pans, thereby interfering with their salt-manufacturing operations, instituted proceedings in the Primary Court of Puttalam by filing information under section 66(1)(b).

Being dissatisfied with the refusal of the learned Magistrate to grant relief, the Appellants invoked the revisionary jurisdiction of the Provincial High Court. However, by order dated 21.06.2013 the learned High Court Judge affirmed the Order of the learned Magistrate and dismissed the application of the Appellant.

Being aggrieved by the said Order, the Appellants has preferred this appeal to this Court seeking to set aside the Order of the leaned High Court Judge dated 21.06.2013 and the Order of the learned Magistrate dated 25.08.2009.

Issue for determination

The appeal presents for determination a single, threshold question of jurisdiction whether the dispute brought before the Magistrate's Court under section 66(1)(b) of the Primary Courts' Procedure Act, No. 44 of 1979, fell within the statutory expression "a dispute affecting land" as defined in section 75 of the Act. More specifically, the issue is whether a complaint based on the obstruction of water supplied by a third party, under a permit or contractual arrangement that is not attached to the land itself but relates only to the use made of the land, can be regarded as a dispute affecting land within the meaning of sections 66 and 75 of the Act.

Statutory Framework

Section 66 of the Primary Courts' Procedure Act confers a special and preventive jurisdiction, exercisable only where the pre-condition of "a dispute affecting land" is satisfied.

Section 75, which defines that expression, provides that:

"dispute affecting land" includes any dispute as to the right to the possession of any land or part of a land and the buildings thereon or the boundaries thereof or as to the right to cultivate any land or part of a land, or as to the right to the crops or produce of any land, or part of a land, or as to any right in the nature of a servitude affecting the land..."

The definition is broad, but it is not unlimited; it applies only where rights in or over land are involved.

The scope of this jurisdiction was clearly explained in *Velupillai and Others v. Sivanathan*¹, where the Court of Appeal held that proceedings under section 66 are preventive and provisional; that the Magistrate is not to adjudicate title or complex proprietary rights; and that not every dispute connected with agricultural or economic activity amounts to a "dispute affecting land". The Court further held that a complaint of interference with cultivation, without a dispute as to possession or the right to cultivate within the meaning of section 75, does not attract the jurisdiction of the Primary Court.

¹ (1993) 1 Sri LR 123

Analysis

When the substance of the Appellants' complaint is examined, it becomes evident that:

- the land itself was not the subject of competing claims to possession;
- no dispute was raised as to boundaries, servitudes, access, or title;
- the grievance centred on the continuation of water supply through a channel, the source of which was State property, and the distribution of which was governed by administrative permits and contractual arrangements.

Even if an obligation to supply water existed, it was not a right attached to the land, but a personal or regulatory entitlement dependent on permits and compliance with public law. The Appellants attempt to characterise the dispute as one "affecting land" by reference to the use of the land for manufacturing of sault, cannot be sustained.

The jurisprudence draws a clear distinction between:

- disputes **about land itself**, and
- disputes **arising out of activities carried on upon land**.

If every interruption of utilities, inputs, or facilities used for commercial activity on land were to be treated as a land dispute, the carefully confined preventive jurisdiction under section 66 would be impermissibly expanded into a general forum for commercial and regulatory disputes.

Conclusion

For the foregoing reasons, we hold that the dispute before the learned Magistrate did not constitute *a dispute affecting land* within the meaning of sections 66 and 75 of the Primary Courts' Procedure Act, and that any remedies available lay outside the preventive jurisdiction of the Primary Court. The learned Magistrate therefore correctly declined jurisdiction, and the Provincial High Court committed no error of law in affirming that dismissal.

The judgment of the Provincial High Court dated 21.06.2013 and the order of the Magistrate's Court of Puttalam dated 25.08.2009 are affirmed. The appeal is dismissed subject to a cost fixed at Rs.30,000/-.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal