

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

In the matter of an application for Revision under Article 138 of the Constitution for revision of Judgment delivered in WP/HCCA/GM/225/2024 (Rev) in the Provincial High Court of Western Province (Holden in Gampaha) dated 22.07.2025.

**CA CPA: 70/2025**

Provincial High Court of Western Province Application No. WP/HCCA/GM/225/2024 (Rev)

Magistrate's Court of Gampaha Case No. 96733/20/S

**IN THE MAGISTRATES COURT**

Officer in Charge,  
Police Station,  
Gampaha.

**Complainant**

**Vs.**

1. Mallika Arachchilage Erangi Harshani Perera,  
No. 149E, Nedagamuwa Road, Opatha,  
Kotugoda.

**Party of the 1<sup>st</sup> Part**

2. Jayasekera Hettiarachchige Dayananda,  
No. 292, Nedagamuwa West, Kotugoda.

**Intervenient Party of the Party of the 1<sup>st</sup> Part**

1. Hettiarachchilage Padmakanthi,  
No. 292/A, Nedagamuwa, Kotugoda.
2. Pahalawatte Gedara Sisira Kumara Wijesekara,  
No. 292/A, Nedagamuwa, Kotugoda.

**Party of the 2<sup>nd</sup> Part**

**IN THE HIGH COURT in a Revision Application**

1. Hettiarachchilage Padmakanthi,  
No. 292/A, Nedagamuwa, Kotugoda.

2. Pahalawatte Gedara Sisira Kumara Wijesekara,  
No. 292/A, Nedagamuwa, Kotugoda.

**Party of the 2<sup>nd</sup> Part – Petitioners**

**Vs.**

Officer in Charge,  
Police Station,  
Gampaha.

**Complainant- Respondent**

1. Mallika Arachchilage Erangi Harshani Perera,  
No. 149E, Nedagamuwa Road, Opatha,  
Kotugoda.

**Party of the 1<sup>st</sup> Part- Respondent**

2. Jayasekera Hettiarachchige Dayananda,  
No. 292, Nedagamuwa West, Kotugoda.

**Intervenient Party of the Party of the 1<sup>st</sup> Part –  
Respondent**

**AND NOW BETWEEN IN THE COURT OF  
APPEAL**

1. Hettiarachchilage Padmakanthi,  
No. 292/A, Nedagamuwa, Kotugoda.
2. Pahalawatte Gedara Sisira Kumara Wijesekara,  
No. 292/A, Nedagamuwa, Kotugoda; *more  
correctly, Pahalawatte Gedara Sisira Kumara  
Weerasekara.*

**Party of the 2<sup>nd</sup> Part – Petitioner- Petitioners**

**Vs.**

Officer in Charge,  
Police Station,  
Gampaha.

**Complainant – Respondent- Respondent**

1. Mallika Arachchilage Erangi Harshani Perera,  
No. 149E, Nedagamuwa Road, Opatha,  
Kotugoda.

**Party of the 1<sup>st</sup> Part – Respondent-  
Respondent**

2. Jayasekara Hettiarachchige Dayananda,  
No. 292, Nedagamuwa West, Kotugoda.

**Interventient Party of the Party of the 1<sup>st</sup> Part –  
Respondent-Respondent**

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

Counsels: Dr. Sunil Cooray with Sudharshani Cooray and Neminda  
Kariyawasam for the Party of 2<sup>nd</sup> Part-Petitioner-Petitioners.  
  
P.K.C. Chathura Dilhan with Sugani Witharanage for the Party of  
the 1<sup>st</sup> Part-Respondent-Respondent.

Inquiry: 19.09.2025

Written submissions  
tendered on: 21.10.2025 and 17.12.2025 by Party of 2<sup>nd</sup> Part–Petitioner–  
Petitioners.  
  
23.10.2025 and 17.12.2025 by Party of the 1<sup>st</sup> Part–Respondent–  
Respondent.

Order  
Delivered: 19.12.2025

**Thotawatte, J.**

This Revision application is directed against the order dated 22.07.2025 pronounced in favour of the Party of the 1<sup>st</sup> Part-Respondent-Respondent (hereinafter sometimes referred to as the “1<sup>st</sup> Respondent”) by the learned High Court Judge of the Provincial High Court of Western Province holden at Gampaha, exercising its revisionary jurisdiction under Article 154P(3)(b) of the Constitution, whereby the said Court had dismissed the revision application of the Party of the 2<sup>nd</sup> Part-Petitioner-Petitioners (hereinafter sometimes referred to as the “Petitioners”) filed against the order dated 30.10.2024 made by the learned additional Magistrate of the Magistrate’s Court of Gampaha, acting as the Primary Court Judge under the provisions of the Primary Court’s Procedure Act, No. 44 of 1979 (hereinafter sometimes referred to as the “PCP Act”).

This matter emanates from proceedings instituted pursuant to information filed under Section 66(1)(a) of the PCP Act by the Officer-in-Charge of the Police Station Gampaha, reporting that the construction of a boundary wall by the Petitioners was obstructing a right of way in the nature of a servitude claimed by the 1<sup>st</sup> Respondent, thereby giving rise to an imminent or threatened breach of the peace.

Upon inquiry, the learned Magistrate delivering her order on 30.10.2024 determined in terms of Section 69 of the PCP Act that, for the time being, the 1<sup>st</sup> Respondent was entitled to exercise a right of way measuring three feet in width over and across the land of the Petitioners.

Being dissatisfied with the order of the learned Magistrate dated 30.10.2024, the Petitioners invoked the revisionary jurisdiction of the Provincial High Court under Article 154P(3)(b) of the Constitution and the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, seeking to have the Primary Court’s Order set aside. After considering a preliminary objection raised by the Respondents as to the maintainability of the revision application, the learned Judge of the High Court, by order dated 22.07.2025, dismissed the revision application, prompting the aggrieved Petitioners to file this instant revision application before this Court.

This application in revision was supported by learned counsel for the Petitioners, who expressly reserved the right to move for a stay order restraining the execution of the writ issued by the Magistrate’s Court of Gampaha, should circumstances so warrant. Formal notice was issued on 07.08.2025. As the Respondents declined to provide an undertaking to preserve the status quo pending the determination of this application, the matter was

fixed for inquiry on the request for interim relief. Following submissions advanced by both parties on 19.09.2025, the Court reserved its order on the application for a stay.

In the course of considering the Petitioners' request for interim relief, it became apparent that the present proceedings amount to what is commonly described as a "revision on revision" or a "revision of a revision." This Court has already addressed that issue in its Judgement dated 31.10.2025 in *Wanni Arachchi Kankanamge Siriyalatha and another v. Kospalage Don Kapila Lankaratne*<sup>1</sup>, wherein it was held that a revision application does not lie to the Court of Appeal against a determination of a Provincial High Court made in the exercise of its revisionary jurisdiction under Article 154P(3)(b) of the Constitution, as such a course runs contrary to the constitutional scheme of concurrent jurisdiction.

As the above judgement was delivered subsequent to arguments made in this case, and as such, parties were afforded an opportunity, if necessary, to submit written submissions on this jurisdictional issue prior to the pronouncement of the order.

The aforesaid contention that the Court of Appeal lacks jurisdiction to entertain a revision application against a determination of a Provincial High Court made in the exercise of its own revisionary jurisdiction rests on two interlinked propositions. First, the Thirteenth Amendment introduced a regime of concurrent appellate and revisionary jurisdiction, vesting appellate and revisionary jurisdiction both in the Court of Appeal and the Provincial High Courts. Second, where such concurrency exists, neither court may assume superiority over the other.

Following the 13<sup>th</sup> Amendment, the Appellate and Revisionary jurisdiction over orders of Magistrates' and Primary Courts was no longer vested exclusively in the Court of Appeal. That jurisdiction was extended to Provincial High Courts, thereby creating a parallel and coordinate forum through which parties may seek revisionary relief. Thus, both courts now operate side-by-side within the same jurisdictional field.

When the Constitution or a statute confers the same appellate and revisionary authority on more than one court over the same subject matter, without subordinating one to the other, those courts exercise concurrent jurisdiction. Under such a regime, a litigant may invoke either forum independently, as each is equally competent to hear and determine the issue.

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<sup>1</sup> CA CPA 0073-2025 CAM 31.10.2025

Article 154P(3)(b), vests Provincial High Courts with appellate and revisionary powers over orders of Magistrates' and Primary Courts, in terms that mirror the corresponding authority of the Court of Appeal under Article 138. This design establishes two co-equal and parallel avenues of review, neither of which is intended to function as superior to the other within that jurisdictional sphere.

This constitutional design provides that, where concurrent authority exists, no hierarchy may be asserted between the courts exercising it. Therefore, the Court of Appeal cannot revisit or revise a revisionary determination of a Provincial High Court, as doing so would improperly elevate one coordinate court over another and contradict the legislative and constitutional intent underpinning concurrency. Allowing such intervention would undermine the very purpose for which it was introduced.

In the recent Judgement, *W.T.S. Nilantha Fernando v. P.M.S. Nilanthi Perera*<sup>2</sup> His Lordship Justice Mahinda Samayawardhena addressing the establishment of Provincial High Courts has stated:

*“These Provincial High Courts were established as part of the scheme of devolution of power under the 13<sup>th</sup> Amendment to the Constitution, with the objective of decentralising certain judicial functions, enhancing access to justice, and alleviating delays in the administration of justice”.*

His Lordship Justice Mahinda Samayawardhena had further, quoted with approval the following extract from *Sharif and Others vs. Wickramasuriya and Others*<sup>3</sup>;

*“I am of the view that the jurisdiction enjoyed by the Court of Appeal through Article 138 remains intact. Through Article 138 one has the liberty to invoke the jurisdiction of the Court of Appeal or to resort to a Provincial High Court in terms of Article 154P(3)(b). If one chooses to go to the High Court, an appeal would lie to the Supreme Court with leave first obtained from the High Court (Section 9 of the Act 19 of 1990). If one invokes the jurisdiction of the Court of Appeal under Article 138 an appeal would lie from any final order or judgement of the Court of Appeal to the Supreme Court with leave of Court of Appeal first obtained (Article 128(1) of the Constitution). It is thus clear that both courts enjoy concurrent jurisdiction on matters referred to in Article 154P(3)(b). The jurisdiction enjoyed by the Court of*

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<sup>2</sup> SC Appeal No. 65-2025 SCM 10.10.2025

<sup>3</sup> [2010] 1 Sri LR 255 at 265

*Appeal had not been disturbed by Articles of the Constitution or by the Acts of Parliament.”*

This unequivocally affirms that Article 154P(3)(b) confers on the Provincial High Courts a jurisdiction already exercised by the Court of Appeal, thereby vesting both forums with concurrent authority.

In “Nilantha Fernando<sup>4</sup>” It is further stated that;

*“In this context, it would be legally impermissible and institutionally unsound for the Court of Appeal, in pari materia, to sit in appeal over judgments and orders pronounced by a Provincial High Court in the exercise of its appellate or revisionary jurisdiction. A party cannot pursue successive appeals before two courts of coordinate jurisdiction in respect of the same matter.”*

While no constitutional or statutory provision has displaced the Court of Appeal’s traditional appellate and revisionary jurisdiction, *Sharif and Others*<sup>5</sup> clarifies that these powers now operate within a concurrent structure introduced by the 13<sup>th</sup> Amendment. That amendment did not diminish the Court of Appeal’s authority but added an equivalent Provincial High Court forum, creating concurrency. Consequently, once the Provincial High Court has exercised its appellate or revisionary jurisdiction, the Court of Appeal is precluded from revisiting that determination, as doing so would subordinate the Provincial High Court’s jurisdiction and create a hierarchy that the constitutional architecture does not sanction.

Section 9 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 reinforces this concurrent jurisdictional design by directing that appeals from Provincial High Courts lie directly to the Supreme Court. In effect, where a Provincial High Court has exercised the appellate jurisdiction vested in it under Article 154P(3)(b) of the Constitution, any final judgment, decree, or order of that Court is appealable only to the Supreme Court, subject to leave first being obtained from the High Court itself.

On aforementioned grounds, I am compelled to hold that a revision application does not lie before this Court against an order of a Provincial High Court made in the exercise of its own revisionary jurisdiction under Article 154P(3)(b) of the Constitution.

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<sup>4</sup> *supra*

<sup>5</sup> *supra*

The Court of Appeal lacks jurisdiction to assume revisionary authority over a determination rendered by a Provincial High Court in the exercise of its concurrent revisionary power. Accordingly, this application stands dismissed. I make no order as to costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal