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

In the matter of an Appeal under and in term of Article 154P (6) of the Constitution read with the provisions of the High Courts of the Provinces (Special Provisions) Act, No.19 of 1990.

Court of Appeal Case No:
CA (PHC) 185/2020
Provincial High Court Ratnapura
Case No: RA 69/2018
Ratnapura Additional Magistrate's
Court Case No: 22676 A

Kirihathanalage Pradeep Wasantha Kumara,
Aturaliya, Gilimale,
Ratnapura.

Petitioner

Vs.

01. Jayanetti Wahumpurage Kamalawathie,
No. 409/8, Embuldeniya,
Gilimale.

02. Thettu Hakurulage Anura Dissanayake,
No. 409/8, Embuldeniya,
Gilimale.

Respondents

AND BETWEEN

Kirihathanalage Pradeep Wasantha Kumara,
Aturaliya, Gilimale,
Ratnapura.

Petitioner - Petitioner

Vs.

01. Jayanetti Wahumpurage Kamalawathie,
No. 409/8, Embuldeniya,
Gilimale.

02. Thettu Hakurulage Anura Dissanayake,
No. 409/8, Embuldeniya,
Gilimale.

Respondents -Respondents

AND NOW BETWEEN

01. Jayanetti Wahumpurage Kamalawathie,
No. 409/8, Embuldeniya,
Gilimale.

02. Thettu Hakurulage Anura Dissanayake,
No. 409/8, Embuldeniya,
Gilimale.

Respondents-Respondents-Appellants

Vs.

Kirihathanalage Pradeep Wasantha Kumara,
Aturaliya, Gilimale,
Ratnapura.

Petitioner – Petitioner- Respondent

Before:	Damith Thotawatte, J. K.M.S. Dissanayake, J.
Counsels:	Shyamal A. Collure with A.P. Jayaweera and Prabath S. Amarasinghe for the Respondents-Respondents-Appellants. Keerthi Thilakarathna with Kaushali Samaratunga for the Petitioner- Petitioner-Respondent.
Argued:	04.09.2025
Written submissions tendered on:	05.05.2025 By Petitioner-Petitioner-Respondent. 20.01.2025 By Respondents-Respondents-Appellants.
Judgement Delivered:	24.10.2025

Thotawatte, J.

This appeal is against the order dated 16.11.2020 pronounced in favour of the Petitioner-Petitioner-Respondent (hereinafter sometimes referred to as the "Respondent") by the learned High Court Judge of the Provincial High Court of Sabaragamuwa holden at Ratnapura, exercising revisionary jurisdiction under Article 154P(3)(b) of the Constitution, whereby the said Court vacated the order dated 02.10.2018 made by the learned Additional Magistrate of the Magistrate's Court of Ratnapura 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").

The Respondent initiated proceedings in the Magistrate's Court of Ratnapura on 27.03.2018 by filing information under section 66(1)(b) of the PCP Act on the grounds that there was a dispute relating to land between him and the Respondents-Respondents-Appellants (hereinafter sometimes referred to as the "Appellants") and it is likely to cause a breach of the peace between them.

The learned Magistrate, acting in the capacity of a Primary Court Judge, having inquired into this information, by his order dated 02.10.2018, had held that the Appellants are entitled to the possession of the disputed portion of land.

Being aggrieved by the Order of the learned Magistrate, the Respondent invoked the revisionary jurisdiction of the Provincial High Court of Ratnapura in order to revise the said order. Having considered the objections, counter objections, and submissions by the parties, the learned High Court Judge, by order dated 16.11.2020, set aside the aforesaid Order of the learned Magistrate, holding that the Respondent was entitled to possession of the disputed portion of land.

Being dissatisfied with the said order of the learned High Court Judge, the Appellants had preferred this instant appeal to this Court seeking to have the order of the learned High Court Judge set aside.

The grounds for appeal are given as follows;

I. The order of the High Court Judge is contrary to the law.
II. The learned High Court Judge has failed to adhere to the mandatory procedural framework prescribed under the PCP Act.
III. The learned High Court Judge has failed to correctly evaluate the evidence.
IV. The learned High Court Judge has failed to consider whether the learned Magistrate had jurisdiction to entertain an application under the PCP Act when

the police have filed an action against the parties under section 81 of the Criminal Procedure Code.

It is to be noted that both parties are in agreement that the disputed land is Lot No. 37 of Final Village Plan No. 384, having an extent of 1 rood and 35 perches, situated at Godella, Ratnapura.

The Respondent's claim

It is the Respondent's position that his predecessors occupied the subject land for nearly fifty years, and as such, there is a longstanding possession. He further states that upon his request in 2008, the Divisional Secretary of Ratnapura issued him an annual license on 14.12.2016. In addition, he relies on payment of annual taxes for 2017 and 2018, and a letter from the Gilimale Small Holding Tea Association confirming his possession for purposes of fertilizer subsidy.

While the Respondent was in possession, the Appellants had allegedly entered the land on 13.03.2018 and cut nearly forty trees. The police had only initiated proceedings under Section 81 of the Criminal Procedure Code in response to the complaint lodged by the Respondent, which did not address the issue of undisturbed possession. In order to prevent future disturbance to his possession, the Respondent had on 27.03.2018 instituted proceedings under Section 66 of the PCP Act, before the Magistrate's Court of Ratnapura.

The Appellants' claim

It is the Appellants' position that the disputed land was possessed for over fifty years by Jayanetti Wahumpurage Simon, the father of the 1st Appellant and grandfather of the 2nd Appellant, and upon his demise on 06.03.2017, possession devolved upon the 1st Appellant, who continued to cultivate the land with the 2nd Appellant and other family members. The Respondent's only connection to the land arises through his marriage to Jayanetti Wahumpurage Piyawathie, a daughter of the late Simon and sister of the 1st Appellant, a relationship initially suppressed by the Respondent.

The Appellants contend that the permit relied upon by the Respondent was irregularly issued, later suspended due to objections, and both parties were subsequently prohibited from entering the land pending an inquiry, meaning the Respondent could not have been in possession on 27.03.2018. Further, that the permit was not renewed for

2017, and the receipts produced fail to establish any actual occupation or cultivation by him.

However, it is not the function of this court to re-evaluate the evidence submitted.

In the case of In ***Nandawathie and another*** Vs. ***Mahindasena***[1] his Lordship Ranjith Silva J. emphasized;

> "For the reasons I have adumbrated I am of the opinion that this particular right of appeal in the circumstances should not be taken as an appeal in the true sense, but in fact an application to examine the correctness, legality or the propriety of the Order made by the learned High Court Judge in the exercise of revisionary powers. The Court of Appeal should not under the guise of an appeal attempt to re-here or re-evaluate the evidence led in the main case and decide on the facts which are entirely and exclusively matters falling within the domain of the jurisdiction of the Primary Court Judge".

This was also highlighted by his Lordship Surasena J. (as he was then) in the case of ***Jayasekarage Bandulasena and others Vs. Galla Kankanamge Chaminda Kushantha and others*** [2]

> "It would be relevant to bear in mind that the appeal before this Court is an appeal against a judgment pronounced by the Provincial High Court in exercising its revisionary jurisdiction. Thus, the task before this Court is not to consider an appeal against the Primary Court order but to consider an appeal in which an order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction is sought be impugned."

In appeals such as this Court of Appeal is confined to examining the correctness of the Provincial High Court's exercise of revisionary jurisdiction, and not to rehear the matter as an appeal against the Primary Court's order itself.[3]

Upon an examination of the order of the learned Magistrate, it becomes evident, as observed by the learned High Court Judge, that the Magistrate has failed to make a

[1](2009) 2 SLR 218
[2]CA (PHC) 147/2009 CAM 27.09.2017
[3]*Wijamunige Charlis (Deceased) and Others* vs. *Weerappulige Ashoka Weerasinghe* CA (PHC) 138-2016 CAM 08.08.2023

definitive and explicit determination as to who was in possession of the disputed land as at 27.03.2018, being the date on which the information was filed.

In proceedings under the PCP Act, it is well-established that the paramount duty of the learned Magistrate, in terms of Section 68(1), is to make a definitive finding as to who was in actual possession of the land as at the date of filing of the information. The inquiry is strictly confined to the factual state of possession, that is, control or occupation of the disputed land, irrespective of ownership or title to the property.

It is only when a party claims that he had been forcibly dispossessed that the inquiry shifts from Section 68(1) to Section 68(3). If there is no allegation of dispossession, the learned Magistrate needs to make an order to protect the possession of the party that was in possession on the date of the filing of information.

There exists a consistent and authoritative line of judicial precedent[4] which firmly upholds this procedural approach. However, the learned Magistrate in the instant matter appears to have been oblivious to this. Further compounding the previous fundamental error, the learned Magistrate had come to a mistaken conclusion that the Respondent had claimed he had been dispossessed.

The Respondent has never claimed that he was dispossessed (physically removed or ousted) from the subject land. There is no statement that the Respondent was removed, evicted, ousted, or prevented from entering the property. The Respondent's position is that the Appellants, by forcibly entering and cutting nearly 40 trees, have unlawfully interfered with his possession.

In the circumstances, the learned Magistrate was obliged to declare that, for the time being, the Respondent was entitled to possession. The learned High Court Judge, upon a proper evaluation of the evidence, has rightly set aside the Magistrate's order and affirmed the Respondent's entitlement to possession of the subject land.

---

[4] *Ramalingam* v. *Thangarajah* (1982) 2 SLR 693, *David Appuhamy* v. *Yassassi Thero* (1987) 01 Sri. L. R 253, *Mohamed Kamil Jaid and others* v. *Sithy Ayesha Rizvi* CA (PHC) APN 115-2015 CAM 14.05.2018, *Rupassara Gedara Gunawansa* vs *Mallawage Thushara Peiris and another.* CA PHC 22/2017 CAM 03.03.2022, *Sath Kumara Mudiyanselage Ranjith Priyantha Sath Kumara* v. *Headquarters Inspector of Police, Pitigala* CA (PHC) 78/2006 CAM 18.01.2019, *Dinesh Kesara Gunasekara* vs *Thilakarathna Mudiyanselage Thilakarathna and another* CPA/APN APPEAL NO: 132/2018 CAM 29.04.2021

In view of the aforesaid reasons, I see no reason to interfere with the Order dated 16.11.2020 of the learned High Court Judge. Hence, the Appeal is dismissed subject to a total cost of Rs. 30,000/-, with each Appellant directed to pay a sum of Rs. 15,000/-.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal