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

In the matter of an application for revision under and in terms of Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka and High Court of the Provinces (Special Provisions) Act No.19 of 1990.

Court of Appeal Case No: CA/PHC/0021/2021

High Court Chilaw Case No: H.C.R. 34/2007

Magistrate Court of Marawila Case No: 15364C

Headquarters Inspector of Police,
Police Station,
Marawila.

Complainant

Vs.

1. **Warnakula Weerasuriya Sunilka Nirmaliee Malkanthi Fernando,**

2. **Warnakula Weerasuriya Leena Nilanthi Victorine Fernando,**

Both of them,
Fernando Road, Marawila.

First Party

1. **Warnakula Suranjanee Weerasuriya**,
2. **Chamika Nilantha Kumarage**,

Both of: Fernando Road,
Marawila.

3. **Waduge Newton Antony Livera**,
   Henegedara,
   Udubaddawa.

Second Party

AND BETWEEN

1. **Warnakula Weerasuriya Sunilka Nirmaliee Malkanthi Fernando,**

2. **Warnakula Weerasuriya Leena Nilanthi Victorine Fernando,**

   Both of them,
   Fernando Road, Marawila.

First Party-Petitioners

Vs.

1. **Warnakula Suranjanee Weerasuriya**,
2. **Chamika Nilantha Kumarage**,

   Both of: Fernando Road,
   Marawila.

3. **Waduge Newton Antony Livera**,
   Henegedara,
   Udubaddawa.

Second Party -Respondent

AND NOW BETWEEN

1. **Warnakula Weerasuriya Sunilka Nirmaliee Malkanthi Fernando,**

2. **Warnakula Weerasuriya Leena Nilanthi Victorine Fernando,**

Both of them,
Fernando Road, Marawila.

First Party-Petitioners-Appellants

Vs.

1. **Warnakula Suranjanee Weerasuriya**,
2. **Chamika Nilantha Kumarage**,

Both of: Fernando Road,
Marawila.

3. **Waduge Newton Antony Livera**,
Henegedara,
Udubaddawa.

Second Party -Respondent-Respondents

Before : **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel : Saumya Amarasekera, PC with Zainab Ismail, Hilary Livera, Gamhani Livera and Shanika Perera for the 1st Party-Petitioners-Appellants.

Rasika Dissanayaka for the 2nd Party-Respondents-Respondents.

Argued on : 07.08.2025

Written Submissions
of the
1st Party-Petitioners-Appellants

tendered on : 10.01.2023

Written Submissions
of the
2nd Party-Respondents
-Respondents
tendered on : 05.07.2023

Decided on : 12.12.2025

K. M. S. DISSANAYAKE, J.

Instant appeal arises from an order dated 26.03.2021 made by the learned High Court Judge of the North Central Province holden at Chilaw (hereinafter called and referred to as the order) in an application in revision bearing No. HCR 34/07, preferred to it by the 1st Party-Petitioners-Appellants (hereinafter called and referred to as the Appellants) against an order dated 01.10.2007 made by the learned Magistrate of Marawila (hereinafter called and referred to as the learned Magistrate) in the proceedings initiated before it by the Officer-In-Charge, Police Station, Marawila by filing information thereat under and in terms of section 66(1)(a) of the Primary Courts Procedure Act No. 44 of 1979 (hereinafter called and referred to as the Act) citing therein the Appellants and the 2nd Party-Respondents-Respondents(hereinafter called and referred to as the Respondents) as parties thereto whereby, the learned Magistrate had having held that the Appellants had not established that they had been in possession of the land in dispute at the time of the information being filled before Court by Police under section 66(1)(a) of the Act on 04.04.2007 or they had been unlawfully, and forcefully, dispossessed by the Respondents from the land in dispute (hereinafter called and referred to as the "land in dispute") but that the Respondents were proved to have been in possession of the land in dispute at the time of the information being filed before Court by Police, determined that the Respondents had been in possession thereof at the time of the information being filed before Court by the Police. The learned Magistrate had thus, ordered the Appellants to

file a case in a Civil Court and resolve their rights in relation to the land in dispute.

It was the position adverted to by the Appellants that they being lawful owners of the land in dispute in terms of the devolution of title recited in their affidavit, had been in possession of the land in dispute and that they had been unlawfully, and forcefully, dispossessed therefrom by the Respondents on 25.03.2007. While denying the allegation so levelled against them by the Appellants, that they had unlawfully, and forcefully, dispossessed from the land in dispute by the Respondents on 25.03.2007, the Respondents had taken up a position in their affidavit that they being lawful owners of the land in dispute in terms of the devolution of title recited in their affidavit, had been in possession thereof at the time of the information being filed by the Police before the Magistrate Court under section 66(1)(a) of the Act. Police had on the other hand, reported to the Magistrate Court in the information that the Appellants had lodged a complaint on 30.03.2007 alleging unlawful and forceful dispossession by the Respondents from the land in dispute. Police had further reported to the Magistrate Court therein that investigation into the complaint made to the Police by the Appellants on 30.03.2007, had revealed that the Appellants as well as the Respondents had claimed title to the land in dispute.

Upon a careful, perusal of the information filed before Court by the Police under section 66(1)(a) of the Act, it clearly, appears without an iota of doubt that the complaint made to the Police by the Appellants dated 30.03.2007, had led the Police to have filed information before the Magistrate Court regarding the dispute between the Appellants and the Respondents affecting the land in dispute for; it is the only complaint referred to in the information as one made by the Appellants regarding the dispute between the Appellants and the Respondents affecting the land in dispute.

A careful scrutiny of the complaint so made to the Police by the 2nd Appellant on 30.03.2007 (**1816**), makes it abundantly, clear that the 2nd Appellant's complaint

made therein was with regard to forceful plucking of some coconut nuts by the Respondents having forcefully, entered into the land in dispute on 25.03.2007, and the relief sought therein being an admonishment on the Respondents not to engage in activities of such kind as alleged, by the Appellants any further.

However, upon a careful consideration of the complaint so made to Court by the 2nd Appellant on 30.03.2007 in its totality, and in its correct perspective, it becomes abundantly, clear that the 2nd Respondent had therein not made anything against the Respondents regarding the alleged unlawful and forceful dispossession of them by the Respondents from the land in dispute on 25.03.2007, having forcefully, entered to the land in dispute as rightly, held both by the learned Magistrate as well as the learned High Court Judge of Chilaw. Hence, I would see no error in the findings of both the learned Magistrate as well as the learned High Court Judge of Chilaw in this regard.

I would therefore, hold that the learned Magistrate was entirely, justified in finding that the Appellants had not established that they had been in possession of the land in dispute at the time of the information being filled before Court by Police under section 66(1)(a) of the Act on 04.04.2007 or they had been unlawfully, and forcefully, dispossessed by the Respondents from the land in dispute (hereinafter called and referred to as the "land in dispute") on 25.03.2007 but that the Respondents were proved to have been in possession of the land in dispute at the time of the information being filed before Court by Police on 04.04.2007.

Hence, I would hold that the learned High Court Judge of Chilaw was right in dismissing the application in revision for; the order sought to be revised is not one which is palpably wrong or not one which tend to shock the conscience of the Court or not one which would tend to cause a grave miscarriage of justice to the Appellants.

I would therefore, hold that the instant appeal is not entitled to succeed both in fact and law and therefore, it ought to be dismissed.

A further reason for the above conclusion is manifest on an examination of the provisions of Part VII of the Act.

The extra-ordinary revisionary jurisdiction was exclusively, vested with the Court of Appeal before the enactment of the 13th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka. However, after the enactment of the 13th Amendment to the Constitution, the revisionary jurisdiction is now, vested with the High Court of the Province concurrently, with the Court of Appeal.

After an exhaustive analysis of all the authorities on this, it was held in **Rustom vs. Hapangama & Company (1978-79) 2 SLR 225,** that "the powers by way of revision conferred on the Appellate Court are wide and can be exercised whether an appeal has been taken against an order of the original Court or not. **However, such powers would be exercised only in exceptional circumstances where an appeal lay and as to what such exceptional circumstances are dependent on the facts of each case".** [emphasis is mine]

Court in **Rustom vs. Hapangama & Co (Supra)** further observed in the following manner; "The trend of authority clearly, indicates that where the revisionary powers of the Court of Appeal are invoked, the practice has been that these powers will be exercised if there is an alternative remedy available, only if the existence of special circumstances are urged necessitating the indulgence of this Court to exercise its powers in revision."

It was further observed by Court in the decision in **Rustom Vs. Hapangama & Company(Supra)** that, "This Court has the power to act in revision even though the appeal is available, in appropriate cases. The question which has now to be decided is whether the instant case is an appropriate case in which we should exercise our discretionary powers of revision. In his petition and affidavit the petitioner has not set out the reasons for his seeking this method of rectification of the order rather than the ordinary method of appeal. Nor has he set out any exceptional circumstances as to why we should grant him the indulgence of

exercising our revisionary powers when he could have appealed against the order with leave".

It was held by Court in **Dharmaratne and Another Vs. Palm Paradise Cabanas Ltd and Others 2003 (3) SLR 24** at page 30 that "Thus, the existence of exceptional circumstances is the process by which the Court selects the cases in respect of which this extra-ordinary method of rectification should be adopted. If such a selection process is not there, revisionary jurisdiction of this Court will become a gateway for every litigant to make a second appeal in the grab of a revision application or to make an appeal in situations where the legislature has not given right of appeal. The practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed. The words used by the legislature do not indicate that it ever intended to interfere with this 'rule of practice'."

It was held in **Urban Development Authority vs. Ceylon Entertainments Ltd. and another reported in 2002 [B.L.R]** at page 66 that "the petitioner who invokes the revisionary jurisdiction of this Court should expressly set out the exceptional circumstances and an express pleading to that effect is a *sine quo non*, for this Court to consider the relief claimed by the petitioner. In the absence of an express plea, this Court would be precluded from considering the relief claimed in the application".

Let me now, quote a passage from the decision in **Perera v. Muthalib 45 NLR 412** "I would invite attention to the observations made by Wood-Renton J. in the King v. Nordeen. He said; I do not think that that power (i.e. , revisionary power) is at all limited to those cases in which either no appeal lies or for some reason or other an appeal has not been taken", but he went on to add that this power would be exercised only when a strong case is made out "amounting to a positive miscarriage of justice in regard to either the law, or the judge's appreciation of the facts. In the case I am dealing with I should have felt compelled to give relief

solely on the ground that what may well be said to be a failure of justice has been brought to the notice of this Court, and technical rules must make way for the granting of redress in such a case. There has been a violation of the fundamental rule of judicial procedure that a person sought to be affected by an order shall first be heard. But, in this instance there is yet another ground upon which this application for revision ought to be exercised and that is that the petitioner had no knowledge of the order made against him till the time for preferring an appeal had elapsed."

In the case of **Attorney-General v. Podi Singho 51 NLR 385** it was held that "even though the revisionary powers should not be exercised in cases when there is an appeal and was not taken, the revisionary powers should be exercised only in exceptional circumstances such as (a) miscarriage of justice (b) where a strong case for interference by the Supreme Court is made out or (c) where the applicant was unaware of the order." Court also observes that "the Supreme Court in exercising its powers of revision is not hampered by technical rules of pleading and procedure."

In **Bank of Ceylon vs Kaleel and others 2004 [1] SLR 284**, at page 287 it was stated that, "In the circumstances this Court will not interfere by way of revision when the law has given the plaintiff an alternate remedy and when the plaintiff has not shown the existence of exceptional circumstances warranting the exercise of revisionary jurisdiction. In any event, for this Court to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it. In other words the order complained of is of such a nature which would have shocked the conscience of Court."

In **Thilagaratnam Vs. E.A.P. Edirisingha 1982 [1] SLR, P56**, it was observed that "though the Appellate Courts' powers to act in revision were wide and would be exercised whether an appeal has been taken against the order of the original

court or not, such powers would be exercised only in exceptional circumstances. There were no exceptional circumstances in this case to justify the exercise of the Court's powers of revision."

In **Cadaman Pulle Vs. Ceylon Paper Sacks Ltd 2001 [3] SLR, P112**, it was held that "no exceptional circumstances are disclosed why his application for revisionary relief should be entertained after the lapse of nearly two years. The existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision."

The Supreme Court, in the case of **Rasheed Ali Vs. Mohamed Ali 1981 [1] SLR, P262**, held that, "the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. Where the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily, the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternate remedy such as the right to file a separate action except when non-interference will cause a denial of justice or irremediable harm..... The fact that a Judge's order is merely wrong is not a sufficient ground for exercising the powers of revision."

The Supreme Court in **AG. Vs. Najimudeen-SC Appeal No. 62/2016-SC Minute of 13-03-2020** observed that, "the Defendant has had an alternative remedy available. In the instant case, what the Provincial High Court was called upon to exercise was its revisionary jurisdiction. The Defendant has not been successful in convincing Court that the grounds he had urged have any exceptional character which is sufficient to move Court to exercise its discretionary revisionary power. Thus, this Court has no reason to disagree with the conclusion of the Provincial High Court that there are no exceptional circumstances to invoke the revisionary jurisdiction of the Court. In these

circumstances and for the foregoing reasons, the appeal is dismissed without costs."

In **Geethani Nilushika Vs. Waruni Harshika-SC Appeal No. 93/2017-SC Minute of 18.06.2021** Court observed that; "**Revision is a discretionary remedy. A party cannot invoke this extraordinary jurisdiction of the Appellate Court as of right. When a right of appeal is available against a Judgment or an Order, a party seeking to come before Court by way of revision shall explain in the petition why he did not exercise his right of appeal. In the revision application filed before the High Court there was no such explanation at all**."

In the case of **Seylan bank Vs. Thangaveil 2004 [2] SLR, 101** wherein Court held that, "no revision lies. The petitioner has not resorted to his statutory right of appeal with leave of court. He has not set out in his petition for revision any exceptional circumstances."

See also; **Hotel Galaxy (Pvt) Ltd Vs. Mercantile Hotels Management Ltd. 1978 (1) SLR 05, Janita Vs. Abeysekara (Sri skantha Law Report Vol iv Page 22)**, and **Thilagaratnam Vs. Edirisinghe 1982 (1) SLR 56.**

In the light of the principle laid down by Court in the aforesaid decisions, an Appellate Court can exercise its revisionary jurisdiction conferred on the Appellate Court **only and only, in exceptional circumstances, where an alternative remedy lay.** [emphasis is mine]

Section 67(1) and (2) of the Act enacts thus;

> "(1) Every inquiry under this Part shall be held in a summary manner and shall be concluded within three months of the commencement of the inquiry.
>
> (2) The Judge of the Primary Court shall deliver his order within one week of the conclusion of the inquiry."

Section 68(2) of the Act enacts thus;

> "(2) An order under subsection (1) shall declare any one or more persons therein specified to be entitled to the possession of the land or the part in the manner specified in such order **until such person or persons are evicted therefrom under an order or decree of a competent court, and prohibit all disturbance of such possession otherwise than under the authority of such an order or decree**." [Emphasis is mine]

Section 69(2) of the Act enacts thus;

> "(2) An order under this subsection may declare that any person specified therein shall be entitled to any such right in or respecting the land or in any part of the land as may be specified in the order **until such person is deprived of such right by virtue of an order or decree of a competent court, and prohibit all disturbance or interference with the exercise of such right by such party other than under the authority of an order or decree as aforesaid**." [Emphasis is mine]

Section 74(1) and (2) of the Act enacts thus;

> "(1) An order under this Part shall not affect or prejudice any right or interest in any land or part of a land which any person may be able to establish in a civil suit; and it shall be the duty of a Judge of a Primary Court who commences to hold an inquiry under this Part to explain the effect of these sections to the persons concerned in the dispute.
>
> (2) An appeal shall not lie against any determination or order under this Part."

This Court observed in **Mansoor and Another V. O.I.C. Avissawella Police & Another [1991] 2 SLR 75** that, "In terms of section 67(1) an inquiry under this Part has to be held in a "summary manner" and has to be concluded within three months of the commencement of the inquiry. Section 74(2) provides that an appeal will not lie against any determination or order under this Part. **It appears**

from section 74(1) that the remedy available to a person affected by an order after such a summary inquiry is to establish his right or interest to the land in a civil suit. A Judge of the Primary Court is specially required to explain the effect of this provision to the persons concerned in the dispute. Therefore, according to the legislative schemes an order made by the Primary Court in a proceeding under Part VII will be operative only till the dispute affecting land is finally resolved on a "civil suit". The phrase "civil suit" is clearly referable to an action filed in a regular Court exercising civil jurisdiction. [Emphasis is mine]

It was held in **Punchi Nona v. Padumasena and Others 1994 [2] SLR 117** at page 122 that, "The jurisdiction conferred on a Primary Court under section 66 is a special jurisdiction. It is quasi-criminal jurisdiction. **The primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land. The Court in exercising this jurisdiction is not involved in an investigation into title or the right to possession which is the function of a civil Court**." [Emphasis is mine]

Hence, it is manifest that the primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land and that the Court in exercising this jurisdiction is not involved in an investigation into title or the right to possession which is the function of a civil Court and that hence, the remedy available to a person affected by an order after such a summary inquiry held in the proceedings under part VII of the Act, is to establish his right or interest to the land in a civil suit and that a Judge of the Primary Court is specially required to explain the legal effect of those provisions quoted above, to the persons concerned in the dispute and therefore, according to the legislative scheme, an order made by the Primary Court in a proceeding under Part VII will be operative only till the dispute affecting land is finally resolved on a "civil suit". The phrase "civil suit" is clearly referable to an action filed in a regular Court exercising civil jurisdiction.

It is significant to observe that, the learned Magistrate of Marawila had in no uncertain terms, explained the effect of those provisions contained in Part VII of the Act to the parties to the proceedings before him including the Appellant and therefore, it is well within the Appellant's knowledge that the remedy available to him affected by the order of the learned Magistrate of Marawila after such summary inquiry is to establish his right or interest to the land in dispute in a civil suit in a regular Court exercising civil jurisdiction.

However, it is rather unfortunate to observe that, the Appellant had not availed himself of the proper and effective remedy so provided for by the Part VII of the Act to establish his right or interest to the land in dispute in a civil suit in a regular Court exercising civil jurisdiction.

It is however, to be observed that the Appellant had instead, made an attempt to avail himself of this extra-ordinary method of rectification rather than resorting to the proper and efficient remedy provided for by Part VII of the Act as enumerated above, even without proceedings to explain to the learned High Court Judge of Chilaw why he had opted to adopt this extra-ordinary method of rectification rather than resorting to the proper and efficient remedy provided for by Part VII of the Act as enumerated above. In the absence of an explanation as such, the Appellants should in law, be presumed that he had no explanation as such to offer thereto. This fact alone would in my view, entitle the High Court of Chilaw to have dismissed the application in revision filed before it by the Petitioners thereto who are now, the Appellants to the instant appeal in the absence of an explanation as such.

A further reason for the above conclusion is manifest on an examination of the record.

The order sought to be revised in their application in revision filed before the High Court of Chilaw by the Appellants had been delivered on 01.10.2007 and the order of the High Court of Chilaw that the Appellants now, seeks to canvas

before us, had been pronounced on 26.03.2021 and the instant appeal against that order had been filed before this Court on 08.04.2021. However, upon a careful scrutiny of the petition of appeal filed before this Court by the Appellants seeking to challenge the said order of the learned High Court of Chilaw, it does not appear that even up to the time of filing of the instant appeal before us by them, they had opted to resort to the proper and effective remedy provided for by the Part VII of the Act to establish their right and interest to the land in dispute in a Court of competent jurisdiction. The conduct and the dealings of the parties are seriously, taken into consideration by a Court in determining as to whether this extra-ordinary method of rectification, namely; invocation of revisionary jurisdiction should be adopted by it and the conduct and deals of the Appellants in the instant appeal, in not resorting to the proper and effective remedy provided for by the Part VII of the Act to establish their right and interest to the land in dispute in a Court of competent jurisdiction would no doubt, disentitle them to invoke this extra-ordinary method of rectification, namely; invocation of revisionary jurisdiction.

In the circumstances, it clearly, appears that, the Appellant had not shown in his application in revision filed before the High Court of the Province any exceptional circumstances warranting the High Court of the Province to exercise its extra-ordinary revisionary jurisdiction vested in it to revise and set aside the order of the learned Magistrate of Marawila for; **an Appellate Court can exercise its revisionary jurisdiction conferred on it only and only, in exceptional circumstances, where an alternative remedy lay.** [Emphasis is mine]

Hence, I would hold that the application in revision filed by the Appellant in the High Court of the Province seeking to revise and set aside the order of the learned Magistrate of Marawila, cannot in any manner, sustain both in fact and law and as such it ought to have been dismissed on this ground too, by the High Court of the province as rightly, done by the learned High Court Judge of Chilaw.

I would therefore, see no reason why this Court should interfere with the order of the learned High Court Judge of Chilaw dismissing the application in revision filed by the Petitioners who are now, the Appellants to the instant appeal.

In view of all the facts and circumstances enumerated above, I would hold that the instant appeal is not entitled to succeed both in fact and law on the ground enumerated above, too.

In the circumstances, I would proceed to dismiss the instant appeal with costs of this Court and below.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL