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

In the matter of an Appeal against the Order made by the Provincial High Court of the Sabaragamuwa Province holden at Kegalle in the application in revision bearing No.4249/ පුනි.

**Court of Appeal Case No: CA(PHC)0043/2019**

**High Court of Kegalle Case No: 4249/ පුනි**

**Magistrate Court of Ruwanwalla Case No: 17206/66**

**Udapola Dasanayakalage Reginold Dasanayaka**,
Sumanagiri Building.
Dehiowita Road
Deraniyagala.

**Petitioner**

**Vs.**

1. **Anhettigama Gamaralalage Dharmawardena,**
   "Latha Sevana",
   Anhettigama,
   Deraniyagala.

2. **Hingurahena Gamaralalage Amila Wasantha Wijeysiri,**
   Dodawaththa,
   Nuriya.

**Respondents**

**AND BETWEEN**

**Udapola Dasanayakalage Reginold Dasanayaka**,
Sumanagiri Building.
Dehiowita Road
Deraniyagala.

**Petitioner-Petitioner**

**Vs.**

1. **Anhettigama Gamaralalage Dharmawardena,**
   "Latha Sevana",
   Anhettigama,
   Deraniyagala.

2. **Hingurahena Gamaralalage Amila Wasantha Wijeysiri,**
   Dodawaththa,
   Nuriya.

**Respondents-Respondents**

**AND NOW BETWEEN**

**Udapola Dasanayakalage Reginold Dasanayaka**,
Sumanagiri Building.
Dehiowita Road
Deraniyagala.

**Petitioner-Petitioner-Appellant**

**Vs.**

1. **Anhettigama Gamaralalage Dharmawardena,**
   "Latha Sevana",
   Anhettigama,
   Deraniyagala.

2. **Hingurahena Gamaralalage Amila Wasantha Wijeysiri,**
   Dodawaththa,
   Nuriya.

**Respondents-Respondents-Respondents**

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| Before | : | **D. THOTAWATTA, J.**<br>**K. M. S. DISSANAYAKE, J.** |
| Counsel | : | Hussain Ahamed with Ms. Ayendri De Silva on the instructions of I. D. Ranjith Wijesinghe for the Petitioner-Petitioner-Appellant.<br><br>Chamara Wannisekara with Isuri Cooray instructed by Dineth Baduwalage for the 1st and 2nd Respondent-Respondent-Respondents. |
| Argued on | : | 18.07.2025 |
| Written Submissions of the Petitioner-Petitioner -Appellant tendered on | : | 10.03.2025 |
| Written Submissions of the Respondents -Respondents-Respondents tendered on | : | 13.02.2024 |
| Decided on | : | 12.12.2025 |

**K. M. S. DISSANAYAKE, J.**

Instant appeal arises from an order dated 07.02.2019 made by the learned High Court Judge of the Sabaragamuwa Province holden at Kegalle (hereinafter called and referred to as the order) in an application in revision bearing No. 4249/ පුනි, preferred to it by the Petitioner-Petitioner-Appellant (hereinafter called and referred to as the Appellant) against an order dated 18.10.2011 made by the learned Magistrate of Ruwanwalla (hereinafter called and referred to as the learned Magistrate) in the proceedings initiated before it by the

Appellant by filing information thereat under and in terms of section 66(1)(b) of the Primary Courts Procedure Act No. 44 of 1979 (hereinafter called and referred to as the Act) against the 1st and 2nd Respondent-Respondent-Respondents (hereinafter called and referred to as the 1st and 2nd Respondents) whereby, the learned Magistrate had having held that the Appellant had not established to the satisfaction of the Court that he had been in possession of the whole of the building, namely; the premises bearing assessment No. 5 situated in a land which is 36 yards in length and 7 yards in breadth in extent as morefully, described in the schedule to the original affidavit of the Petitioner filed in the Magistrate's Court of Ruwanwella under section 66(1)(b) of the Act and therefore, he had not established to the satisfaction of the Court that the 1st and 2nd Respondents had having boarded up and fenced off a portion of the ground floor of the said premises (hereinafter called and referred to as the premises in dispute) dispossessed the Petitioner therefrom on 03.02.2010 but, the 1st and 2nd Respondents had established through the documents submitted to Court that they too, had having taken-over the possession of the premises in dispute, been in possession thereof, determined that the 1st and 2nd Respondents had been in possession thereof and made order prohibiting the Appellant from all disturbance of such possession.

As can be gathered from the record, the facts enumerated below are uncontroverted and admitted facts in the instant action instituted by the Appellant in the Magistrate Court of Ruwanwalla; namely;

**a)** the premises in dispute is a portion of a building bearing assessment No.05 which is alleged to have been boarded up and separated off by the 1st and 2nd Respondents, and which is standing on the land morefully described in the schedule to the affidavit filed by the Appellant in the Magistrate Court of Ruwanwalla dated 23.02.2010 furnishing information thereto under in terms of section 66(1)(b) of the Act, as well as in the schedule to the further affidavit of the Appellant and the joint

counter affidavits of the 1st and 2nd Respondents filled in the Magistrate Court of Ruwanwalla;

**b)** the complaints dated 03.02.2010 and 24.03.2010 had been made to the Police by the Appellants while, the complaint dated 12.08.1999 had been made to the Police by the 1st Respondent;

**c)** the land in which the premises in dispute is situated, is a co-owned land and A. G. Punchimahathmaya, U.D.U. Dassanyaka, H. A. V. Heenmanike, Kamalawathie Dassanayaka, Gunarathne Manike Dassanayaka, Karunawathie Dassanayaka, U.D. Pushpalatha, Gaminilatha Dassanayaka, and Gamlath manike had been co-owners thereof, as admitted by the Appellant as well as the 1st and 2nd Respondents and as also, manifest from the document dated 14.02.1985 which was annexed to the further affidavit of the Appellant marked as '**ඉඋ1/X6**' and also from the complaints dated 03.02.2010 and 24.03.2010 made to the Police by the Appellants and also the complaint made to the Police by the 1st Respondent dated 12.08.1999;

**c)** both the Appellant as well as the 1st Respondent too, had been co-owners thereof, respectively, by virtue of the deed of gift bearing No. 396 (**ඉඋ2/X7**) and the deed of transfer bearing No. 372 (**ඉ2/X37**);

**d)** two partition actions bearing Nos. 17455 and 20084P, had been instituted in the District Court of Avissawella seeking partition of the land and the building standing thereon including the premises in dispute –the subject matter of the Magistrate Court of Ruwanwalla as morefully described above with the latter being instituted in the year 2010 by the 1st Respondent himself to the Magistrate Court action who is 1st Respondent to the instant appeal too.

Let me now, briefly, set out the facts and circumstances relevant and material to the instant appeal as follows;

The Appellant had furnished information under section 66(1) (b) of the Act to the Magistrate Court of Ruwanwalla alleging that he had forcibly, been dispossessed by the 1st and 2nd Respondents on 03.02.2010 from the possession of the premises in dispute in the instant action.

On the other hand, the 1st and 2nd Respondents had while vehemently, denying the allegation so levelled against them by the Appellant, taken up a position in their joint counter affidavit (**X34**) that they being co-owners of the premises in dispute, had been in continuous possession thereof.

However, the learned Magistrate of Ruwanwalla in her order dated 18.10.2011, had having held that the Appellant had not established to the satisfaction of the Court that he had been in possession of the whole of the building, namely; the premises bearing assessment No. 5 situated in a land which is 36 yards in length and 7 yards in breadth in extent as morefully, described in the schedule to the original affidavit of the Petitioner filed in the Magistrate's Court of Ruwanwella under section 66(1)(b) of the Act and therefore, he had not established to the satisfaction of the Court that the 1st and 2nd Respondents had having boarded up and fenced off a portion of the ground floor of the said premises dispossessed the Petitioner therefrom on 03.02.2010 but, the 1st and 2nd Respondents had established through the documents submitted to Court that they too, had having taken-over the possession of the premises in dispute, been in possession thereof, determined that the 1st and 2nd Respondents had been in possession thereof and made order prohibiting the Appellant from all disturbance of such possession.

It is this order of the learned Magistrate of Ruwanwalla, that the Appellant had in his application in revision filed before the High Court of the Sabaragamuwa Province holden at Kegalle (hereinafter called and referred to as the High Court of the Province) sought to revise and set aside.

The learned High Court Judge of Kegalle had in the order, proceeded to find that the Court of first instance had held that the Petitioner had not proved to

the satisfaction of the Court that he had occupied the entire building and premises in question and that according to the document marked X6 or P1 produced in connection with the taking over of the possession of the building and premises in question, the two-storey building was handed over to nine persons at the time of taking over the possession and that the same document had been marked as **අ18** by the Respondents and that it is the position of the Respondents that the name mentioned in it as Punchi Appuhamy is the father of the 1st Respondent and this has not been challenged and controverted and that accordingly, it did not reveal that when possession of the building and premises in question was handed over, it had not been handed over only to one person by the Deraniyagala-Panawala Multipurpose Cooperative Society Limited and that even though, the Petitioner claims that the possession of the entire building and premises in question had been obtained by him by the letter X6, it had been contradicted by the document submitted by the Petitioner himself and that the Petitioner had become entitled to an undivided ½ share of the entire building and premises in question by virtue of the deed of gift-X7, but none of the documents submitted by the Petitioner reveals that he had acquired the possession of the entire building and premises in question, which had been duly, found by the Court of first instance and that even if the relevant documents submitted in relation to the electoral register were either accepted or rejected, they do not lend any support to prove the assertion that he had complete possession of the building and premises in question and that while the Petitioner had failed to satisfy Court that the entire building and premises in question had been possessed by him, however, according to his own position, adverted to by him, the Respondents had been possessing a part of the building in question even at the time of the information being forwarded to Court by him and that the Petitioner had failed to adduce sufficient evidence to establish that he had been dispossessed from the premises in dispute by the 1st and 2nd Respondents illegally, on 03.02.2010 and that the Petitioner in this case had not proved when and how the possession of the land and premises in

question that had been taken over by the father of the 1st Respondent-Punchi Mahathmaya, by ඵ19(X53) had been lost and that accordingly, there has been no error in law in the findings of the Court of first instance reached by it under Section 68(3) of the Act that the Respondents had been occupying a part of the premises in dispute and that it becomes clear that a partition action had already, been filed in Court by the parties in order to settle the dispute between them.

The learned High Court Judge of Kegalle had having found so, proceeded to dismiss the application in revision. The reasons adduced therefor being the availability of an alternative remedy which the parties had already availed themselves of it, namely; institution of a partition action and that the order sought to be revised and set aside, is not one which is palpably, wrong and therefore, is not one which is illegal; or is not one which would tend to shock the conscience of the Court; or is not one which would tend to cause a miscarriage of justice. It is this order that the Appellant now, seeks to canvas before us in the instant appeal.

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."

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 an admitted fact in the instant action that, two partition actions bearing Nos. 17455 and 20084P, had been instituted in the District Court of Avissawella seeking partition of the land and the premises standing thereon including the premises in dispute–the subject matter of the Magistrate Court of Ruwanwalla as morefully described above with the latter being instituted in the year 2010 by the 1st Respondent himself to the Magistrate Court action (who is

1st Respondent to the instant appeal too), being plaintiff thereto, and the Appellant to the instant appeal being the 1st defendant thereto, which is according to the pleadings filed in the Magistrate Court of Ruwanwalla in the said proceedings under part VII of the Act, still pending and the partition action bearing No. 17455/ඉඛදම in which the Appellant in the instant appeal being the 25th defendant, appears to have come to an end by the entering the final partition decree by Court as manifest from the amended interlocutory decree filed in that case a copy of which was annexed to his counter affidavit filed by the Appellant in the Magistrate Court of Ruwanwalla marked as **ඉඵ15** (**X21**) and also from the final partition plan and the scheme of share distribution a copy of which was annexed to his counter affidavit filed by the Appellant in the Magistrate Court of Ruwanwalla marked as **ඉඵ16** (**X22**).

Hence, it clearly, appears that the rights of the parties in relation to the land and premises including the premises in dispute had already, been finally, and conclusively, adjudicated upon and determined by the District Court of Avissawella in the said partition action bearing No. 17455/ඉඛදම and that the rights of the parties in relation to the dispute between them in the proceedings before the Magistrate Court of Ruwanwalla taken under part VII of the Act affecting the premises in dispute too, is yet to be adjudicated upon and determined by the District Court of Avissawella in the said partition case bearing No. 20084P.

It thus, clearly, appears that, the parties affected by the order of the learned Magistrate of Ruwanwalla after such a summary inquiry held in the proceedings under part VII of the Act, had already, availed themselves of the lawful remedy available to them in law and therefore, the necessity does not in any manner, arise for the Appellant to have adopted this extra-ordinary method of rectification as rightly, held by the learned High Court Judge of Kegalle.

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 Ruwanwalla, cannot in any manner, sustain both in fact and law and as such it ought to have been dismissed on this ground alone, by Court as rightly, done by the learned High Court Judge of Kegalle.

On the other hand, I would see no reason why this Court or the High Court of the Province should interfere with the order of the learned Magistrate of Ruwanwalla for; the learned Magistrate had come to such findings as arrived at by her in the order on the material available on record which clearly, and unequivocally, establishes that the Appellant as well as the Respondents had been co-owners of the land and premises including the premises in dispute and that possession of the entirety of the land and premises including the premises in dispute had been handed over by the Daranigala Co-operative Society Limited to nine persons including the predecessors in title of both the Appellants as well as the Respondents but, however, there had been an iota of evidence on record to show as to how and when the Respondents had lost the possession thereof, into which their predecessors had admittedly, been let.

In the circumstances, I would see no error in the order of the learned Magistrate of Ruwanwalla which would tend to shock the conscience of the Court or which would tend to occasion a grave miscarriage of justice to any party to the proceedings before the Magistrate Court of Ruwanwalla warranting the High Court of the Province to exercise its extra-ordinary revisionary jurisdiction in revision of the order of the learned Magistrate of Ruwanwalla as rightly, held by the learned High Court Judge of Kegalle.

Besides, the parties to the proceedings before the Magistrate Court of Ruwanwalla had already, availed themselves of the proper remedy available to them in law in respect of the premises in dispute as enumerated above.

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 Ruwanwalla 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]

In view of the above, I would hold that the appeal is not entitled to succeed both in fact and law.

In the result, I would dismiss the 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***