IN THE COURT OF APPEAL OF THE DEMOCRAIC SOCIALIST REPUBLIC OF SRI LANKA.

Court of Appeal case no. CA/PHC/140/2010

H.C. Chilaw case no. 47/2006

M.C. Chilaw case no. 89113/66

C.G.H.Ramniya Kumari,
Kiriyankalliya, Baththuluoya.
1st Party Respondent Appellant

Vs.

K.D.Ninecias,
Tharawilluwa, Baththuluoya.
2nd Party Petitioner Respondent.

Before : P.R.Walgama J.
: L.T.B. Dehideniya J.

Counsel : Dulinda Weerasooriya PC with S.P.P. Samaranayake for the1st Party Respondent Appellant.
: M. Premachandra for the 2nd Party Petitioner Respondent.

Argued on : 05.05.2016

Written submissions filed on: 14.07.2016

Decided on : 14.12.2016

L.T.B. Dehideniya J.

This is an appeal from the High Court of Chilaw.

According to the 1st party Respondent Appellant (The Appellant), she was the wife of the deceased Kalibowilage Don Alfred. They were living in matrimony at the land in dispute until the said Alfred demised on 17.06.2005.

On 30.06.2005 the 2nd party Petitioner Respondent (the Respondent) who is a son of the deceased's first marriage dispossessed the Appellant. Thereafter the Appellant filed an information in the Magistrate Court of Chilaw under section 66 (1)(b) of the Primary Court Procedure Act. The Respondent's contention is that he being a son of the Alfred, managed the land in dispute and it amounts to possession. He further submits that he looked after the sickly father and did not admit the marriage between the Appellant and his father.

The land in dispute is a land alienated to the said Alfred on grant under the Land Development Ordinance. The Respondent states that he was nominated as the successor under the grant.

After filing the documents, affidavits and written submissions the learned Magistrate determined that the Appellant was in possession and was dispossessed within two months prior to the filing of the information and ordered to restore the Appellant in possession.

Being aggrieved by the said order the Respondent moved in revision in the Provincial High Court of Chilaw. The learned High Court Judge came to the finding that the Appellant was the wife of the deceased and they were living in matrimony in the disputed land, but the learned judge decided that as per the nomination of the deceased Alfred the Respondent becomes the successor of the land the Appellant as the wife of the deceased is not entitle to succeed and further decided that there is no forcible dispossession, the Appellant vacated the premises on her own and set aside the order of the learned Magistrate. This appeal is from the said order.

The Respondent when he moved the matter in revision in High Court Chilaw has failed to tender the relevant documents with the application. The order of the Magistrate Court is the most relevant document that has to be submitted with the application but was not tendered. In the application he reserved the right to tender the certified copies of the written submissions but

not reserved the right to tender the order knowingly that the copy of the order was not obtained from the Magistrate Court. He has pleaded that the copy of the order was not received till the application is filed but has failed to reserve the right to tender when obtained. Without getting involved in obtaining relevant documents, the Court should have dismissed the application for violating the rules of Court of Appeal Appellate Procedure Rules 1990, because the failure to tender the material documents is fatal.

The revision is a discretionary remedy available only on the exceptional grounds. It is settled law that unless exceptional circumstances are pleaded and established, Court will not act in revision. Gamini Amarathunga J. after considering several authorities, held in the case of *Dharmaratne and another v Palm Paradise Cabanas Ltd and others* [*2003*] *3 Sri L R 24 at page 29 that;*

> *The requirement of exceptional circumstances for the exercise of revisionary jurisdiction is not a requirement statutorily laid down anywhere. As Gunawardana J, himself has referred to, Abrahams CJ. in Ameen v Rashid (supra) has explained the rationale for insisting on the existence of exceptional circumstances for the exercise of revisionary jurisdiction. According to Abrahams CJ. revision of an appealable order is an exceptional proceeding and a person seeking this method of rectification must show why this extra-ordinary method is sought rather than the ordinary method of appeal. As Hutchinson CJ. has stated in Perera v Silva (supra) it is not possible to contend that the power ought to be exercised or that the legislature could have intended that it should be exercised so as to give the right of appeal practically in every case. 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 garb 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'.

In the revision application to the High Court the Respondent (the Petitioner in that case) has failed to plead any exceptional circumstance. In the paragraph 9 of the petition dated 18.09.2006, the Respondent pleaded to invoke the revisionary jurisdiction of the Provincial High Court on the grounds pleaded in sub paragraphs i to xvii where none of them could be considered as exceptional grounds.

The learned Magistrate as well as the learned High Court Judge has accepted that the Appellant was the wife of the deceased Alfred and they were living in matrimony in the disputed land. The land was in possession of the deceased until his demise. The Respondent was helping him to manage the estate. The learned Magistrate has clearly analyzed the evidence such as keeping the car at his father's premises, the statement that the Respondent where he says that he is staying in the night in the disputed land and the affidavits of the neighbors and come to the conclusion that the land was possessed by deceased and the Appellant.

After the death of Alfred, the Appellant possessed the land. On 30.066.2005 the appellant had to leave the land in dispute and go to her own land. She had to leave the land because she was threatened to leave by the Respondent. She has made three complaints to the police on this threat. It

cannot be said that she left the premises on her free will but she was forced to leave. It amounts to a forcible dispossession.

The learned High Court Judge has considered that the deceased Alfred has made a nomination on succession, but it is not a matter that can be considered in a case under section 66 of the Primary Court Procedure Act.

The learned High Court Judge has misdirected herself and decided that the Appellant had left the premises on her free will and she is not getting any matrimonial right because of the nomination made by the deceased.

I set aside the order of the learned High Court Judge dated 04.11.2010 and affirm the order of the learned Magistrate dated 12.09.2006.

Judge of the Court of Appeal

P.R.Walgama J.

I agree.

Judge of the Court of Appeal