

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

**Court of Appeal Case No.
CA (PHC) 163/18**

High Court of Tangalle Case No.
HCRA/13/2017

Magistrate Court of Walasmulla
Case No. 41298

In the matter of an application under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the Article 154(P)(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Kankanam Vitharanage David
No. 95/1, Netolapurawa, Hakuruwela.
2. Kankanam Vitharanage Piyadasa
Gahagalagoda, Dangalakanda,
Katuwana.
3. Kankanam Vitharanage Upul Nishantha
No. 70/17, Ambaseswana, Dangalakanda,
Katuwana.

Petitioners

Vs.

1. Kankanam Gamage Somasiri
Miriswatta, Hulankanda,
Dampahala.
2. Kankanam Gamage Piyathissa
Palugoda, Wathukanda,
Katuwana.
3. Kankanam Gamage Ariyadasa
Mitikomehena, Hulankanda, Dampahala,
Urubokka.
4. Kankanam Vitharanage Premawathi
Palugoda, Wathukanda, Katuwana.
5. Geeganage Renuka
Miriswatta, Hulankanda, Dampahala,
Urubokka.

Respondents

IN THE PROVINCIAL HIGH COURT

1. Kankanam Gamage Somasiri
Miriswatta, Hulankanda,
Dampahala.

4. Kankanam Vitharanage Premawathi
Palugoda, Wathukanda,
Katuwana.

1st and 4th Respondent- Petitioners

Vs.

1. Kankanam Vitharanage David
No. 95/1, Netolapurua, Hakuruwela.

2. Kankanam Vitharanage Piyadasa
Gahagalagoda, Dangalakanda,
Katuwana.

3. Kankanam Vitharanage Upul Nishantha
No. 70/17, Ambasewana, Dangalakanda,
Katuwana.

Petitioner-Respondents

2. Kankanam Gamage Piyathissa
Palugoda, Wathukanda,
Katuwana.

3. Kankanam Gamage Ariyadasa
Mitikomehena, Hulankanda, Dampahala,
Urubokka.

5. Geeganage Renuka
Miriswatta, Hulankanda, Dampahala,
Urubokka.

2nd, 3rd, 5th Respondent- Respondents

IN THE COURT OF APPEAL

1. Kankanam Vitharanage David
No. 95/1, Netolapurawa, Hakuruwela.
2. Kankanam Vitharanage Piyadasa
Gahagalagoda, Dangalakanda,
Katuwana.
3. Kankanam Vitharanage Upul Nishantha
No. 70/17, Ambasewana, Dangalakanda,
Katuwana.

Petitioner - Respondent – Appellants

Vs.

1. Kankanam Gamage Somasiri
Miriswatta, Hulankanda,
Dampahala.
4. Kankanam Vitharanage Premawathi
Palugoda, Wathukanda,
Katuwana.

**1st and 4th Respondent- Petitioner-
Respondents**

2. Kankanam Gamage Piyathissa
Palugoda, Wathukanda,
Katuwana.
3. Kankanam Gamage Ariyadasa
Mitikomehena, Hulankanda, Dampahala,
Urubokka.
5. Geeganage Renuka
Miriswatta, Hulankanda, Dampahala,
Urubokka.

**2nd, 3rd, 5th Respondent – Respondent-
Respondents**

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

Counsels: Pathum Navarathne Bandara for the Petitioner – Respondent-Appellants.
Ruwan Jayawardena for the 1st, 2nd, 4th & 5th Respondents

Argued: 29.01.2026

Written submissions tendered on: 28.10.2025 by Petitioner – Respondent- Appellants.
26.01.2026 by 1st, 2nd, 4th, 5th Respondent- Petitioner- Respondents.

Judgment Delivered: 22.05.2026

Thotawatte, J.

Introduction

The present appeal has been preferred by the Petitioner-Respondent-Appellants (hereinafter sometimes referred to as the “Appellants”) against the judgment dated 05.09.2018 delivered in favour of the 1st and 4th Respondent-Petitioner-Respondents and 2nd, 3rd, 5th Respondent-Respondent-Respondents (hereinafter sometimes referred to as the “Respondents”) by the learned High Court Judge of the High Court of the Southern Province holden in Tangalle, exercising revisionary jurisdiction under Article 154P(3)(b) of the Constitution, whereby the learned High Court Judge set aside the order dated 22.05.2017 made by the learned Magistrate of the Magistrate Court of Walasmulla, functioning as the Primary Court Judge under the provisions of the Primary Courts’ Procedure Act, No. 44 of 1979 (hereinafter referred to as the “PCP Act”).

Factual Matrix

The dispute in the present matter relates to a land situated within the Katuwana area. The 1st Appellant claimed that he had received a Grant under the Land Development Ordinance in the year 2000 in respect of a land described as containing an extent of one acre.

However, the Appellants stated that the actual physical extent within the boundaries of the said Grant measured approximately 1¾ acres and that they had continuously possessed and cultivated the entirety of the said land for several years.

The Appellants further alleged that the Respondents had entered a portion of the said land and continuously disturbed their peaceful possession. Several complaints had been made to the police and public authorities regarding the said disturbances. It also appears that proceedings had earlier been instituted before Court relating to the same dispute for the purpose of maintaining peace between the parties.

The Respondents denied the Appellants' claim to the disputed portion and maintained that they were not claiming the land referred to by the Appellants, but only a separate adjoining portion identified by them as Lot No. 1339.

Progression of Litigation

The Appellants instituted proceedings before the learned Magistrate of Walasmulla under Section 66(1)(b) of the PCP Act alleging disturbances to their possession and seeking appropriate relief.

The learned Magistrate, after allowing parties to file affidavits, counter affidavits, documents and written submissions, by order dated 22.05.2017 held inter alia that:

- the Appellants had established prior possession of the disputed land;
- the Respondents had failed to properly identify the land claimed by them; and
- the Respondents had forcibly removed the Appellants from the land.

Accordingly, the learned Magistrate directed the Respondents to hand over vacant possession of the disputed land to the Appellants.

Being aggrieved by the said order, the 1st and 4th Respondents invoked the revisionary jurisdiction of the High Court of Tangalle seeking to set aside the order of the learned Magistrate.

The learned High Court Judge by judgment dated 05.09.2018 held that:

- the material before Court did not establish dispossession of the Appellants within two months preceding the institution of proceedings; and
- disputes between the parties had existed long before the institution of the action.

Accordingly, the learned High Court Judge set aside the order of the learned Magistrate.

Being dissatisfied with the said judgment of the learned High Court Judge, the Appellants have preferred the present appeal before this Court seeking to set aside the judgment of the learned High Court Judge and to restore the order of the learned Magistrate.

Grounds of Appeal

The principal grounds urged before this Court may be summarized as follows:

- that the learned High Court Judge had improperly interfered with findings of fact made by the learned Magistrate;
- that the learned High Court Judge had failed to properly appreciate the evidence relating to possession and disturbances caused by the Respondents;
- that the learned High Court Judge had failed to consider that the application principally related to continuing disturbances to possession; and
- that the learned Magistrate had correctly found that the Respondents failed to properly identify the land claimed by them.

Analysis

Proceedings under Section 66 of the PCP Act are preventive in nature and are intended mainly to preserve public order and prevent breaches of the peace until parties establish their rights before a competent civil court. The inquiry before the learned Magistrate is therefore limited to questions relating to possession and disturbances to possession and does not involve a final determination regarding title.

It is also well settled that revisionary jurisdiction is an exceptional jurisdiction and is not intended to function as a substitute for an appeal. Interference is generally justified only where there exists illegality, jurisdictional error, procedural irregularity or a serious miscarriage of justice.

Having considered the material placed before this Court, it appears that the learned Magistrate had evaluated the affidavits and documentary material submitted by both parties and had made findings regarding prior possession and alleged disturbances to possession, whereas the learned High Court Judge took the view that the material did not establish recent dispossession within the period contemplated by Section 68(3) of the PCP Act.

However, this Court observes that the Appellants themselves had not clearly pleaded that they had been forcibly dispossessed of the entirety of the disputed land within two months before the institution of proceedings. On the contrary, the Appellants' own written submissions indicate that their complaint mainly related to continuing disturbances to their peaceful possession.

Before this court the counsel for the Appellant categorically denied that they were dispossessed from the land claimed by the and the learned magistrate has erroneous conclusion.

In such circumstances, the finding of the learned Magistrate that the Respondents had forcibly removed the Appellants from the land, together with the consequential order directing the Respondents to hand over vacant possession, appears to extend beyond the factual basis pleaded by the Appellants themselves.

However, this Court is unable to agree that the entirety of the application necessarily failed solely because the Appellants had not satisfactorily established a recent forcible dispossession within the two months preceding the institution of proceedings. It appears that the learned Magistrate had approached the matter on the basis that the Appellants had been forcibly removed from possession and were therefore entitled to restoration of possession under Section 68(3) of the PCP Act. The learned High Court Judge, having found that such recent forcible dispossession had not been satisfactorily established, proceeded to treat that deficiency as fatal to the entirety of the application.

Nevertheless, the material placed before Court disclosed not merely an allegation of completed dispossession, but a continuing dispute affecting land involving repeated

disturbances to possession, prior police intervention, and earlier proceedings relating to the maintenance of the peace. Accordingly, the material before Court required further consideration as to whether the application, properly construed, principally related to continuing disturbances to possession rather than a completed dispossession requiring restoration of possession.

This Court further observes that the dispute between the parties appears fundamentally to concern the identification of the disputed land itself. Whilst the Appellants claimed possession of approximately 1¾ acres within the boundaries of the Grant issued to the 1st Appellant, the Respondents consistently maintained that they occupied separate adjoining land identified as Lot No. 1339 and not the land covered by the said Grant. Thus, competing claims existed not merely regarding possession, but also regarding the identity and extent of the land actually in dispute between the parties.

In such circumstances, this Court is of the view that neither the learned Magistrate nor the learned High Court Judge had fully considered the true nature of the dispute disclosed by the pleadings and the material placed before Court. Accordingly, the interests of justice require that the matter be reconsidered afresh upon a proper evaluation of the pleadings, the nature of the alleged disturbances, and the identification of the disputed corpus.

In such circumstances, this Court is of the view that the learned Magistrate appears to have treated the application as one involving a completed dispossession and consequently granted restoration-type relief upon findings that the Appellants had been forcibly removed from possession, notwithstanding the fact that the pleadings and material before Court primarily disclosed allegations relating to continuing disturbances to possession and not dispossession. Conversely, although the learned High Court Judge correctly identified deficiencies regarding proof of recent forcible dispossession within the period contemplated by Section 68(3) of the PCP Act, the learned High Court Judge also appears to have proceeded on the basis of an alleged dispossession and that the failure to establish such dispossession was fatal to the entirety of the proceedings. In the view of this Court, neither Court appears to have fully considered whether the application, properly construed upon the pleadings and other material submitted.

Having regard to the uncertainty surrounding the precise nature of the alleged disturbances, the identity and extent of the disputed land, the distinction between the land covered by the Grant and the adjoining land claimed by the Respondents, together with the uncertainty regarding the precise relief arising from the pleadings, this Court is of the

view that the interests of justice would best be served by setting aside both the order of the learned Magistrate and the judgment of the learned High Court Judge and remitting the matter to the learned Magistrate for fresh consideration.

Conclusion

For the aforesaid reasons, this Court makes order as follows:

- (a) The judgment of the learned High Court Judge of Tangalle dated 05.09.2018 in HCRA/13/2017 is hereby set aside.
- (b) The order of the learned Magistrate of Walasmulla dated 22.05.2017 in Case No. 41298 is also hereby set aside.
- (c) The matter is remitted to the Magistrate's Court of Walasmulla for rehearing and fresh determination in accordance with law and consistent with the observations contained in this judgment.
- (d) The learned Magistrate shall confine the inquiry to the pleadings already filed in the Magistrate's Court of Walasmulla unless any amendment is duly sought and permitted in accordance with law.
- (e) No order is made regarding costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree.

Judge of the Court of Appeal