

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

In the matter of an appeal under Article 154 (g)(6) and 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka and the Provisions of Act No. 19 of 1990.

Court of Appeal Case No.
CA/PHC/105/2018

Officer In-Charge,
Police Station,
Tissamaharama.

Complainant

HC Hambantota Case No.
HCRA/03/2015

Vs.

MC Tissamaharama Case No.
23376

Sudantha Sanjeewa Ahangama,
No.79,
Dr. C.W.W. Kannangara Mawatha,
Colombo 07.

1st Party

Siththachcharige Sumith,
No.33, Sithujayapura,
Kirinda, Tissamaharama.

2nd Party

Talpawila Vidana Kankanamge Munidasa,
Magama, Power of Attorney Holder,
Tissamaharama on Behalf of Thusitha Srimal
Hikkaduwa Liyange

Intervenor Party

And between

Siththachcharige Sumith,
No.33, Sithujayapura,
Kirinda, Tissamaharama.

2nd Party- Petitioner

Talpawila Vidana Kankanamge Munidasa,
Magama, Power of Attorney Holder,
Tissamaharama on Behalf of Thusitha Srimal
Hikkaduwa Liyange

Intervient Party - Petitioner

Vs.

Sudantha Sanjeewa Ahangama,
No.79,
Dr. C.W.W. Kannangara Mawatha,
Colombo 07.

1st Party- Respondent

Officer In-Charge,
Police Station,
Tissamaharama.

Complainant- Respondent

And now between

Siththachcharige Sumith,
No.33, Sithujayapura,
Kirinda, Tissamaharama.

2nd Party- Petitioner- Appellant

Talpawila Vidana Kankanamge Munidasa,
Magama, Power of Attorney Holder,
Tissamaharama on Behalf of Thusitha Srimal
Hikkaduwa Liyange

Intervient Party – Petitioner- Appellant

Vs.

Sudantha Sanjeewa Ahangama,
No.79,

Dr. C.W.W. Kannangara Mawatha,
Colombo 07.

1st Party- Respondent- Respondent

Officer In-Charge,
Police Station,
Tissamaharama.

Complainant- Respondent- Respondent

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

Counsels: Newille Abeyratne, PC with Kaushalya Abeyratne Dias instructed by
Ajith Lal Kumara for the 2nd Party – Petitioner- Appellant and
Intervient Party - Petitioner – Appellant.

Manoj Bandara with Kasun Chamara Munasinghe and Warangani
Wickaramarathna instructed by Sudath Perera Associates for the
1st Party- Respondent- Respondent.

Argued: 15.06.2026

Written submissions 28.02.2022 & 02.02.2026 (on preliminary objections) by 1st Party-
tendered on: Respondent- Respondent.

18.04.2022 & 30.01.2026 (on preliminary objections) by 2nd Party
– Petitioner - Appellant and Intervient Party - Petitioner –
Appellant.

Judgment Delivered: 16.09.2026

Introduction

The present appeal has been preferred by, the 2nd Party – Petitioner - Appellant, together with the Intervenant Party – Petitioner - Appellant (hereinafter collectively referred to as the “Appellants” and separately as the “Appellant” and “Intervenant Appellant”), against the judgment dated 28.06.2018 delivered by the learned High Court Judge of the High Court of the Southern Province holden in Hambantota, exercising revisionary jurisdiction under Article 154P(3)(b) of the Constitution. By that judgment, the learned High Court Judge affirmed the order dated 11.02.2015 made by the learned Magistrate of Tissamaharama functioning as the Primary Court Judge under Part VII of the Primary Courts’ Procedure Act, No. 44 of 1979 (hereinafter referred to as the “PCP Act”), and dismissed the Appellants’ revision application.

Factual Matrix

The dispute concerns a portion of State land at Tissamaharama in respect of which the rival parties rely upon instruments emanating from the State. The Appellants state that the land had originally been granted to one Somirathne by a Jayabhoomi Grant bearing No. 51550 dated 20.05.1999, and that, with the approval of the Divisional Secretary, Somirathne transferred his interest to the Intervenant Appellant by Deed No. 460. The 1st Party-Respondent-Respondent (hereinafter referred to as the “Respondent”), on the other hand, relies upon long-term Lease Agreement No. 4/10/34669 granted under State Lands Ordinance, No. 8 of 1947. These instruments are invoked by the respective parties as part of the factual history bearing upon their respective claims to the disputed possession; final title was not a matter committed to the Primary Court for adjudication.

On a complaint made by the Respondent, the Officer-in-Charge of the Tissamaharama Police referred the dispute to the Primary Court on 18.03.2014 by information filed under section 66(1)(a) of the PCP Act. The parties tendered affidavits, counter-affidavits, documents and written submissions. The matter was thereafter fixed for order on 08.07.2014.

On that date, instead of delivering the final order, the learned Primary Court Judge directed the Survey General’s Department to survey the land claimed by the parties, to superimpose the disputed portion and to submit a plan and report. After receipt of the survey material the learned Primary Court Judge, by order dated 11.02.2015, held that the Respondent

was entitled to possession of the disputed portion and ordered that he be restored to possession.

Progression of Litigation

Aggrieved by that order, the Appellants invoked the revisionary jurisdiction of the High Court of Hambantota under HCRA 03/2015 (in the written submissions submitted to this court this number is incorrectly referred to as HCRA 05/2015). After notice, objections and written submissions, the learned High Court Judge had delivered judgment on 28.06.2018, affirming the Primary Court order and dismissed the revision application.

Being dissatisfied with the order of the learned judge of the High Court the Appellants has submitted the instant Appeal to this Court.

Grounds of Appeal

The Petition of Appeal states, in substance, that the High Court judgment is contrary to law; that the provisions governing an inquiry under section 66 were wrongly interpreted, that the learned High Court Judge failed properly to identify and evaluate the exceptional circumstances relied upon for revision, and the learned High Court Judge erred in holding that no exceptional circumstances had been established.

The remaining grounds challenge the conclusion concerning the revocation and execution of powers of attorney, the interpretation of section 72(c) of the PCP Act, the power and discretion of the Primary Court Judge to issue a commission, the alleged enlargement or disregard of the procedure prescribed by the PCP Act; and the use of facts relating to ownership when determining possession.

Preliminary Objection

Before considering the merits of the appeal, it is necessary to determine the preliminary objection raised by the 1st Party – Respondent - Respondent concerning its maintainability. The objection that was raised when the matter came before this Court on 10.12.2025, is founded on Rule 4(2) of the Court of Appeal (Procedure for Appeals from the High Courts) Rules, 1988. Rule 4(2) requires that, where an appeal concerns a matter of law, the petition of appeal shall set out the matter of law sought to be argued and bear a certificate by an Attorney-at-Law that it constitutes a fit question for adjudication by the Court of Appeal. Both parties were afforded an opportunity to tender written submissions on the objection.

The Respondent submits that the absence of the prescribed certificate constitutes non-compliance with a mandatory requirement of Rule 4(2).

Rule 4(2) provides:

“Where the appeal is on a matter of law the petition shall contain a statement of the matter of law to be argued and shall bear a certificate by an Attorney-at-Law that such matter of law is a fit question for adjudication by the Court of Appeal.”

It is common ground that the Petition of Appeal does not bear such a certificate. The Respondent contends that the grounds of appeal raise matters of law and that non-compliance with Rule 4(2) is fatal to the appeal, which should accordingly be dismissed *in limine*. The Appellants offer no satisfactory explanation for the omission. They contend, however, that the objection was raised belatedly, after the appeal had remained pending before this Court for several years and the grounds involve mixed questions of fact and law. Further that the Respondent participated in the proceedings, filed written submissions without raising the objection at an earlier stage and that the relevant omission has caused no prejudice to the Respondent. On those grounds, the Appellants invite this Court to exercise its discretion against dismissal.

Applicable Principles

The observance of procedural rules is integral to the orderly exercise of appellate jurisdiction. Such rules are not to be regarded as inconsequential technicalities. This principle is reflected in *Shanmugavadive v. Kulathilake*¹, *Fernando v. Sybil Fernando and Others*², *Sudath Rohana and Another v. Mohamed Zeena and Another*³, and *Attanayake v. Commissioner General of Elections*⁴.

The authorities concerning compliance with the Court of Appeal (Procedure for Appeals from High Courts) Rules, 1988, likewise emphasize the mandatory character of their material requirements. In *Manivannan and Others v. Bernard Kurukuladhithya*⁵, non-compliance with Rule 4(1) was held fatal. Similarly, in *Rathnayake Mudiyansele Mahinda*

¹ (2003) 1 Sri LR 215

² (1997) 3 Sri LR 1

³ (2011) 2 Sri LR 134

⁴ (2011) 1 Sri LR 220

⁵ CA (PHC) 54/2003 decided on 12.02.2019

*Rathnayake and Others v. Henry Persy Bonipus and Others*⁶ the Court similarly upheld a preliminary objection founded upon material non-compliance with Rules 4 and 14. The broader principle that compliance with imperative procedural rules is mandatory, and that a material defect in invoking the jurisdiction of the Court may prove fatal, was also affirmed in *Amerasian Private Ltd. v R. A. Ranasinghe and Others*⁷.

The object of Rule 4(2) is readily discernible. Where appellate intervention is sought on a matter of law, the petition must identify the matter of law sought to be argued and bear the certificate of an Attorney-at-Law that it constitutes a fit question for adjudication. The certificate is not an ornamental endorsement. It embodies a professional assessment of the legal question sought to be agitated, identifies and confines the legal controversy upon which the appellate jurisdiction of this Court is invoked, and discourages frivolous or ill-conceived appeals. Rule 4(2) is, accordingly, expressed in mandatory terms.

Although the intervenient Appellant describes the grounds as involving errors of both law and fact, their true nature must be determined from their substance.

The grounds concern the interpretation of sections 66 and 72(c) of the Primary Courts' Procedure Act, the power of the Primary Court Judge to issue a commission for survey, the jurisdiction of the Primary Court over State land, and the principles governing the exercise of revisionary jurisdiction. These are substantially questions of law. Rule 4(2) was therefore applicable, and the Petition of Appeal ought to have contained the prescribed certificate of an Attorney-at-Law.

It is common ground that the petition does not contain that certificate. However, although compliance with Rule 4(2) is mandatory, dismissal is not necessarily the automatic consequence of every failure to comply.

The mandatory character of a procedural rule does not, however, necessarily mean that every instance of non-compliance must result mechanically in dismissal. In *Kiriwanthe and Another v. Nawarathne and Another*⁸, the Supreme Court recognized that, although procedural rules must be complied with, the consequence of non-compliance must be determined by considering the nature of the default, the purpose of the rule, the explanation offered and the circumstances of the particular case. That approach was

⁶ CA (PHC) 23/2005, decided on 28.04.2016

⁷ CA (PHC) 185/2011, decided on 05.08.2015.

⁸ (1990) 2 Sri LR 393

subsequently applied in *Ceylon Electricity Board v. Poyry Switzerland Limited*⁹, where the absence of a reasonable explanation and the litigant's lack of diligence were treated as material considerations.

The decisions relied upon by the Appellants, including *Attorney-General v. Dr. Shirani Bandaranayake and Others*¹⁰, and *Rohitha Peiris and Another v. Doreen Peiris*¹¹, similarly demonstrate that dismissal is not invariably an automatic consequence of every procedural default and that the Court retains a discretion in an appropriate case. Those decisions do not, however, dispense with compliance. They require the Court to evaluate the default in its proper setting, having regard to the purpose of the rule, the nature and gravity of the non-compliance, the explanation offered for it, and the conduct of the defaulting party.

Analysis of the Preliminary Objection

The purpose of Rule 4(2) is to ensure that the questions of law to be argued are clearly identified and certified as fit for determination by this Court. In the present case, although the certificate is absent, the Petition of Appeal clearly sets out the questions of law relied upon. The Respondent understood those grounds, participated in the proceedings and addressed them in written submissions. No prejudice caused by the omission has been shown.

The stage at which the objection was raised is also material. The appeal was filed on 10.07.2018. The Respondent participated in the proceedings and filed written submissions without raising this objection. It was taken only on 10.12.2025, more than seven years after the appeal was filed.

A procedural objection of this nature should ordinarily be raised at the earliest available opportunity. In *Romesh Cooray v. Jayalath, Sub-Inspector of Police and Others*¹², the Supreme Court held, in the context of a time-bar objection in a fundamental-rights application, that such an objection should be raised in the objections or written submissions and not for the first time at the hearing. This principle was reaffirmed in *Marapitiya Arachchilage Manjula Somawardana and Others v. Neel Bandara Hapuhinne*

⁹ SC/HC/LA/06/2020, decided on 09.07.2025

¹⁰ SC/SPL/LA No. 27/2012

¹¹ (2015) Vol. XXI Bar Association Law Journal 101

¹² (2008) 2 Sri LR 43

*and Others*¹³, where the Court regarded an objection raised in the pre-argument written submissions as having been taken at the proper stage.

The Respondent's participation in the proceedings cannot, by itself, supply the certificate required by Rule 4(2). It is, nevertheless, a relevant consideration in deciding the consequence of the omission. In the present case, the Respondent participated in the appeal, filed written submissions without raising the objection, and addressed the legal grounds relied upon by the Appellants. No prejudice caused by the omission has been established. These circumstances, together with the delay in raising the objection, weigh against dismissing the appeal without considering its merits.

The Appellants have not satisfactorily explained the omission. However, considering the Respondent's delay in raising the objection, the absence of prejudice, the clear statement of the legal issues, and the interests of justice, dismissal would be disproportionate to the default.

Accordingly, while holding that the Petition of Appeal does not comply with Rule 4(2), I exercise the discretion of this Court not to dismiss the appeal on account of that non-compliance, having regard to the circumstances of this case. This conclusion should not be understood as diminishing the obligation of parties and Attorneys-at-Law to comply with the Rule.

The preliminary objection raised by the 1st Party – Respondent - Respondent is therefore rejected. The appeal will accordingly be considered on its merits.

Determination of the Substantive Appeal

The appeal is from the judgment of the High Court refusing to revise the order of the learned Primary Court Judge. An order made under Part VII of the Primary Courts' Procedure Act is not appealable and the High Court was therefore exercising revisionary jurisdiction, which is discretionary and is not intended to provide a second appeal on facts. The Appellants were required to establish an illegality, material irregularity or miscarriage of justice amounting to an exceptional circumstance warranting revision.

¹³ SC/FR/06/2023, decided on 17.12.2025

Nature of the Primary Court Inquiry

Proceedings under Part VII are summary and preventive. Where the dispute concerns possession, section 68(1) requires the Primary Court Judge to determine who was in possession of the land, or the disputed part of it, on the date on which the information was filed. If a party had been forcibly dispossessed within the preceding two months, section 68(3) permits restoration of that party to possession. The order remains effective only until the parties' rights are determined by a competent court.

Accordingly, the Primary Court does not determine ownership or the ultimate right to possession. As stated in *Punchi Nona v. Padumasena and Others*¹⁴, title may be considered only so far as it assists in deciding possession. The competing State grant, deed of transfer and lease could therefore be examined as part of the history and surrounding circumstances, but their validity and the parties' final proprietary rights cannot be decided in these proceedings.

Jurisdiction in Respect of State Land

The Appellants submit that section 32(2), read with paragraphs (1) and (3) of the Fourth Schedule to the Judicature Act No. 2 of 1978, excludes the dispute from the jurisdiction of the Primary Court because the parties relied upon instruments issued or approved by State officers. I am unable to accept that submission.

The Fourth Schedule does not exclude every dispute relating to State land. It excludes, among other matters, actions concerning acts or orders of the State or acts or orders made by State officers in their official capacity. The present proceedings did not seek to challenge, affirm, set aside or determine the validity of any such act or order. They concerned a dispute between private parties as to the actual possession of a particular portion of land.

Once the police information was filed under section 66(1)(a) of the Primary Courts' Procedure Act, section 66(2) vested the Primary Court with jurisdiction to inquire into and determine that dispute in the manner provided in Part VII. The fact that the parties relied upon a State grant, an official approval and a State lease as evidence supporting their

¹⁴ (1994) 2 Sri LR 117

respective claims did not, by itself, bring the proceedings within the Fourth Schedule of the Judicare Act.

The Primary Court did not affirm or invalidate the Jayabhoomi Grant, the approval relating to Deed No. 460, or Lease Agreement No. 4/10/34669. Nor did its order determine title against the State. It made only a provisional determination of possession between the parties, subject to any order or decree of a competent court. The objection based on section 32(2) and the Fourth Schedule therefore fails.

Survey Commission and Section 72

The Appellants complain that, after the inquiry had concluded and the matter had been fixed for order, the learned Primary Court Judge directed the Survey General's Department, on his own motion, to survey the land, superimpose the disputed portion and submit a plan and a report.

The learned High Court Judge accepted that the Primary Courts' Procedure Act contains no express provision authorizing the issue of a commission to survey land. Nevertheless, the learned High Court Judge held that, where the evidence relating to possession was evenly balanced, the Primary Court Judge was entitled to obtain further material, even after the matter had been fixed for order, for the limited purpose of clarifying the affidavits and documents already before Court. In reaching that conclusion, the learned High Court Judge also considered the preventive purpose of proceedings under Part VII, the Appellants' failure to object when the commission was issued, and the opportunity subsequently afforded to both parties to make submissions upon the survey report.

Section 72 provides that a determination under Part VII shall be made after considering the information, affidavits and documents furnished by the parties; such other evidence on matters arising from those affidavits or documents as the Court may permit to be led; and such oral or written submissions as the Judge may permit. Although section 72(b) allows the Court to permit additional evidence on matters arising from the material already filed, it does not expressly authorize the Judge to reopen a concluded inquiry and obtain fresh evidence on his own initiative.

In *Karunanayake v. Sangakkara*¹⁵, the Court of Appeal held that, after closing the case and fixing the matter for judgment, the Primary Court Judge was not entitled to reopen the inquiry and summon witnesses of his own choice *ex mero motu*. The Court observed that the Judge could not embark upon a “voyage of discovery” to supplement the material placed before Court by the parties, since the determination contemplated by section 72 of the Primary Courts’ Procedure Act must be made upon that material and such further evidence as the Court may lawfully permit the parties to lead.

Even when obtained for that limited purpose of clarifying the identity of the disputed property, the survey plan and report remain fresh evidentiary material secured by the Primary Court Judge after the inquiry had concluded and the matter had been fixed for order. The purpose for which the commission was issued cannot, by itself, establish that the procedure was authorized by section 72.

Determination of Possession & Exceptional circumstances

The learned Primary Court Judge relied on survey material obtained *ex mero motu* after the matter had been fixed for order to identify the disputed portion and to determine possession. Although the learned High Court Judge held that no exceptional circumstance arose because the parties had not objected and were permitted to address the report, those matters do not establish that the learned Magistrate was legally entitled to obtain and rely upon such evidence. The learned Magistrate’s order clearly demonstrates that the survey material materially influenced the finding as to possession. Neither acquiescence for the procedure nor an opportunity to make submissions can render admissible evidence obtained contrary to section 72 or confer a power not granted by the PCP Act.

Even if it is contended that section 78 of the Primary Courts’ Procedure Act supplies the procedural authority to issue a survey commission where clarification of the identity of the corpus is required, that contention cannot be sustained. In *Kayas v. Nazeer and Others*¹⁶, subsequently followed in *Jayantha Wickremasinghe Gunasekara alias Kananke Dhammadinna v. Jayatissa Wickremasinghe Gunasekara and Others*¹⁷, it was authoritatively held that section 78 cannot be invoked to import the provisions of the Civil Procedure Code into an inquiry under Part VII of the Act. Nor does Part VII contain any provision expressly empowering the Magistrate to issue a survey commission *ex mero*

¹⁵ (2005) 2 Sri LR 403

¹⁶ 2004 3 SLR 202

¹⁷ CA (PHC) APN 17/2006 decided on 30.09.2011

motu. Section 72(b) merely permits the Court to receive other evidence relating to matters arising from the affidavits or documents furnished; it does not authorize the Magistrate to conduct an independent investigation or procure evidence upon the Court's own initiative. Accordingly, the learned Magistrate lacked a legal basis under the Act to issue the survey commission *ex mero motu* and thereafter rely upon the resulting plan and report as evidence procured by Court. The consent of the parties could not confer a statutory power which the Act itself does not confer.

Exceptional Circumstances in Revision

In *C.G.H. Ramniya Kumari v. K.D. Ninecias*¹⁸, the Court applied the principle stated in *Dharmaratne and Another v. Palm Paradise Cabanas Ltd. and Others*¹⁹ that, although the requirement of exceptional circumstances is not expressly prescribed by statute, it has become firmly established as a settled rule of practice. Revision is an extraordinary remedy, and the party invoking it must disclose exceptional circumstances demonstrating why the extraordinary process of revisionary rectification should be employed. Without that selection mechanism, revisionary jurisdiction would become a "gateway" through which litigants could obtain a second appeal in the guise of revision or pursue an appeal where the legislature has conferred no right of appeal.

The existence of exceptional circumstances is therefore a condition precedent to the exercise of revisionary jurisdiction.

In *Siripala v. Lanerolle and Another*²⁰, the Court recognized that exceptional circumstances are not susceptible to an exhaustive definition and must be determined according to the facts of each case. They may include a manifest illegality, a fundamental misdirection of law, a material procedural irregularity, or an error resulting in a grave failure or miscarriage of justice. Nevertheless, the existence of an ordinary error or irregularity is insufficient; the circumstances relied upon must be of such gravity as to warrant the exercise of the Court's extraordinary revisionary jurisdiction and must be expressly disclosed in the petition.

¹⁸ CA (PHC) 140/2010, decided 14.12.2016

¹⁹ (2003) 3 Sri LR 24

²⁰ (2012) 1 Sri LR 105

The mere existence of an error of fact or law does not, by itself, justify revision. As recognized in *Athurupana v. Premasinghe*²¹, every illegality, impropriety or irregularity does not warrant the exercise of revisionary jurisdiction. Such jurisdiction will be exercised only where the illegality, impropriety or irregularity in the proceedings has resulted in a miscarriage of justice, by the party affected being denied what is lawfully and justly due to that party.

In *Aysha Hameed and Another v. Mohamed Mohideen Shaul Hameed and Others*²² the Court, relying upon judgements such as *Urban Development Authority v. Ceylon Entertainments Ltd.*²³ and *Siripala v. Lanerolle and Another*²⁴, reiterated that the existence of exceptional circumstances is a precondition to the exercise of revisionary powers. Where the petitioners have neither properly pleaded nor established exceptional circumstances warranting revision, the Court of Appeal cannot exercise its revisionary jurisdiction to revise or set aside the impugned order of the learned High Court Judge.

In *Galgamu Ralalage Chandima Dilrukshi v. Rajapakse Arachchilage Thushara Ranjan and Another*²⁵, His Lordship Neil Iddawala J. held that, in the absence of specifically pleaded and established exceptional circumstances, the extraordinary and discretionary revisionary jurisdiction of the Court of Appeal could not properly be invoked.

The requirement that exceptional circumstances be “pleaded” relates to the petitioner’s obligation to demonstrate, by reference to the pleaded facts and supporting material, that such circumstances actually exist and are sufficiently exceptional to warrant revisionary intervention. Matters not pleaded cannot ordinarily be introduced for the first time through written submissions. Written submissions may explain the legal significance of circumstances already pleaded and supported by the record, but they cannot ordinarily cure the failure to plead the material circumstances in the petition.

The necessity of pleading and establishing exceptional circumstances was similarly affirmed in *Wijamunige Charlis (Deceased) and others v. Weerappulige Ashoka Weerasinghe*²⁶, where the Court upheld the High Court’s finding that the appellants had neither expressly averred in their revision petition the existence of exceptional circumstances warranting

²¹ SC Appeal No. 21/202, decided on 14.05.2004, (B.L.R [2004] Vol. X Part II P. 60)

²² CA/CPA/13/2021, decided on 02.03.2023

²³ (2004) 1 Sri. LR 95

²⁴ Supra

²⁵ CA/PHC/APN/78/2021, decided on 17.08.2021

²⁶ CA (PHC) 138/2016, decided on 08.08.2023

revision nor established circumstances sufficiently exceptional to justify the exercise of revisionary jurisdiction.

The use of the words “exceptional circumstances” in the petition is not, by itself, sufficient. The petitioner must plead the particular facts of manifest illegality or procedural irregularity relied upon and explain how it has caused, or is likely to cause a grave miscarriage of justice, denial of justice or irreparable prejudice.

The learned High Court Judge in his order dated 28.06.2018 has referring to ***Siripala vs. Lanerolle and Another***²⁷ stated that the pleadings should expressly state exceptional grounds for revision and in the instant case the Petitioner in the Revision application has merely referred to the existence of exceptional grounds, indicating that the Petitioner has failed to establish the existence of exceptional circumstances warranting revision.

Although the Appellants (the Petitioners in the revision application), in subparagraphs (iii) and (iv) of paragraph 08 of the petition dated 25.02.2015 in the revision application HCRA 03/2015, alleged that the learned Magistrate had, *ex mero motu*, made an unlawful order directing the Surveyor-General’s Department to survey the land, the Intervenant Appellant has failed to explain how that order had caused, or was likely to cause, a grave miscarriage of justice, denial of justice, or irreparable prejudice. Indeed, several of the other grounds urged by the Intervenant Appellant in revision proceeds upon the footing that the learned Magistrate had failed properly to consider and analyze the very survey report so obtained. In these circumstances, I agree with the learned High Court Judge that the Appellants had failed to establish exceptional circumstances warranting the exercise of revisionary jurisdiction.

Conclusion

For the foregoing reasons, I find that the Appellants have therefore failed to establish any exceptional circumstance which required the High Court to exercise revisionary jurisdiction. I find no basis to interfere with the order dated 28.06.2018 of the learned High Court Judge of the Southern Province holden in Hambantota.

The appeal is accordingly dismissed. The order dated 28.06.2018 of the learned High Court Judge of Hambantota and order dated 11.02.2015 of the learned Magistrate of Tissamaharama functioning as the Primary Court Judge shall remain in force, subject to any

²⁷ Supra

order or decree that may be made by a competent court concerning the parties' substantive rights.

Under the circumstances I make no order regarding cost.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal