

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

In the matter of an appeal under Article 154P(6) of the Constitution read with the Court of Appeal (Procedure for Appeals from High Courts)

C. A. (PHC) Appeal No. 111/2023

High Court Awissawella Case No.
RA/06/2022

MC Awissawella Case No.
60429

Thuiya Hennadige Sugath Ranjan
No. D 12/2 Malwatte Thimbiripola,
Dehiowita.

2nd Party Respondent – Petitioner- Appellant

Vs.

Paluwatte Gamaralalage Jagath Swarnathilaka
No. D 12/2, Thimbiripola,
Dehiowita.

1st Party Respondent- Respondent –
Respondent

1. Ranawakage Udayakanthi Pathirana
No. D 109/2, Thimbiripola,
Dehiowita.
2. Withana Arachchige Sanjeewani Kumari
No. D 120, Thimbiripola,
Dehiowita.
3. Withana Arachchige Aruna Nuwanpriya
No. D 107, Thimbiripola,
Dehiowita.

Intervenient 1st Party – Respondent-
Respondent- Respondents

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

Counsels: Prabath de Silva instructed by C. Sarachchandra for the 2nd Party Respondent- Petitioner – Appellant.
Seevali Amitirigala, PC with Pathum Wijepala for the 1st Party 1st to 3rd Intervenant Respondent – Respondent – Respondents.
Widura Gunarathne instructed by Kosala Samanthi Perera for the 1st Party Respondent- Respondent.

Written submissions tendered on: 27.04.2026 & 03.09.2026 by 2nd Party Respondent- Petitioner – Appellant.
28.08.2026 by 1st Party-1st, 2nd, 3rd Intervenant- Respondent – Respondent – Respondents.
20.07.2026 by 1st Party – Respondent – Respondent- Respondent.

Judgment 02.10.2026
Delivered:

Thotawatte, J.

Introduction

The 2nd Party Respondent-Petitioner-Appellant (hereinafter referred to as the “Appellant”) appeals from the order dated 10.03.2023 of the learned High Court Judge of the Western Province holden in Avissawella in Case No. RA/06/2022. By the said order, the learned High Court Judge declined to exercise revisionary jurisdiction in respect of the order dated 26.04.2022 made by the learned Magistrate of Avissawella, functioning as the Primary Court Judge, in Case No. 60429. The Magistrate’s order arose from proceedings instituted under section 66 of the Primary Courts’ Procedure Act, No. 44 of 1979 (hereinafter referred to as the “Act”).

Factual Matrix

The Appellant owns land at Thimbiripola, Dehiowita. The dispute concerns a passage adjoining its northern boundary. The 1st Party Respondent-Respondent-Respondent (hereinafter sometimes referred to as the “Respondent”) maintains that an eight-foot-wide roadway had long been used to gain access to his residence and other premises. The 1st, 2nd, and 3rd Intervenant- Respondent – Respondent – Respondents (hereinafter sometimes referred to collectively as the “Intervenant Respondents”) supported that position and claimed to have used the passage to reach their respective lands and other destinations.

The Appellant’s position is that no such roadway existed. He accepts that there was a footpath, but maintains that it was used only occasionally by his family and his predecessor in title to reach the Seethawaka River. He denies that the Respondents had used it as a means of access to their respective lands. The dispute escalated when the Appellant erected concrete posts along the boundary. The Respondent alleged that the posts obstructed the roadway, whereas the Appellant alleged that the Respondent had damaged his fence and uprooted trees on his land.

Progression of the Litigation

Following complaints and a police inquiry, the Officer-in-Charge of the Avissawella Police Station filed information on 15.03.2021 under section 66(1) of the Act. Thereafter, the parties filed affidavits, counter-affidavits and documentary material while the Intervenant Respondents also placed material before the Magistrate’s Court.

At the conclusion of the inquiry, by order dated 26.04.2022, the learned Magistrate found in favour of the Respondent and the Intervenant Respondents in relation to the use of an eight-foot-wide roadway and prohibited the Appellant from obstructing its use. Aggrieved by the said order, the Appellant applied to the High Court in revision. After hearing submissions on maintainability, the learned High Court Judge dismissed the revision application on 10.03.2023, holding that exceptional circumstances warranting revision had not been established.

Grounds of Appeal

The Appellant challenges the High Court's finding that he had not shown exceptional circumstances and its reliance on *Rustom v. Hapangama & Co.*¹, pointing out that no ordinary appeal lies against the Magistrate's order. He also argues that the Magistrate exceeded his powers, and that sufficient evidence had not been produced to establish an eight-foot-wide roadway. He also contends that the order prejudiced his rights. He further complains that the police did not investigate his earlier complaint about damage to the fence and trees, and that the Respondent's conduct caused the threatened breach of the peace.

In his composite written submissions, the Appellant argues that section 69 required the Respondents to prove their right of way by deeds or clear evidence of prescription. He submits that the Magistrate's failure to require that proof amounted to an exceptional circumstance warranting revision.

The Statutory Scheme and the Nature of the Inquiry

Section 66 provides a means of bringing before the Primary Court a dispute affecting land where a breach of the peace is threatened or likely. Where the dispute concerns possession, section 68 applies. Where, as in the present case, it concerns a right of way rather than possession of the land, the applicable provision is section 69. The Judge must determine who is entitled to the right in dispute before making an order regulating its exercise and prohibiting interference with it.

The inquiry is summary and preventive. An order under section 69 does not finally determine title to the land or establish a servitude binding the parties for all purposes. Section 74(1) preserves rights which may be established in a civil suit; section 74(2) excludes an ordinary appeal from an order made under this Part, without excluding revision in a proper case.

The Appellant correctly relies on the statement in *Ramalingam v. Thangarajah*² that section 69 requires a determination of entitlement to the disputed right. It does not follow, however, that a claimant must prove title by deed or establish prescription to the standard

¹ [1978–79] 1 Sri L.R. 352.

² [1982] 2 Sri LR 693

required in a civil action. The Supreme Court has explained that the claimant must show either that he has acquired the right or that he is entitled *for the time being* to exercise it. Mere use of a passage, without material supporting an entitlement in the nature of a servitude, will not suffice; the nature and duration of the use and the surrounding circumstances must be considered³.

Consideration of the Grounds of Appeal

Firstly, it is necessary to consider whether the High Court applied an erroneous test in declining to exercise its revisionary jurisdiction. The absence of an ordinary appeal under section 74(2) does not, by itself, entitle the Appellant to a rehearing of the evidence in revision. Revision is an extraordinary and discretionary jurisdiction exercised to correct serious errors, ensure the due administration of justice, and prevent miscarriages of justice. It is distinct from ordinary appellate jurisdiction, and relief by way of revision cannot be demanded as of right. A party seeking such relief must establish exceptional circumstances justifying its exercise.

The absence of a right of appeal does not transform revision into an ordinary appeal or dispense with the requirement to establish exceptional circumstances. An applicant must demonstrate why the alleged error and its consequences warrant revisionary intervention, beyond mere disagreement with the findings of the Primary Court⁴. Under Chapter VII of the Primary Courts' Procedure Act, the provisional nature of the order and the availability of a civil action to determine the parties' rights are relevant considerations. A failure to establish exceptional circumstances cannot be cured merely by the Court reaching a different conclusion with regard to the dispute⁵. A party with an alternative remedy must establish exceptional circumstances justifying recourse to revision⁶, and even the absence of such a remedy does not dispense with that requirement⁷.

³ *Pallemulla Ralalage Malinda Nishan Pallemulla and Another v. Rankoth Dewayalage Aananda and Others*, SC Appeal No. 27/2023, decided on 12 November 2025; *Ramalingam Nadarajah and Others v. Sanmugasundara Kurukkal Srisantharajah Kurukkul*, SC Appeal No. 140-2019, decided on 13 February 2026

⁴ *Ranawana Hewa Vitharanalage Anoma Geethanjali Samarasena v. Officer-in-Charge, Police Station, Kandy*, CA (PHC) 01/2020, decided on 13 October 2022; *Weerappulige Ashoka Weerasinghe v. Wijamunige Charlis*, CA (PHC) No. 138/2016, decided on 8 August 2023

⁵ *Nazeer v. M.M.A. Moomin*, CA (PHC) 63/2008, decided on 1 August 2014

⁶ *Opatha Kankanamage Sumanasiri v. Thommaya Hakuru Nandawathie*, CA (PHC) 01/2008, decided on 5 May 2014

⁷ *M.M.P. Fernando v. S.M. Podimenike and Others*, CA (PHC) APN 113/2010, decided on 2 December 2013

In *Agampodidurage Somapala alias Remiyal v. Duwage Kularathna and Others*⁸, this Court emphasised that revision is an extraordinary jurisdiction whose exercise requires the establishment of exceptional circumstances. In relation to an order made under the Primary Courts' Procedure Act, the applicant must demonstrate that the impugned order has occasioned a miscarriage of justice or injustice of such gravity as to shock the conscience of the Court. Accordingly, before exercising its revisionary powers, the Court must be satisfied that such circumstances have been disclosed by the material placed before it⁹.

In *Nandawathie and Another v. Mahindasena*¹⁰ this Court explained that revision of an order made under Part VII of the Primary Courts' Procedure Act concerns its legality and does not permit a rehearing of the dispute through a fresh evaluation of the evidence. The parties cannot re-agitate the entire case as they might in an ordinary appeal. Accordingly, the circumstances relied upon to justify revisionary intervention must be examined within those limits, rather than merely as grounds for substituting a different factual conclusion for that reached by the Primary Court.

An appeal against a judgment of a Provincial High Court exercising revisionary jurisdiction concerns the correctness, legality or propriety of the High Court's exercise of that jurisdiction. It does not constitute a direct appeal against the Primary Court's order or permit a rehearing of the original dispute through a fresh evaluation of the evidence. The Court of Appeal must therefore determine whether the High Court properly assessed the circumstances relied upon and whether its refusal to intervene was justified in light of the alleged injustice, prejudice or miscarriage of justice¹¹.

The Appellant contends that the learned High Court Judge failed to consider the circumstances set out in paragraph 12 of his revision application, reproduced in paragraph 23 of his composite written submissions. It is therefore necessary to examine the principal matters relied upon as exceptional circumstances and determine whether the High Court's refusal to intervene was justified in light of the alleged failures.

⁸ CA (PHC) 131/2013, decided on 23 February 2023

⁹ *Caderamanpulle v. Ceylon Paper Sacks Ltd.* [2001] 3 Sri L.R. 112 at 116 C.A. Revision No. 759-2001 decided on 29 June 2001

¹⁰ [2009] 2 Sri L.R. 218, at pages 237–238

¹¹ *Muthusami Loganathan v. Walpale Gedara Malani Manjalika and Others*, CA (PHC) No. 203/2019, decided on 4 April 2023

The contention that the Magistrate could recognise the Respondents' right to use the roadway only upon proof of a deed granting that right or its acquisition by prescription cannot be accepted. An inquiry under section 69 does not finally determine whether a permanent right of way has been acquired over another's land. The Magistrate must nevertheless determine whether the material before Court establishes an entitlement to exercise the claimed right for the time being. The mere existence of a passage or an isolated instance of its use would not suffice. In the present case, the Magistrate considered the competing claims and the material tendered by the parties before finding that the Respondents were entitled to use the passage for the time being. That finding was made for the limited purpose of section 69 and did not amount to a final adjudication of a permanent servitude over the Appellant's land.

The Appellant next disputes the finding that the passage was eight feet wide. His photographs, plan, sketch and supporting affidavits were relevant to that question. So too were the police observations, the material concerning use of the passage and the Pradeshiya Sabha letter relied on by the Respondents. The absence of a survey plan was a matter to consider, but was not, of itself, fatal: a disputed passage may be adequately identified by a sketch, boundaries, landmarks and other reliable material¹². The identification must be sufficiently clear to make the order capable of enforcement.

The Appellant accepts that a footpath existed but disputes its width and the use claimed by the Respondents. The Appellant alleges that the passage was widened while the proceedings were pending and relies on the Magistrate's warnings in support of that allegation. A warning against altering the passage would not, by itself, establish that widening had occurred, unless the relevant order also recorded a finding to that effect. On the material referred to in the written submissions, I find no basis to conclude that the Magistrate's finding of an eight-foot-wide passage was unsupported by evidence or involved a manifest error requiring the High Court to intervene in revision.

The Respondents' failure to produce deeds or prove prescription did not, by itself, prevent the Magistrate from recognising their entitlement to use the passage under section 69. He could consider the evidence of longstanding use to decide whether they were entitled to

¹² *Ramalingam Nadarajah and Others v. Sanmugasundara Kurukkal Sriskantharajah Kurukkul*, SC Appeal No. 140-2019, decided on 13 February 2026

use it for the time being. The Appellant's opposing affidavits and claim that another route was available did not, by themselves, require rejection of the Respondents' claim.

The complaint about the police investigation does not invalidate the Magistrate's order. Although the Appellant's complaint to the police and allegations of damage were relevant, the Magistrate's duty under section 66 was to inquire into the land dispute and the threatened breach of the peace. He was not required to determine who first acted unlawfully or who was liable for the damage before making an order concerning the passage.

The Appellant's contention that the Magistrate should merely have maintained the *status quo* cannot be accepted. Section 69 requires a determination of entitlement to the disputed right and permits an order prohibiting interference with its exercise. Such an order remains provisional and does not finally determine the Appellant's title or the Respondents' claim to a servitude.

Conclusion

The dispute concerned a claimed right of way and was properly considered under section 69. The Appellant's principal objection assumes that final proof of ownership or prescription was required, which that section does not impose. His remaining objections concern the Magistrate's assessment of the competing evidence. On the material identified in the submissions, these matters, whether considered individually or together, do not establish exceptional circumstances, a jurisdictional error or a manifest miscarriage of justice warranting revision.

This conclusion does not finally determine the legal width of the passage or the parties' permanent rights, which remain open to determination by a competent civil court.

For the foregoing reasons, I find no ground to interfere with the order dated 10.03.2023 of the learned High Court Judge of Avissawella. The appeal is dismissed subject to costs

fixed at 50,000/- payable to the State by the Appellant. The order dated 26.04.2022 of the learned Magistrate of Avissawella shall remain in force according to its terms, subject to any order or decree of a competent court.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal