

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

Court of Appeal Case No:

CA (PHC) 126/2020

High Court Case No:

NE/PHC/REV/17/2019 (Rev)

MC Nuwara Eliya Case No:

86936

In the matter of an application for Revision under and in terms Article 154P of the Constitution read Section 5 of the High Court of the Province (Special Province) Act No. 19 of 1990 for the Revision of the order dated 09/09/2019 of the Primary Court (Magistrate Court) of Nuwara Eliya.

Velusamy Premila,
No.22, Waterfield Drive,
Nuwara Eliya.

Petitioner

Vs.

1. Madivanan Kavidaran,
(correctly Mahalingam Kavitharan)
In front of Central Market,
Nuwara Eliya.
2. Patabedi Wasam Baduge Lasantha Sarath
Piyaweera,
No. 36/2, Waterfield Drive,
Nuwara Eliya.
3. Officer in Charge,
Police Station,
Nuwara Eliya.

Respondents

AND BETWEEN

Patabedi Wasam Baduge Lasantha Sarath
Piyaweera,
No. 36/2, Waterfield Drive,
Nuwara Eliya.

2nd Respondent- Petitioner

Vs.

1. Velusamy Premila,
No.22, Waterfield Drive,
Nuwara Eliya.

Petitioner- Respondent

2. Madivanan Kavidaran,
(correctly Mahalingam Kavitharan)
In front of Central Market,
Badulla Road, Nuwara Eliya.

1st Respondent-Respondent

3. Officer in Charge,
Police Station,
Nuwara Eliya.

3rd Respondent-Respondent

AND NOW BETWEEN

Velusamy Premila,
No.22, Waterfield Drive,
Nuwara Eliya.
Presently
No. 32/1A/1/1, Santhi Mawatha,Hedala,
Wattala.

Petitioner-Respondent-Appellant

Vs.

Patabedi Wasam Baduge Lasantha Sarath
Piyaweera,
No. 36/2, Waterfield Drive,
Nuwara Eliya.

2nd Respondent-Petitioner- Respondent

Madivanan Kavidaran,
(correctly Mahalingam Kavitharan)
In front of Central Market,
Badulla Road, Nuwara Eliya.

1st Respondent-Respondent-Respondent

Officer in Charge,
Police Station,
Nuwara Eliya.

3rd Respondent-Respondent-Respondent

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

Counsels: Vijith Singh with Priyantha Rajapaksha for the Petitioner-Respondent-Appellant.

Sanjeewa Jayawardena, PC with Lakmini Warusewithana for the 2nd Respondent- Petitioner- Respondent.

Argued: 04.08.2025 & 11.11.2025

Written submissions tendered on: 23.12.2025 & 28.10.2024 by Petitioner- Respondent- Appellant.
01.08.2025 & 09.03.2026 by 2nd Respondent- Petitioner- Respondent.

Judgment Delivered: 24.03.2026

Thotawatte, J.

Introduction

This is an appeal preferred by the Petitioner–Respondent–Appellant (hereinafter referred to as the “Appellant”) against the Order dated 22.07.2020 of the Provincial High Court of the Central Province holden at Nuwara Eliya, made in the exercise of its revisionary jurisdiction under Article 154P(3)(b) of the Constitution read with the High Courts of the Provinces (Special Provisions) Act, No. 19 of 1990, whereby the learned High Court Judge set aside the Order of the learned Magistrate dated 09.09.2019 in Case No. 86936 instituted under Section 66(1)(b) of the Primary Courts’ Procedure Act, No. 44 of 1979.

Factual Background and Relationship of Parties

The dispute concerns a residential premises situated at Waterfield Drive, Nuwara Eliya. The Appellant avers that the said property was acquired in her name by a Deed of Transfer dated 15.06.2015, the consideration for which was provided by her father, and that subsequent to such acquisition, she and her husband the 1st Respondent-Respondent-Respondent (hereinafter sometimes referred to as the “1st Respondent”) resided therein as husband and wife.

It is not in dispute that the said property after acquisition became the subject of financial transactions, said to have been undertaken with the knowledge and consent of the Appellant’s father.

Subsequently, matrimonial discord arose between the Appellant and her husband, leading to the husband leaving the said premises, whilst the Appellant continued to remain therein along with her daughter.

Thereafter, competing claims emerged in respect of the ownership and possession of the said premises. The 2nd Respondent-Petitioner-Respondent (hereinafter sometimes referred to as the “2nd Respondent”) claiming to be a purchaser for value of the property, relying on agreements to sell and deeds of transfer executed in his favour.

A careful consideration of the material placed before this Court reveals that the present matter has assumed the character of a triangular dispute. The Appellant claims title to the subject property derived through her father. The 1st Respondent, who is the Appellant’s estranged husband, advances a competing claim to the same property, while the 2nd Respondent asserts an independent right thereto as a subsequent purchaser of the property.

Facts Giving Rise to the Present Application

The immediate cause for the institution of proceedings under Section 66(1)(b) of the Primary Courts’ Procedure Act arises from an alleged incident wherein the Appellant claims that upon returning to the premises on 07 July 2019 after a temporary absence, she was prevented from entering the said premises by the 1st and 2nd Respondents, who are alleged to have threatened her, thereby created a situation amounting to a breach of the peace.

It is on this basis that the Appellant, by affidavit dated 30.08.2019, invoked the jurisdiction of the learned Magistrate seeking relief under Section 66 read with Section 68 of the Primary Courts' Procedure Act.

Procedural History (litigation history)

A proper appreciation of the procedural history is essential to the determination of this appeal.

- The Appellant, together with her father, instituted a civil action bearing Case No. SPL/247 in the District Court of Nuwara Eliya on or about 24.04.2019 seeking declaratory and injunctive reliefs in respect of the same property as the subject of this present appeal.
- Notwithstanding the pendency of the said civil proceedings, the Appellant, on or about 30.08.2019, instituted proceedings under Section 66(1)(b) of the Primary Courts' Procedure Act before the Magistrate's Court of Nuwara Eliya, bearing Case No. 86936 based on the alleged altercation on 07 July 2019.
- At the stage of supporting the said application, in Magistrate's court the 2nd Respondent raised a preliminary objection challenging the jurisdiction of the Magistrate's Court, *inter alia*, on the basis that the dispute was *sub judice* before the District Court and did not fall within the ambit of Section 66.
- By Order dated 09.09.2019, the learned Magistrate overruled the said preliminary objection and proceeded to assume jurisdiction.
- Being aggrieved by the said Order, the 2nd Respondent invoked the revisionary jurisdiction of the Provincial High Court by filing application bearing No. NE/PHC/REV/17/2019.
- Upon consideration, the learned High Court Judge, by Order dated 22.07.2020, set aside the Order of the learned Magistrate and dismissed the Section 66 proceedings.
- It is against the said Order that the present appeal has been preferred.

Issue for Determination

The main issue that needs to be determined is whether the pendency of civil proceedings in the District Court in respect of the same subject matter precluded the invocation of Section 66 jurisdiction.

Basis of the High Court's Determination

The High Court set aside the order of the learned Magistrate on the basis that the subject matter of the dispute, being the ownership and possession of the premises, was already the subject of a pending civil action before the District Court of Nuwara Eliya between the same parties, thereby rendering the matter *sub judice*. In such circumstances, the invocation of jurisdiction under Section 66 of the Primary Courts' Procedure Act amounted to an improper resort to a parallel summary remedy in respect of a dispute involving complex questions of title and the validity of transactions, which fall within the province of the civil court.

The High Court further observed that the continuance of proceedings before the Magistrate's Court would give rise to a real risk of conflicting findings and would indirectly interfere with the adjudicatory process of the District Court, particularly in relation to interim relief already sought therein. While recognising that the mere pendency of a civil action is not, in all instances, an absolute bar to proceedings under Section 66, the Court held that, on the facts of the present case, the learned Magistrate had erred in assuming jurisdiction. Accordingly, it was concluded that the impugned order was contrary to law, that the Magistrate lacked jurisdiction to entertain the application, and that the dispute ought properly to be resolved within the civil proceedings already instituted before the District Court.

Analysis

The jurisdiction conferred upon the Magistrate under Section 66 of the Primary Courts' Procedure Act is summary, preventive, and limited in scope. It is designed to address situations involving breach of the peace relating to possession, and not to adjudicate disputes involving title or proprietary rights.

It is now well settled that the jurisdiction exercised by the Magistrate under Part VII of the Primary Courts' Procedure Act is of a preventive and summary character, directed not at the adjudication of title or proprietary rights, but at the preservation of public order by

determining possession or recent dispossession in circumstances giving rise to a likelihood of a breach of the peace, and is expressly without prejudice to the rights of parties to seek a final determination before a competent civil court.

The statutory scheme makes it abundantly clear that such jurisdiction is not intended to supplant or duplicate the jurisdiction of the District Court in matters relating to ownership and civil rights.

In *Ganemulla Lekamlage Ananda Tissa v. Ganemulla Lekamlage Dilrukshi Ganemulla*¹, when the dispute concerning the obstructed roadway arose, a partition action relating to the same premises was pending before the District Court. Nevertheless, proceedings were instituted under Section 66(1)(b) of the Primary Courts' Procedure Act alleging obstruction likely to cause a breach of the peace. His Lordship Prasantha De Silva, J., cited with approval in the following passage from *Kanagasabai Vs. Mylvaganam*² where his Lordship Sharvananda J. held,

“As stated earlier, the mere pendency of a suit in a civil Court is an irrelevant circumstance for the Magistrate to take into consideration when making an order under Section 62 and 63 of the Administration of Justice Law. His primary function is to maintain Law and order. If the mere institution of a suit in a civil Court is sufficient to divest the Magistrate of his jurisdiction, the whole purpose of Section 62 will be defeated. A scheming party will be enabled to play hide and seek”.

Also citing the case of *Mutha Merengya Keerthi Rohan Vs. Koralage Upali Senarath*³, where Walgama J. held,

“It is intensely relevant to note that the mere fact, a civil action is pending in the District Court, will not fetter a Magistrate to make any Order in respect of an application filed under Section 66 of the Primary Courts' Procedure Act”.

held that the mere pendency of a civil action before a competent civil court does not constitute a bar to proceedings instituted under Section 66 of the Primary Courts'

¹ CA (PHC) 209/2017 CAM 06.01.2022

² (1976) 78 N.L.R 280 at 284

³ CA (PHC) 25/2014 CAM 24.06.2016

Procedure Act, the object of such proceedings being preventive in nature and directed towards the maintenance of the peace until such time as the rights of the parties are finally adjudicated by a civil court.

The underlying rationale for this position is readily apparent. The jurisdiction under Section 66 operates in a distinct field from that of civil courts. While civil proceedings are concerned with the definitive adjudication of rights and title, proceedings under Part VII of the Primary Courts' Procedure Act are interim and provisional in nature, intended to maintain the *status quo* until such rights are determined by a competent forum. To permit the pendency of civil litigation to oust this jurisdiction would not only undermine the statutory purpose, but would also encourage parties to resort to tactical litigation to delay or obstruct urgent relief aimed at preventing disorder.

Accordingly, this Court is of the considered view that the pendency of civil proceedings, including actions for partition or declaration of title, does not constitute a legal bar to the institution or continuation of proceedings under Section 66. At its highest, the existence of such proceedings may be considered as surrounding circumstance, however, it does not undermine the Magistrate's duty to inquire into the existence of a dispute affecting land and the likelihood of a breach of the peace, and to make such provisional orders as are necessary in that regard.

Existence of a likelihood of a breach of the peace

A fundamental prerequisite for the invocation of Section 66 jurisdiction is the existence of a likelihood of a breach of the peace.

The learned Magistrate in the order dated 09.09.2019 on the analysis of the material presented had come to a finding that there is a likelihood of a breach of the peace.

The learned High Court Judge does not expressly reject the Magistrate's finding that there was a likelihood of a breach of the peace. By stating that "There is no doubt that there is some threat to peace owing to this dispute." it appears the High Court Judge has accepted that possibility. Nevertheless, he has set aside the Magistrate's order on jurisdictional grounds, primarily due to the pending District Court proceedings and risk of conflicting orders.

Conclusion

Upon a careful consideration of the entirety of the material placed before this Court, the impugned order of the learned High Court Judge dated **22.07.2020** cannot be sustained in law. The learned High Court Judge, in the exercise of revisionary jurisdiction, has misdirected himself in holding that the pendency of proceedings before the District Court deprived the learned Magistrate of jurisdiction to entertain the application under **Section 66(1)(b) of the Primary Courts' Procedure Act, No. 44 of 1979**, notwithstanding the clear existence of circumstances giving rise to a likelihood of a breach of the peace. The jurisdiction exercised by the learned Magistrate was preventive and summary in nature, directed to the maintenance of public peace, and did not amount to an adjudication of title or civil rights which properly fall within the domain of the District Court. In these circumstances, the intervention of the High Court in revision was unwarranted and has resulted in a failure to give due effect to the statutory purpose underlying Section 66 of the said Act.

Accordingly, this Court allows the appeal, sets aside the Order of the learned High Court Judge dated 22.07.2020 made in High Court Case No. NE/PHC/REV/17/2019 (Rev), and affirms the Order of the learned Magistrate dated 09.09.2019 made in Magistrate's Court Case No. 86936.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal