

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

In the matter of an Application for Appeal
against the Judgment dated 2022.08.26
delivered by the High Court of the Southern
Province holden in Galle in the Case
HCR/572/2020.

Court of Appeal Case No:
CA (PHC) 150/2022

High Court of Galle Revision
Application No: HCR 572/2020

Magistrate/Primary Court of Galle
Case No: 25122

Officer in Charge,
Police Station,
Akmeemana.

Complainant

Vs.

Kodithuwakku Kankanmge Manoj Prasanna,
Ganegoda, Akmeemana.

1st Party

1. Alawaththe Kankanamge Karunawathi
2. Ranchegoda Liyanage Lathika Ranjani
3. Ranchegoda Liyanage Mala Kumudini
Mahawaththa, Ganegoda, Akmeemana.
4. Alawaththe Kankanamge Dharmadasa,
No. 05, Kahadulla, Kuliyaipitiya.
5. Happawana Withanage Leelarathna,
No. 108D, Ganegoda, Akmeemana.
6. Sarath Gunasekara,
Mahawaththa, Ganegoda, Akmeemana.

2nd Party

And between

Kodithuwakku Kankanmge Manoj Prasanna,
Ganegoda, Akmeemana.

1st Party- Petitioner

Vs.

1. Alawaththe Kankanamge Karunawathi
2. Ranchegoda Liyanage Lathika Ranjani
3. Ranchegoda Liyanage Mala Kumudini
Mahawaththa, Ganegoda, Akmeemana.
4. Alawaththe Kankanamge Dharmadasa,
No. 05, Kahadulla, Kuliypitiya.
5. Happawana Withanage Leelarathna,
No. 108D, Ganegoda, Akmeemana.
6. Sarath Gunasekara,
Mahawaththa, Ganegoda, Akmeemana.

2nd Party- Respondents

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

And now between

Kodithuwakku Kankanmge Manoj Prasanna,
Ganegoda, Akmeemana.

1st Party – Petitioner- Appellant

Vs.

1. Alawaththe Kankanamge Karunawathi
2. Ranchegoda Liyanage Lathika Ranjani
3. Ranchegoda Liyanage Mala Kumudini
Mahawaththa, Ganegoda, Akmeemana.
4. Alawaththe Kankanamge Dharmadasa,
No. 05, Kahadulla, Kuliypitiya.
5. Happawana Withanage Leelarathna,
No. 108D, Ganegoda, Akmeemana.
6. Sarath Gunasekara,
Mahawaththa, Ganegoda, Akmeemana.

2nd Party – Respondent- Respondents

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent- Respondent

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

Counsels: Dilan Kuragodage with Lakshitha Edirisinghe for the 1st Party
Petitioner – Appellant.

Pubudu Alwis with Supun Jayathilaka for the 2nd Party
Respondent- Respondents.

Asela Wijesinghe, SC with Dinithi Wijesekara, AAL instructed by
Ms. N. Wickramasinghe, Act. SSA for the Respondent-
Respondent.

Argued: 06.03.2026

Written submissions
tendered on: 03.03.2026 by 1st Party- Petitioner- Appellant.
03.03.2026 by 2nd Party- Respondent- Respondents.

Judgment Delivered: 07.07.2026

Thotawatte, J.

Introduction

The present appeal has been preferred by the 1st Party–Petitioner–Appellant (hereinafter referred to as the “Appellant”) against the judgment dated 26.08.2022 delivered by the learned High Court Judge of the High Court of the Southern Province holden at Galle, exercising revisionary jurisdiction, whereby the learned High Court Judge affirmed the order dated 20.10.2020 made by the learned Additional Magistrate of Galle in proceedings instituted under the provisions of the Primary Courts' Procedure Act, No. 44 of 1979 (hereinafter referred to as the "PCP Act").

Factual Matrix

The present appeal arises from a dispute concerning the use of a roadway situated at Ganegoda, Akmeemana.

The proceedings originated upon an information filed on or about 21.01.2020 by the Officer-in-Charge of Police, Akmeemana under Section 66(1)(a) of the PCP Act, on the basis that a dispute concerning the roadway had occasioned, or was likely to occasion a breach of the peace.

The Appellant asserted that his mother had resided for nearly sixty years in premises bearing Assessment No. 503/5 and that the disputed ten-foot roadway constituted the only means of ingress to and egress from that property. According to the Appellant, on 18.01.2020 and 19.01.2020 the Respondents obstructed the roadway by depositing rubble and stones, thereby preventing access to the premises.

The 2nd Party–Respondent–Respondents (hereinafter referred to as the “Respondents”) disputed that version of events. Their position was that the disputed strip formed part of Lot No. 1 of the land known as "Unapandura Addara Owita" or "Marakkala Addara Owita", of which they were the co-owners. It was their contention that the Appellant had no legal entitlement to use that land and that the present dispute arose only because the Appellant had sought to establish a new means of access across their property after his previous means of access had ceased to be available.

According to the Respondents, the Appellant's father had previously operated a school canteen adjoining Akmeemana Maha Vidyalaya and had historically obtained access through the school premises and adjoining paddy lands. Following the closure of the canteen and the refusal of permission by the school authorities to continue using that route, the Appellant attempted to establish a roadway through the Respondents' land.

Proceedings before the Magistrate's Court

Both parties tendered affidavits, counter-affidavits and documentary material in support of their respective positions. The learned Additional Magistrate also conducted a personal inspection of the locus in quo, heard the submissions of learned Counsel at the inspection and thereafter considered the written submissions filed on behalf of both parties.

By order dated 20.10.2020, the learned Additional Magistrate held that the Appellant had failed to establish the entitlement asserted in respect of the disputed roadway and accordingly refused the relief sought.

Proceedings before the Provincial High Court

Being dissatisfied with that determination, the Appellant invoked the revisionary jurisdiction of the Provincial High Court.

By judgment dated 26.08.2022, the learned High Court Judge dismissed the revision application and affirmed the order of the learned Additional Magistrate. The learned High Court Judge found no illegality, impropriety or irregularity warranting the exercise of the Court's revisionary jurisdiction and upheld the finding that the Appellant had failed to establish an entitlement to the disputed roadway.

It is against that judgment that the present appeal has been preferred.

Grounds of Appeal

The principal grounds advanced on behalf of the Appellant may be summarized as follows:

- that both Courts below failed properly to appreciate the evidence placed before them;
- that the learned Magistrate failed to appreciate that the Appellant had no alternative means of access to the property;
- that insufficient weight was attached to the Police sketch and investigation report;
- that the learned Magistrate erroneously required the Appellant to establish his entitlement in the manner required in an ordinary civil action; and
- that proceedings under Sections 66 to 69 of the PCP Act are preventive and provisional in nature and therefore require only proof of an entitlement "for the time being."

Analysis

The principal contention advanced on behalf of the Appellant is that both Courts below approached the inquiry as though it were an ordinary civil action and consequently imposed upon the Appellant a higher standard of proof than that contemplated by Sections 66 to 69 of the Primary Courts' Procedure Act.

There can be no dispute that proceedings instituted under Part VII of the PCP Act are preventive and provisional in character. Their object is not the final adjudication of proprietary rights but the preservation of public peace pending the determination of such rights by a competent civil court. The authorities relied upon by the Appellant correctly recognize that proceedings under the Act are not intended to resolve disputed questions of title or other civil rights finally and are preventive and provisional in nature.

That, however, does not mean that relief under Part VII follows merely upon the assertion of a claim. Although the inquiry is summary in nature, the party invoking the jurisdiction of the Court must nevertheless establish, on the material placed before it, a *prima facie* legal

entitlement to the right asserted. The summary character of the proceedings affects the nature and extent of the inquiry; it does not dispense with the necessity of demonstrating the factual and legal basis upon which the Court is invited to intervene.

In an inquiry under Section 69, the Court is required to determine whether the party has acquired the disputed right or is, at least for the time being, entitled to exercise it. The expression "entitled" necessarily imports the existence of a legally recognizable right, although proof of such entitlement need not attain the standard required in an ordinary civil action. As observed by the Supreme Court in *Ramalingam v. Thangarajah*¹, the inquiry is directed, not to the question of title, but to whether the party has acquired the disputed right or is entitled, for the time being, to exercise it.

I am, therefore, unable to agree with the submission that the learned Magistrate approached the inquiry upon an erroneous legal footing. A careful reading of the order reveals that the learned Magistrate did not require the Appellant to establish title in the strict sense recognized by the civil law. What was required was proof of the entitlement asserted in respect of the disputed roadway, which is precisely the inquiry contemplated by Section 69 of the Act.

The order further demonstrates that the learned Magistrate reached that conclusion only after evaluating the affidavits and documentary material placed before Court, considering the Police investigation and, importantly, conducting a personal inspection of the location in question. The conclusion ultimately reached was not that title had not been established, but that the material before Court failed to establish even a *prima facie* legal entitlement to the disputed roadway.

In this regard, the decision of the Court of Appeal in *Dasanayake Mudiyanseelage Ariyaratne v. Dasanayake Mudiyanseelage Somaweera*² is particularly instructive. That decision recognizes that the existence of a roadway, photographic material, police observations or evidence of user, without more, does not establish a legal entitlement to use the roadway. The Court must distinguish between evidence demonstrating the physical existence of a roadway and evidence establishing the legal right asserted in respect of that roadway. It is only where the latter is disclosed on the available material that relief under Section 69 may properly be granted.

¹ [1982] 02 SLR 693

² CA (PHC) 89/2015 Decided on 25.05.2018

Viewed in that context, it cannot be said that the learned Magistrate converted the inquiry into an ordinary civil trial. On the contrary, the inquiry remained confined to the limited question whether the material before Court established a legally recognizable entitlement to the disputed right. Having answered that question in the negative, the learned Magistrate was entitled to refuse the relief sought.

Particular significance must also be attached to the personal inspection conducted by the learned Magistrate. The order records several observations made during that inspection concerning the physical condition of the premises, including that the alleged residence was in fact a partially damaged building previously used as a school canteen, that substantial renovations had been undertaken only after the institution of these proceedings, that facilities ordinarily associated with continuous residential occupation were either absent or had been constructed only recently, and that the physical condition of the premises was inconsistent with the Appellant's assertion of longstanding occupation. Those findings were reached upon direct judicial observation of the location in question.

It is well established that an appellate court will ordinarily be slow to interfere with factual findings founded, in part, upon a judicial inspection of the subject matter of the dispute unless such findings are shown to be plainly erroneous or unsupported by the material before Court. No such circumstance has been demonstrated in the present case.

Nor can the documentary material relied upon by the Respondents be overlooked. Their case was that access had historically been obtained through the adjoining school premises and paddy lands and not across the disputed land. They further relied upon material indicating that permission to continue using the school roadway had previously been refused by the relevant educational authorities and that complaints regarding attempts to establish a roadway through the Respondents' property had preceded the institution of these proceedings. When considered together with the findings made at the site inspection, that material afforded a rational basis for the conclusion reached by the learned Magistrate that the Appellant had failed to establish the entitlement asserted.

The submission that the Appellant had no alternative means of access to the property does not, in my view, advance the Appellant's case. While the absence of an alternative route may, in an appropriate case, constitute a relevant factual circumstance in support of a claim founded upon a way of necessity or other asserted right, it does not, of itself, furnish a legal basis for relief under Section 69 of the Primary Courts' Procedure Act. The inquiry before the learned Magistrate was directed to determining whether the Appellant had established

a *prima facie* entitlement to the use of the disputed roadway for the purposes contemplated by Sections 66 to 69 of the Act. The jurisdiction thereby conferred does not empower the Primary Court to recognize or create rights merely because the circumstances appear equitable or because the claimant would otherwise be left without access. Accordingly, the absence of an alternative route could justify relief only insofar as it formed part of the factual foundation for establishing a *prima facie* entitlement to an asserted right, such as a right in the nature of a servitude of way of necessity, and not as an independent ground for relief.

In the present case, the learned Magistrate expressly found that the Appellant had failed to establish a *prima facie* entitlement to the use of the disputed roadway. In those circumstances, the Appellant's reliance upon the absence of an alternative means of access could not have altered the outcome of the inquiry or entitled the Appellant to the relief sought.

The order of the learned Magistrate was subsequently challenged before the Provincial High Court in the exercise of its revisionary jurisdiction. In the exercise of that jurisdiction, the learned High Court Judge was not required to undertake a fresh evaluation of the evidence or substitute his own findings of fact for those of the learned Magistrate. Rather, the revisionary jurisdiction of the Provincial High Court is confined to examining whether the proceedings before the Primary Court disclose any illegality, impropriety, irregularity, jurisdictional error, or other exceptional circumstance warranting intervention.

The scope of appellate review before this Court is narrower still. Where an appeal is preferred against an order made by a Provincial High Court in the exercise of its revisionary jurisdiction, this Court is not concerned with reconsidering the merits of the original dispute or re-evaluating the evidence led before the Primary Court. Rather, the inquiry is directed to the legality and propriety of the manner in which the High Court exercised its revisionary jurisdiction. That principle is firmly established by the decisions in ***Nandawathie and another v. Mahindasena***³, ***Jayasekarage Bandulasena and others v. Galla Kankanamge Chaminda Kushantha and others***⁴, ***Ranawana Hewa Vitharanalage Anoma Geethanjali Samarasena v. Officer in Charge, Police Station, Kandy and others***⁵ and ***Muthusami Loganathan v. Walpale Gedara Malani Manjalika and others***⁶.

³ [2009] 02 SLR 218

⁴ CA PHC/147/2009 Decided on 27.09.2017

⁵ CA (PHC) 01/2020, Decided on 13.10.2022

⁶ CA (PHC) 203/2019, Decided on 04.04.2023

Having examined the judgment of the learned High Court Judge in the light of those principles, I am unable to discern any basis for appellate intervention. Nothing before this Court suggests that the learned Magistrate acted without jurisdiction, misdirected herself upon the applicable law, ignored material evidence or reached a conclusion that was unsupported by the material before Court. The learned High Court Judge was therefore fully justified in declining to invoke the Court's revisionary jurisdiction.

Although learned Counsel for the Appellant maintained that the learned Magistrate imposed an unduly onerous standard of proof, the order, when read as a whole, discloses no such error. The claim was rejected, not because the Appellant failed to establish title in the strict sense, but because the learned Magistrate was not satisfied that the material placed before Court established the entitlement asserted. That was a factual determination squarely within the jurisdiction of the Primary Court and disclosed no error warranting revisionary intervention.

Conclusion

For all of the foregoing reasons, I am unable to accept the submissions advanced on behalf of the Appellant.

The material placed before the learned Additional Magistrate has been carefully evaluated together with the documentary evidence, the Police investigation and the observations made during the personal inspection of the locus in quo. Upon that material, the learned Additional Magistrate concluded that the Appellant had failed to establish even a *prima facie* legal entitlement to the disputed roadway. That conclusion cannot be characterized as one that is unsupported by the evidence, contrary to law or otherwise vitiated by any illegality, impropriety or irregularity.

The learned High Court Judge, exercising revisionary jurisdiction, correctly appreciated the limited scope of that jurisdiction and was fully justified in declining to interfere with the order of the learned Additional Magistrate. I am likewise unable to identify any error in the exercise of the revisionary jurisdiction which would warrant appellate intervention by this Court.

Accordingly, I affirm the judgment dated 26.08.2022 of the learned High Court Judge of the High Court of the Southern Province holden at Galle in HCR 572/2020.

The appeal is dismissed with costs fixed at Rs. 50,000/- to be paid by the Appellant to Court.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal