

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

In the matter of an application for Appeal under and in terms of Article 154 H (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.
CA/PHC/153/2023

HC Kurunegala Revision Application
No. HCR 24/2019

MC Wariyapola Application No.
12938/2018

Basnayake Mudiyanseelage Rasika Deepani
Basnayake,
Divisional Secretary,
Divisional Secretariat,
Bamunakotuwa.

Petitioner

Vs.

Jayalakshmi Yuppresia Ganegoda
Weherabandawatta,
Akkara Panaha Watta,
Ambalewa, Demataluwa.

Respondent

And

Jayalakshmi Yuppresia Ganegoda
Weherabandawatta,
Akkara Panaha Watta,
Ambalewa, Demataluwa.

Respondent- Petitioner

Vs.

Basnayake Mudiyanseelage Rasika Deepani
Basnayake,
Divisional Secretary,
Divisional Secretariat,
Bamunakotuwa.

Petitioner- Respondent

And now between

Jayalakshmi Yuppresia Ganegoda
Weherabandawatta,
Akkara Panaha Watta,
Ambalewa, Demataluwa.

Respondent- Petitioner- Appellant

Vs.

Basnayake Mudiyanseelage Rasika Deepani
Basnayake,
Divisional Secretary,
Divisional Secretariat,
Bamunakotuwa.

1 (A). H.N. Chandima Jeewani Herath,
Divisional Secretary,
Divisional Secretariat,
Bamunakotuwa.

Petitioner- Respondent- Respondent

Before: **Damith Thotawatte, J.**

K.M.S. Dissanayake, J.

Counsels: Sapumal Bandara with Dilan Kuragodage instructed by
Sanjeewa Wijepala for the Respondent – Petitioner – Appellant.
J. Mathurathne, SC for the Petitioner – Respondent –
Respondent.

Written submissions 30.04.2026 Respondent- Petitioner- Appellant.
tendered on: 30.06.2026 by Petitioner – Respondent- Respondent.

Judgement Delivered: 08.09.2026

Introduction

This appeal is from the judgment dated 06.07.2023 of the Provincial High Court of the North Western Province holden in Kurunegala in Revision Application No. HCR 24/2019. By that judgment, the learned High Court Judge declined to revise the order dated 20.09.2019 of the learned Magistrate of Wariyapola in Application No. 12938/2018, by which the Respondent-Petitioner-Appellant (hereinafter sometimes known as the “Appellant”) and her dependents were ordered to be ejected from the land described in an application by Petitioner- Respondent- Respondent (hereinafter sometimes known as the “Respondent”) made under section 5 of the State Lands (Recovery of Possession) Act, No. 7 of 1979, as amended (hereinafter sometimes referred to as the “Act”).

The question is whether the learned High Court Judge erred in refusing revisionary relief. The Appellant relies principally on alleged defects in the service or exhibition of the quit notice and in the summons issued by the Magistrate’s Court, and on a claim that she and her late husband had acquired prescriptive title before the land became vested in the State. The Respondent contends that the statutory steps were sufficiently established, enabling the Appellant to appear in court and fully contest the application without suffering prejudice, and further that the Appellant failed to produce a valid permit or other written authority of the State as required by section 9 of the Act.

Background

The Divisional Secretary, Bamunakotuwa, acting as the competent authority, instituted the ejectment proceedings in the Magistrate’s Court of Wariyapola on 12.10.2018. The application stated, in substance, that the land described in the schedule was State land; that the Appellant was in unauthorized possession or occupation of it, that a quit notice had been duly served or exhibited and that she had failed to deliver vacant possession within the period specified in the notice.

Following the statutory inquiry, the learned Magistrate, by order dated 20.09.2019, directed the ejectment of the Appellant. The Appellant thereafter invoked the revisionary jurisdiction of the Provincial High Court. By judgment dated 06.07.2023, the learned High Court Judge dismissed the revision application. The Appellant has preferred the present appeal under Article 154P (6) of the Constitution.

The Appellant's position is that she and her late husband entered into possession of the land in or about 2001 and thereafter remained in continuous, uninterrupted and undisturbed possession, adverse to the interests of the then owner. She further states that they developed the land by establishing a substantial coconut plantation, planting teak and mango trees, installing irrigation facilities, erecting a boundary fence and constructing houses thereon.

The Appellant further states that the land became vested in the State pursuant to an order dated 6 June 2014 in Colombo High Court Case No. 4027/2007, to which she was not a party, and relies on this assertion to contend that her possession since 2001 preceded its acquisition by the State. The Appellant submits that she acquired prescriptive title with regard to the subject land before it was vested with the state. However, apart from the Appellant's own account, there is no independent material establishing the nature of asserted High Court proceedings, the parties thereto, or the terms and legal basis of the order allegedly made. However, what is undisputed is that she produced no State permit or other written authority authorizing her continued occupation of the land.

Grounds urged in appeal

The submissions on behalf of the Appellant may be reduced to three grounds.

Firstly, she contends that the quit notice was neither duly served on her nor properly exhibited on the land in the manner prescribed by section 3 of the Act. Having regard to the extent and physical features of the land, she further submits that the Respondent failed to prove compliance with the statutory requirements governing such service or exhibition.

Secondly, it is argued that the summons did not conform to section 6 and that her subsequent appearance and participation could not cure a jurisdictional defect. Reliance is placed on *Sudath Rohana and another v. Mohamed Zeena and another*¹ and the line of authority requiring strict compliance with the prescribed forms.

Thirdly, it is contended that the Act is directed only against unauthorized occupiers; the Appellant, having acquired prescriptive title before the land became State land, does not fall within that description.

¹ [2011] 2 Sri L.R. 134

The statutory scheme

The Act establishes a special and summary procedure for the recovery of possession of State land from persons in unauthorized possession or occupation. Under section 3(1), a competent authority who forms the requisite opinions may serve a quit notice upon the occupier, or, where personal service is considered impracticable or inexpedient, exhibit it in a conspicuous place in or upon the land. The notice must allow not less than thirty days. Section 3(3) provides for deemed service by registered post, while section 3(4) requires the notice to be in Form A.

Upon non-compliance, section 5 authorizes an application for ejectment in Form B, supported by an affidavit in Form C and accompanied by a copy of the quit notice. Under section 6, the Magistrate must issue summons requiring the person named to appear and show cause. If cause is shown, sections 8 and 9 govern the inquiry.

Section 9 is decisive. The person summoned is not entitled to contest any matter stated in the section 5 application, save by establishing that he or she is in possession or occupation upon a valid permit or other written authority of the State, granted according to written law, which remains in force and has not been revoked or otherwise rendered invalid. Section 9(2) further precludes the Magistrate from calling evidence from the competent authority in support of the section 5 application. If the person showing cause fails to establish the statutory entitlement, section 10 requires an order of ejectment.

The expression “unauthorized possession or occupation”, introduced by the 1983 amendment, means every possession or occupation other than possession or occupation upon such a valid State permit or written authority, and expressly includes encroachment upon State land. The width of that definition and the restriction in section 9 must be read together. They demonstrate that questions of competing title, prescription and the correctness of the competent authority’s opinion are not to be tried within the summary ejectment inquiry.

That conclusion does not leave a person asserting ownership without a remedy. Section 12 preserves an action against the State for vindication of title within the period stated therein, and section 13 provides for compensation where such an action succeeds. The summary order therefore regulates immediate possession; it does not constitute a final adjudication of title.

Scope of the Magistrate's inquiry

In *Farook v. Gunewardene, Government Agent, Amparai*², this Court held that, once the competent authority has formed the opinion that the land is State land, the Magistrate is not competent to inquire into the correctness of that opinion. The restricted nature of the inquiry contemplated by section 9 is also reflected in *Ihalapathirana v. Bulankulame, Director-General, Urban Development Authority*³ and *Nirmal Paper Converters (Pvt) Ltd. v. Sri Lanka Ports Authority and another*⁴. As a substantive defence to ejectment, the person summoned must establish that his or her possession or occupation is founded upon a valid permit or other written authority of the State, granted in accordance with written law, which remains in force and has not been revoked or otherwise rendered invalid.

The same construction was applied in *M.C. Margrate Perera v. Divisional Secretary, Naula*⁵, *Gardi Hewaage Sumanawathi v. Ratnapatambendige Nihal Weerawarna Nilaweera*⁶, *G. Wijitha Pieris v. Mithrasena Wickremage*⁷, and *Rathnasiri Jayasinghe and another v. Kasun Epa Senevirathna and others*⁸. These decisions reflect the statutory distinction between the summary recovery of possession under the Act and the adjudication of proprietary claims through the remedy provided by section 12.

The alleged defects in the quit notice and summons

In *Kankanam Pathiranage Ariyawathie v. Divisional Secretary, Katharagama and another*⁹ and *Velu Velanantha Devi v. J.M. Chandrika Priyadarshani and another*¹⁰, this Court applied the principle stated in *Kandiah v. Abeykoon*¹¹ that, because proceedings under the State Lands (Recovery of Possession) Act may seriously affect proprietary interests, the prescribed notice, application and supporting affidavit must strictly comply with those statutory requirements which the legislature has considered sufficiently important to incorporate in the prescribed forms. Compliance with such requirements constitutes a necessary foundation for the exercise of the Magistrate's power of ejectment. In both *Ariyawathie* and *Velu Velanantha Devi*, the Court held that the omission from the

² [1980] 2 Sri L.R. 243

³ [1988] 1 Sri L.R. 416

⁴ [1993] 1 Sri L.R. 219

⁵ CA (PHC) 41/2010, decided on 31.01.2017

⁶ CA (PHC) 41/2011, decided on 09.02.2017

⁷ CA (PHC) 264/2006, decided on 04.10.2017

⁸ CA (PHC) 109/2015, decided on 23.10.2020

⁹ CA (PHC) 102/2011 decided 01.10.2014

¹⁰ CA 06/2015 (Rev) decided on 05.08.2019

¹¹ Srisantha L.R. Vol. IV, p.96/ (1986) 3 CALR 41

application or supporting affidavit of particulars expressly required by the prescribed forms constituted a failure to comply with a mandatory requirement and could not be treated as a mere technical defect.

Although *Sudath Rohana and Another v. Mohamed Zeena and Another*¹² concerned compliance with the Supreme Court Rules rather than the present Act, it supports, by analogy, the broader principle that non-compliance with a procedural requirement expressed in mandatory terms—particularly one designed to ensure notice and safeguard a party’s right to be heard—cannot be treated as a mere technical defect.

Strict compliance does not, however, mean that an unsupported allegation of defective service, or every inaccuracy unrelated to a mandatory statutory requirement, necessarily invalidates the proceedings. The party alleging non-compliance must identify the particular requirement said to have been infringed and establish the alleged defect from the relevant material. The Court must therefore examine each alleged defect separately. In accordance with *Kandiah v. Abeykoon*¹³, the quit notice, application and supporting affidavit must strictly comply with the mandatory requirements embodied in the Act and the prescribed forms. Any objection to the summons must similarly be determined by identifying the particular requirement of section 6 alleged to have been infringed and considering whether, having regard to its purpose, that requirement is mandatory or merely directory. As explained in *Gunaratne (Alexis Auction Rooms) v. Abeysinghe*¹⁴, that question must be decided by considering the scope and purpose of the enactment, the importance of the requirement and the consequences of non-compliance.

In the present case, the Appellant’s complaint concerning service relates principally to the service or exhibition of the quit notice required by section 3 of the Act. Since that step necessarily precedes the institution of proceedings in the Magistrate’s Court, its sufficiency cannot be determined by reference to a Fiscal’s return or journal entry relating to the subsequent summons. It must instead be considered by reference to the application, the supporting affidavit and any other material placed before the Magistrate concerning the manner in which the quit notice was served or exhibited.

The quit notice is reproduced at page 74 of the appeal brief. The reason advanced by the Appellant in support of her contention that the section 03 quit notice had not been affixed

¹² 2011 02 SLR 134

¹³ Supra

¹⁴ [1988] 1 Sri LR 255

to or upon the land is stated in paragraph 22 of her Statement of Objections submitted to the learned Magistrate. It appears to be her contention that the notice could have been affixed to the adjoining land. The Appellant further relies on the fact that the competent authority has not submitted any proof that the notice was affixed to the correct land.

The paragraph 14 of the Appellant's written submissions submitted to this court state as follows;

"However, the two lands which are the subject matter of the instant action, together with the land referred to in Case No. 12938/2018, extend to an area exceeding 40 acres, and as admitted by the Respondent (vide page 119 of the brief), two officers have visited the premises and affixed the notice on a single gate. In those circumstances, the Appellant respectfully submits that such alleged service, is wholly inadequate and does not constitute proper service of the quit notice on the Appellant".

Accordingly, the Appellant does not appear to dispute that the notice was exhibited on the land. Her complaint is instead directed at the manner of its exhibition. The Appellant relies upon the aggregate extent of the lands, stated to exceed 40 acres, in support of her contention that affixing the notice on a single gate is inadequate and as such the quit notice had not been properly exhibited in accordance with section 3 of the Act.

The alleged aggregate extent of those lands, without more, does not establish that the quit notice was not exhibited in a conspicuous place in or upon the particular land sought to be recovered. The Appellant has not identified any material demonstrating that the gate upon which the notice was affixed was not situated on the scheduled land, that the location was inconspicuous, or that the manner of exhibition otherwise failed to satisfy section 3 of the Act. I am therefore unable to conclude that the Magistrate's acceptance of the application was erroneous on this ground.

A separate complaint is directed against the summons issued under section 6 of the Act. The Appellant contends that the summons, having been issued in terms of the Code of Criminal Procedure Act, did not expressly require him to show cause why he and his dependents, if any, should not be ejected from the land, as contemplated by section 6(1) of the State Lands (Recovery of Possession) Act. The mere fact that the summons does not expressly state to show cause why he and his dependents, if any, should not be ejected from the land does not, by itself, invalidate the summons. The material question is

whether, notwithstanding its form or statutory description, the summons sufficiently communicated the nature of the proceedings, identified the land concerned and required the Appellant to answer the application for ejectment.

The Appellant appeared before the Magistrate, obtained time, filed detailed objections addressing the scheduled land and the proposed ejectment, and participated in the inquiry through counsel. Such participation cannot, by itself, establish compliance with every mandatory requirement governing the summons. It is nevertheless relevant in determining whether the summons, considered in its factual and procedural context, adequately informed the Appellant of the case he was required to meet and whether the alleged omission caused any prejudice. The Appellant has not identified any defence available under section 9 which he was prevented from presenting by reason of the impugned wording of the summons. In these circumstances, the omission complained of has not been shown to have impaired his opportunity to show cause or otherwise occasioned a failure of justice.

The claim based on prescription

The Appellant herself states that the land became vested in the State only on 6 June 2014 and that the quit notice and ejectment proceedings followed thereafter. Her contention is that, before such vesting, she had already acquired prescriptive title against the person who then held title to the land. Even assuming that the pleaded long possession and improvements are factually established, this contention is not equivalent to a permit or written authority of the State. It is therefore not a defence permitted by section 9.

Whether the State acquired a title subject to an earlier prescriptive title or whether the Appellant's possession satisfied all legal requirements of prescription, or what effect the order in High Court Case No. 4027/2007 has upon her claim are questions requiring an adjudication of title upon proper pleadings and evidence. The Magistrate exercising the special jurisdiction under the Act could not try those questions. Neither could the High Court, in revision, convert the section 9 inquiry into a vindicatory action.

Section 12 is material in this respect. It expressly preserves the ability of a person claiming ownership to institute an action against the State for vindication of title, subject to the statutory period. Section 13 addresses the consequences where that claim succeeds. Accordingly, the rejection of prescription as a defence in these proceedings does not determine the ultimate title to the land. It merely recognizes that the Appellant had not

established the only authority which could justify continued occupation for the purposes of sections 9 and 10.

Revisionary jurisdiction

The order of the Magistrate was not appealable by reason of section 10(2). The Appellant therefore invoked revision. Revisionary jurisdiction is extraordinary and discretionary. It is available to correct an illegality, a jurisdictional defect or a miscarriage of justice, but it is not an avenue for re-trying matters which the statute excludes from the original inquiry. A party seeking revision must establish both an error amenable to correction and circumstances warranting the exercise of that exceptional jurisdiction.

The learned Magistrate applied section 9 and found that the Appellant had produced no valid State permit or written authority. That conclusion is not disputed. The alleged procedural defects were not established as defects which deprived the learned Magistrate of jurisdiction or denied the Appellant a fair opportunity to show cause. The prescriptive claim fell beyond the permissible scope of the inquiry. In those circumstances, the learned High Court Judge had no proper basis to revise the order of ejectment.

Conclusion

For the forgoing reasons, I find no error in the judgment dated 06.07.2023 of the learned High Court Judge refusing to interfere in revision with the order dated 20.09.2019 of the learned Magistrate of Wariyapola. The judgment of the Provincial High Court and the order of the Magistrate's Court are affirmed.

The appeal is accordingly dismissed subject to a cost fixed at Rs. 50,000/- to be paid to state by the Appellant.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal