

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

Court of Appeal Case No.
CA (PHC) 175/23

Uva Provisional High Court
No.119/2017 (Rev)

Badulla Magistrate Court
No.96864

01. Rathanayake Mudiyansele Udayananda
Liyadipitiya,
No. 21, Badulla Road, Hali Ela.

02. Samaweera Duwalage Nilani Wasantha
Samaweera,
No. 21, Badulla Road, Hali Ela.

Petitioners

Vs.

01. Rathnayake Mudiyansele Nandani
Subadra Liyadipitiya,
No. 239/3, Pore, Athurugiriya.

02. Mohamad Thajudeen Mohamad Rameshi,
No.03, Jayathilaka Mawatha, Hali Ela.

03. Mohamad Thajudeen Mohamad Nazar,
No.03, Jayathilaka Mawatha, Hali Ela.

04. H.A.K. Karunadasa Kodithuwakku,
No. 239/3, Pore, Athurugiriya.

05. Samaradiwakara Chandrasena Ranasinghe
Arachchilage Nihal Stanley Gunasekara,
No.88, Ambagahakumbura, Hali Ela.

(Removed Party)

06. D.M. Sarath Somaweera,
Madapitigama, Egodagama, Hali Ela.

(Defaulted Party)

07. Priyanka Dissanayake,
Madapitigama, Egodagama, Hali Ela.

(Defaulted party)

Respondents

AND BETWEEN

01. Rathnayake Mudiyanseelage Nandani
Subadra Liyadipitiya,
No. 239/3, Pore, Athurugiriya.
02. Mohamad Thajudeen Mohamad Rameshi,
No.03, Jayathilaka Mawatha, Hali Ela.
03. Mohamad Thajudeen Mohamad Nazar,
No.03, Jayathilaka Mawatha, Hali Ela.
04. H.A.K. Karunadasa Kodithuwakku,
No. 239/3, Pore, Athurugiriya.

Respondent-Petitioners

Vs.

01. Rathanayake Mudiyanseelage Udayananda
Liyadipitiya,
No. 21, Badulla Road, Hali Ela.
02. Samaweera Duwalage Nilani Wasantha
Samaweera,
No. 21, Badulla Road, Hali Ela.

Petitioner-Respondents

05. Samaradiwakara Chandrasena Ranasinghe
Arachchilage Nihal Stanley Gunasekara,
No.88, Ambagahakumbura, Hali Ela.
(Removed Party)
06. D.M. Sarath Somaweera,
Madapitigama, Egodagama, Hali Ela.
(Defaulted Party)
07. Priyanka Dissanayake,
Madapitigama, Egodagama, Hali Ela.
(Defaulted party)

Respondent-Respondents

AND NOW BETWEEN

01. Rathnayake Mudiyanseelage Nandani
Subadra Liyadipitiya,
No. 239/3, Pore, Athurugiriya.
02. Mohamad Thajudeen Mohamad Rameshi,
No.03, Jayathilaka Mawatha, Hali Ela.
03. Mohamad Thajudeen Mohamad Nazar,
No.03, Jayathilaka Mawatha, Hali Ela.
04. H.A.K. Karunadasa Kodithuwakku,
No. 239/3, Pore, Athurugiriya.

Respondent-Petitioner-Appellants

Vs.

01. Rathanayake Mudiyanseelage Udayananda
Liyadipitiya,
No. 21, Badulla Road, Hali Ela.
02. Samaweera Duwalage Nilani Wasantha
Samaweera,
No. 21, Badulla Road, Hali Ela.

Petitioner-Respondent-Respondents

05. Samaradiwakara Chandrasena Ranasinghe
Arachchilage Nihal Stanley Gunasekara,
No.88, Ambagahakumbura, Hali Ela.
(Removed Party)
06. D.M. Sarath Somaweera,
Madapitigama, Egodagama, Hali Ela.
(Defaulted Party)
07. Priyanka Dissanayake,
Madapitigama, Egodagama, Hali Ela.
(Defaulted party)

Respondent-Respondent-Respondents

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

Counsels: Erusha Kalidasa with Shanela Jayasinghe for the Respondent-Petitioner-Appellants.
D.P.L.A. Kashyapa Perera for the Petitioner – Respondent-Respondents.

Argued: 15.12.2025

Written submissions tendered on: 17.06.2025 by Petitioner- Respondent- Respondents.
18.08.2025 by 1st, 2nd, 3rd, 4th, Respondent – Petitioner-Appellants.

Judgment Delivered: 30.04.2026

Thotawatte, J.

Nature of the Appeal

This Appeal is against the judgment of the learned High Court Judge of the Uva Provincial High Court holden at Badulla dated 28.08.2023, whereby the learned High Court Judge dismissed the Revision Application filed by the Respondent-Petitioner-Appellants (hereinafter sometimes referred to as the “Appellants”) against the order dated 05.12.2017 and thereby affirming the order made in favour of the Petitioner-Respondent-Respondents (hereinafter sometimes referred to as the “Respondents”) by the learned Magistrate of Badulla acting as the primary court judge, in Case No. 96864, instituted under Section 66(1)(b) of the Primary Courts’ Procedure Act No. 44 of 1979 (hereinafter sometimes referred to as the “PCP Act”).

Relationship Between CA (PHC) 175/2023 and CPA 143/2023

It is necessary at the outset to observe that, parallel to the present Appeal, a Revision Application bearing No. CPA 143/2023 had also been instituted before this Court impugning the judgment of the learned High Court Judge of the Provincial High Court of Uva holden at Badulla dated 28.08.2023 in Case No. 119/2017 (Rev). Although the pleadings in CPA 143/2023 appear to have reached completion, the present Appeal alone has proceeded to the stage of argument.

It must further be noted that, while it is not presently the accepted practice of this Court to entertain multiple proceedings challenging the same order of a subordinate court, the said Revision Application, CPA 143/2023, continued to be mentioned together with this Appeal in view of the subsistence of a stay order issued therein, which operated to restrain further proceedings and/or the execution of the order of the learned Magistrate of Badulla in Case No. 96864, pending the final determination of these proceedings.

Subject Matter in Dispute

The subject matter of the dispute relates to the business premises bearing No. 10, Katawala Road, Hali-Ela. The identity of the said subject matter had been disputed before the Magistrate's Court and the High Court. However, it is not contested in the present appeal before this Court.

The dispute centers not upon title to the property but upon competing claims relating to possession of the said premises and the alleged existence of circumstances giving rise to a breach of peace.

History and Factual Matrix

The Appellants rely on their ownership of the disputed premises and assert that the property had been leased to the 1st Respondent for a period of two years commencing on or about 10.06.2014 and terminating on or about 09.06.2016. It is their position that, upon expiry of the lease, notice had been issued requiring the Respondents to vacate the premises and that possession was thereafter voluntarily handed over, following which the premises were delivered to persons acting on behalf of a subsequent transferee.

The Respondents, however, advance a materially different account. Their case is that, notwithstanding the alleged termination of the lease, they remained in possession of the premises and were thereafter unlawfully dispossessed. They contend that the Appellants, together with others acting under them, entered the premises and interfered with their occupation, thereby giving rise to a dispute affecting possession. It is their position that such acts created a situation likely to occasion a breach of the peace, thereby necessitating recourse to proceedings under Section 66(1)(b) of the PCP Act.

Course of Litigation

The 1st and 2nd Petitioners commenced proceedings by filing an information dated 01.07.2016 in terms of Section 66(1)(b) of the PCP Act against the 1st to 5th Respondents, (in the Magistrates Court) alleging that they had been forcibly dispossessed of the premises in dispute on 27.06.2016 by the said Respondents. Thereafter, the Petitioners moved to add the 6th and 7th Respondents as parties to the action. However, the 5th, 6th and 7th Respondents had not participated in the proceedings.

Upon the conclusion of the inquiry conducted under Section 66 of the PCP Act, the learned Magistrate, by order dated 05.12.2017, directed that possession of the premises in dispute be restored to the Petitioners, having been satisfied that there existed a dispute affecting land attended by circumstances giving rise to a likelihood of a breach of the peace, thereby warranting the exercise of jurisdiction under the said section.

Being dissatisfied with the order of the learned Magistrate, the present Appellants invoked the revisionary jurisdiction of the High Court of the Uva Province holden at Badulla, contending, *inter alia*, that the learned Magistrate had improperly assumed jurisdiction, that there was no material placed before the Court disclosing a likelihood of a breach of the peace, and that the proceedings under Section 66 of the PCP Act had been improperly utilized as a substitute for civil litigation relating to possession. The learned High Court Judge, upon consideration of the material placed before the Court, dismissed the said revision application and affirmed the order of the learned Magistrate. Being dissatisfied with the said judgment of the learned High Court Judge, the present Appellants have thereafter preferred the present appeal to this Court challenging the correctness of the said judgment.

Aggrieved by the said judgment of the learned High Court Judge, the present appeal was filed before this Court seeking *inter alia*:

1. to set aside the judgment of the learned High Court Judge dated 28.08.2023
2. alternatively, to declare that the Appellants are entitled to possession of the disputed premises.

The principal grounds upon which the present appeal has been preferred may be summarized as follows:

- (a) That the learned Magistrate assumed jurisdiction under Section 66(1)(b) of the Primary Courts' Procedure Act in the absence of material establishing a threatened breach of peace;
- (b) That the proceedings under Section 66 were improperly invoked as a substitute for civil remedies arising from the expiry of a lease agreement;
- (c) That the learned Magistrate failed to satisfy himself as to the existence of the statutory preconditions necessary to invoke jurisdiction under Section 66(1)(b);
- (d) That the learned High Court Judge erred in law in dismissing the revision application and thereby failed to correct jurisdictional and procedural defects in the proceedings before the Magistrate; and
- (e) That the materials relied upon by the Respondents were insufficient to establish dispossession accompanied by breach of the peace within the meaning of the Act.

Scope and Limits of Appellate Review in Appeals from Revisionary Orders

It is now well settled that where an appeal is preferred against an order of a learned Provincial High Court Judge made in the exercise of revisionary jurisdiction, the function of this Court is not to re-hear the original dispute or to re-evaluate the evidence led before the Primary Court, but rather to examine the correctness, legality and propriety of the manner in which the revisionary jurisdiction has been exercised. In *Nandawathie and another v. Mahindasena*¹ the Court of Appeal emphasized that such an appeal should not be regarded as an appeal in the true sense, but as a limited inquiry into the legality and propriety of the order made by the High Court in revision, and that the Court of Appeal must not, under the guise of an appeal, attempt to re-hear or re-evaluate the evidence led in the main case. This principle has been consistently reaffirmed in *Jayasekarage*

¹ (2009) 2 Sri L.R. 218 at 238,

*Bandulasena and others v. Galla Kankanamge Chaminda Kushantha and others*² where it was observed that the task before the Court of Appeal in such matters is not to review the Primary Court order directly but to determine whether the High Court properly exercised its revisionary jurisdiction, and similarly in *Ranawana Hewa Vitharanalage Anoma Geethanjali Samarasena v. Officer in Charge, Police Station, Kandy and others*³, and *Muthusami Loganathan v. Walpale Gedara Malani Manjalika and others*⁴, where the Court reiterated that interference is warranted only upon the establishment of exceptional circumstances such as illegality, jurisdictional error, or a manifest miscarriage of justice. Accordingly, in the absence of such exceptional grounds, this Court will exercise appellate restraint and decline to interfere with an order made by the High Court in the exercise of its revisionary powers.

Nature of Jurisdiction under Section 66 of the Primary Courts' Procedure Act & likelihood of a breach of the peace

The jurisdiction in the present proceedings arises under Section 66(1)(b) of the PCP Act, which permits the filing of information in disputes affecting land where circumstances disclose a breach of the peace or the likelihood thereof. Judicial authority discloses two related approaches as to the stage at which the learned Magistrate must be satisfied of the existence of such circumstances. One such approach is exemplified in *Suppaihadas Shanthi Wijeshwari and another V. Ramasamy Meenachchi and others*⁵ wherein it was emphasized that notice should issue only where the material initially placed before the Court discloses the existence of a dispute affecting land of such a nature as to give rise to a threatened breach of the peace. The second approach is reflected in *Jayasinghe and Others v. Loku Bandara*⁶, which emphasizes that upon the filing of information under Section 66(1), whether by a police officer under Section 66(1)(a) or by a party under Section 66(1)(b), jurisdiction to inquire into the dispute is vested in the Primary Court by operation of Section 66(2), the ultimate determination as to the existence of circumstances justifying preventive intervention being a matter to be resolved upon inquiry. Both approaches, when properly understood, underscore that the existence of a dispute affecting land giving rise to a breach of the peace remains the essential jurisdictional foundation of proceedings under Section 66. The learned Magistrate is required, to determine whether the material placed before

² CA (PHC) 147/2009, Decided on 27.09.2017,

³ CA (PHC) 01/2020, Decided on 13.10.2022

⁴ CA (PHC) 203/2019, Decided on 04.04.2023

⁵ CA (PHC) 39/2003 Decided on 12.03.2015,

⁶ (2019) 2 Sri L.R. 202

the Court discloses the existence of a dispute affecting land giving rise to circumstances necessitating preventive intervention, consistent with the preventive and provisional nature of the jurisdiction described in *Punchi Nona v. Padumasena and Others*⁷, and as further clarified by the Supreme Court in *Ramalingam Nadarajah and Others v. Sanmugasundara Kurukkal*⁸, which affirmed that jurisdiction under Section 66(2) arises upon the filing of information under Section 66(1).

With regard to the present application, the learned High Court Judge has, in his judgment, specifically observed that the learned Magistrate issued notice only after satisfying himself that circumstances disclosing a likelihood of a breach of peace existed, thereby rendering the said ground of appeal untenable.

The contention that the materials relied upon by the Respondents were insufficient to establish dispossession accompanied by a likelihood of breach of the peace within the meaning of the Act is likewise untenable. The learned Magistrate, having considered the affidavits and surrounding circumstances placed before the Court, was satisfied that there existed a dispute affecting land attended by a likelihood of breach of the peace, thereby warranting the invocation of jurisdiction under Section 66. Such findings, being based on an appreciation of the material available at the time of inquiry, do not disclose any manifest insufficiency or illegality so as to justify interference either in revision or on appeal.

Alleged Improper Invocation of Section 66 as a Substitute for Civil Remedies

The contention that the proceedings under Section 66 were improperly invoked as a substitute for civil remedies arising from the expiry of a lease agreement cannot be sustained. The existence or expiry of a lease does not, by itself, preclude the exercise of jurisdiction under Section 66, provided the material before the Court discloses a dispute affecting land accompanied by a likelihood of breach of the peace. The availability of civil remedies is not determinative of the Magistrate's preventive jurisdiction, and accordingly this ground does not disclose any illegality in the invocation of Section 66.

It is well settled that the jurisdiction conferred under Section 66 is preventive, quasi-criminal and provisional in nature, intended to maintain public order and regulate possession until the substantive rights of parties are determined in appropriate civil

⁷ (1994) 2 Sri L.R. 117

⁸ SC Appeal No. 140/2019 Decided on 13.02.2026

proceedings. In *Jayasinghe and Others v. Loku Bandara*⁹, it was affirmed that proceedings under Section 66 are concerned primarily with possession rather than title, and that orders made therein are of an interim character pending civil adjudication.

The statutory scheme, particularly of Sections 66 and 68, underscores that the function of the Primary Court is confined to determining possession for the purpose of preventing disturbances to the peace, and not to adjudicate proprietary rights, a principle consistently reiterated in the authorities governing Section 66 proceedings, including *Ramalingam Nadarajah and Others v. Sanmugasundara Kurukkal*.¹⁰

Exercise of Revisionary Jurisdiction by the Learned High Court Judge

The contention that the learned High Court Judge erred in law in dismissing the revision application and thereby failed to correct jurisdictional or procedural defects in the proceedings before the learned Magistrate cannot be sustained. It is well settled that the revisionary jurisdiction of the High Court is discretionary, extraordinary, and to be exercised sparingly, and only upon the demonstration of exceptional circumstances disclosing illegality, jurisdictional error, or a miscarriage of justice. This principle has been consistently affirmed in *Rasheed Ali v. Mohamed Ali*¹¹ and *Rustom v. Hapangama & Co.*¹², where it was emphasized that revision is not intended to function as a substitute for ordinary remedies available under the law. In matters arising under Section 66 of the PCP Act, the availability of an alternative remedy before the District Court for the determination of substantive rights assumes particular significance, and revisionary intervention is justified only where exceptional circumstances are clearly established, as observed in *K.W. Ranjith Samarasinghe vs K.W. Wilbert*¹³. A consideration of the judgment of the learned High Court Judge demonstrates that he properly directed himself to these governing principles and examined whether any procedural irregularity or miscarriage of justice had been occasioned in the proceedings before the learned Magistrate. Upon such evaluation, he declined to interfere, having found that no defect of a nature warranting revisionary intervention had been established. There is nothing in the record to suggest any misdirection in law or improper exercise of discretion. In these circumstances, the refusal of the learned High Court Judge to interfere with the order of the learned Magistrate must

⁹ Supra

¹⁰ Supra.

¹¹ (1981) 2 SLR 29

¹² (1978–79–80) 1 Sri. LR 352

¹³ C.A. (P.H.C.) 127/99 Decided on 28.03.2011

be regarded as a proper and judicious exercise of revisionary jurisdiction, and accordingly this ground does not disclose any error of law warranting appellate interference.

Conclusion

For the foregoing reasons, this Court holds that the judgment of the learned High Court Judge of the Uva Province holden at Badulla dated 28.08.2023 discloses no error of law or circumstance warranting appellate interference. The learned High Court Judge has correctly applied the principles governing proceedings under Section 66 of the Primary Courts' Procedure Act and properly declined to interfere with the order of the learned Magistrate. Accordingly, the judgment of the learned High Court Judge dated 28.08.2023 and the order of the learned Magistrate in Case No. 96864 are affirmed. The Appeal bearing No. CA (PHC) 175/2023 is dismissed with costs fixed at Rs. 30,000/-.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal