

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

An appeal in terms of rule 2 (1) of the Court of Appeal (Procedure for Appeals from High Court) Rules read with Sections 320 and 322 of the Criminal Procedure Code.

**Court of Appeal Case No.
CA (PHC) 188/2017**

Panadura Provincial High Court
Case No. HCRA 3/ 2017

Kesbewa Magistrate Court
Case No. 72711/66

Warshahannadige Chandra Soysa,
No. 323 A, Narangahahena Road,
Katuwana, Homagama.

Petitioner

Vs.

Egodage Prasad Indika Perera,
No. 283, Somalankara Mawatha,
Magammana, Homagama.

Respondent

And between

Egodage Prasad Indika Perera,
No. 283, Somalankara Mawatha,
Magammana, Homagama.

Respondent- Petitioner

Vs.

Warshahannadige Chandra Soysa,
No. 323 A, Narangahahena Road,
Katuwana, Homagama.

Petitioner- Respondent

And now between

Warshahannadige Chandra Soysa,
No. 323 A, Narangahahena Road,
Katuwana, Homagama.

Petitioner- Respondent- Appellant

Vs.

Egodage Prasad Indika Perera,
No. 283, Somalankara Mawatha,
Magammana, Homagama.

Respondent- Petitioner- Respondent

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

Counsels: Seevali Amitirigala, PC with Pathum Wijepala for the Petitioner –
Respondent – Appellant.

Chathura Galhena instructed by Dharani Weerasinghe for the
Respondent – Petitioner – Respondent.

Written submissions 05.06.2026 by Petitioner – Respondent- Appellant.
tendered on: 14.07.2026 by Respondent – Petitioner – Respondent.

Judgement Delivered: 07.08.2026

Thotawatte, J.

Introduction

The present appeal has been preferred by the Petitioner-Respondent-Appellant (hereinafter sometimes referred to as the "Appellant") against the judgment dated 17.11.2017 delivered by the learned High Court Judge of the Provincial High Court of the Western Province holden at Panadura in Case No. HC/RA 3/2017, exercising revisionary

jurisdiction under Article 154P(3)(b) of the Constitution, whereby the learned High Court Judge set aside the order made by the learned Magistrate of Kesbewa functioning as the Primary Court Judge in Case No. 72711/66 under the provisions of the Primary Courts' Procedure Act, No. 44 of 1979 (hereinafter referred to as the "PCP Act").

Factual Matrix

The dispute between the parties concerns a residential property situated at Homagama which originally belonged to the present Respondent. According to the Appellant, the Respondent transferred the property to her by Deed No. 2687 dated 27.09.2014, following which vacant possession, together with the keys to the premises, was delivered to her. Although she did not thereafter reside continuously in the premises, she maintains that she remained in constructive possession by keeping the house securely locked whilst exercising dominion over the property as owner.

The Respondent's position throughout has been that the conveyance was not intended to transfer beneficial ownership or possession but was executed merely as security for monies advanced by the Appellant. He asserts that notwithstanding the execution of the deed, he and his family continued uninterrupted occupation of the premises, retained physical possession of the property and continued to treat it as their residence. In support of this contention he relies upon numerous contemporaneous documents, including electricity bills, insurance records, official correspondence, vehicle registration documents, school records and reports of the Grama Niladhari, all of which, according to him, demonstrate continuous occupation by his family.

The Appellant alleges that on or about 20.01.2016, the Respondent unlawfully entered the premises after breaking open the locks and forcibly dispossessed her. She further alleges that this incident occasioned a breach of the peace and therefore entitled her to invoke the jurisdiction of the Primary Court under Section 66(1)(b) of the PCP Act. A complaint was also lodged with the Police, following which criminal proceedings had been instituted against the Respondent. The Appellant relies upon those circumstances as corroborating the existence of a forcible dispossession.

The Respondent denies that any such dispossession occurred. According to him, he remained continuously in occupation of the premises both before and after the execution of the deed. He therefore maintains that the Appellant never obtained possession capable of being protected under the PCP Act.

Progression of Litigation

Proceedings before the Magistrate's Court

On 16.03.2016, the Appellant instituted proceedings before the learned Magistrate of Kesbewa by way of a private plaint and affidavit under Section 66(1)(b) of the PCP Act alleging that the Respondent had forcibly dispossessed her on or about 20.01.2016, thereby creating a situation likely to occasion a breach of the peace. She sought relief under Section 68(3) of the Act.

Both parties filed affidavits together with numerous documentary productions. Those productions included the transfer deed relied upon by the Appellant, police statements, utility records, official documents, correspondence and other material intended to establish or negate possession of the disputed premises.

Upon completion of the inquiry, the learned Magistrate held that the Appellant had been forcibly dispossessed within two months prior to the institution of proceedings and accordingly granted relief under Section 68(3), restoring possession to the Appellant.

Proceedings before the Provincial High Court

Being dissatisfied with that determination, the Respondent invoked the revisionary jurisdiction of the Provincial High Court under Article 154P(3)(b) of the Constitution.

Before the Provincial High Court, it was principally contended that the learned Magistrate had failed properly to evaluate the evidence relating to possession, had attached undue significance to the transfer deed whilst overlooking compelling documentary evidence demonstrating the Respondent's continued occupation of the premises, and had thereby reached findings that could not reasonably be sustained on the material before Court.

The learned High Court Judge had accepted those submissions. Having examined the affidavits and documentary evidence, and had concluded that the learned Magistrate had misdirected himself in his appreciation of the evidence bearing upon possession and that the requirements of Section 68(3) had not been satisfactorily established. The learned High Court Judge had accordingly set aside the Magistrate's order by judgment dated 17.11.2017.

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

Grounds of Appeal

Although the Petition of Appeal and the written submission of the Appellant formulate grounds of appeal from different perspectives, the substance of the Appellant's complaints may conveniently be distilled into the following principal issues for determination.

- 1) Whether the learned High Court Judge exceeded the proper limits of revisionary jurisdiction by re-evaluating the evidence and substituting his own findings for those of the learned Magistrate.
- 2) Whether the learned High Court Judge erred in holding that the Appellant had failed to establish possession or forcible dispossession within the meaning of Section 68(3) of the Primary Courts' Procedure Act.
- 3) Whether the learned High Court Judge erred in interfering with the Magistrate's findings by failing to give due consideration to the oral and documentary evidence relied upon by the Appellant.

The Statutory Scheme under Part VII of the Primary Courts' Procedure Act

Part VII of the Primary Courts' Procedure Act establishes a special statutory machinery designed to prevent breaches of the peace arising from disputes affecting land. It does not confer jurisdiction to determine title, ownership or permanent possessory rights, but vests in the Primary Court a limited preventive jurisdiction directed towards preserving public order until the parties' substantive rights are determined by a competent civil court. Proceedings under Part VII are neither civil trials nor criminal prosecutions but special statutory inquiries possessing certain quasi-criminal characteristics, the principal object of which is the maintenance of public peace. Accordingly, the inquiry is intentionally summary in nature, being conducted primarily upon affidavits, supplemented where appropriate by documentary productions and such limited further inquiry as the statute permits.

The learned Primary Court Judge does not determine questions of title, ownership, beneficial interests, contractual rights or equitable claims, all of which remain within the exclusive jurisdiction of the ordinary civil courts. Accordingly, whether a transfer deed constitutes an absolute conveyance of title or merely security for a loan are matters for determination in separate civil proceedings and fall outside the scope of Part VII. The

statutory inquiry is confined to the narrower question whether the evidence establishes possession protected by Section 68 or the forcible dispossession contemplated by Section 68(3) of the Primary Courts' Procedure Act.

The Scope of the Provincial High Court's Revisionary Jurisdiction

Revision is not an ordinary appeal but an extraordinary and discretionary revisionary jurisdiction, designed to ensure that subordinate courts exercise the jurisdiction entrusted to them according to law. Its function is concerned primarily with legality, jurisdiction, procedural regularity and the prevention of miscarriages of justice rather than with substituting one view of the facts for another. This assumes particular importance in proceedings under the Primary Courts' Procedure Act, where Parliament has provided a summary and expeditious statutory procedure for resolving disputes affecting possession. Accordingly, when an order of a learned Primary Court Judge is challenged by way of revision, the Provincial High Court is not invited to conduct a fresh inquiry into the merits, or to receive fresh evidence.

At the same time, the High Court is not precluded from intervening where the learned Magistrate has misdirected himself in law, failed to consider material evidence, relied upon matters unsupported by the record, misunderstood the statutory requirements or reached conclusions that cannot reasonably be sustained on the evidence. In such circumstances, its supervisory jurisdiction necessarily extends to examining the evidentiary foundation of the Magistrate's findings for the limited purpose of determining whether they were lawfully reached. This distinction has been consistently recognized in the jurisprudence of this Court. As explained by His Lordship Ranjith Silva, J. in ***Nandawathie and Another v. Mahindasena***¹, in the context of proceedings under Part VII of the Primary Courts' Procedure Act, the High Court, when exercising its revisionary jurisdiction, is concerned with the legality of the Primary Court's order rather than its correctness. His Lordship further held that an appeal to the Court of Appeal from such a revisionary order is not a rehearing of the original dispute but is confined to examining the correctness, legality and propriety of the High Court's exercise of its revisionary jurisdiction.

¹ (2009) 2 Sri L.R. 218

The Limits of Appellate Intervention

The principle stated in *Nandawathie and Another v. Mahindasena*², has been consistently followed in subsequent decisions, including *Jayasekarage Bandulasena and others v. Galla Kankanamge Chaminda Kushantha and others*³, *Ranepurahewa Mulin Vs. Kaluwadeva Ruwan Handapangoda*⁴ and *Aluthhewage Harshani Chandrika and Another Vs. Aluthhewage Swarna Nilanthi*⁵, which reiterate that the Court of Appeal does not re-evaluate the Primary Court's findings of fact but determines whether the High Court properly exercised its limited revisionary jurisdiction.

Analysis of the Grounds of Appeal

The principal contention advanced by the Appellant is that the learned High Court Judge exceeded the proper limits of the revisionary jurisdiction by re-evaluating the evidence and substituting his own findings of fact for those of the learned Magistrate. It is submitted that the learned Magistrate had conducted the inquiry contemplated by Part VII of the Primary Courts' Procedure Act after considering the affidavits, documentary productions and written submissions of the parties and that the High Court merely preferred a different view of the evidence. I am unable to accept that submission.

As already discussed, the function of the Provincial High Court exercising revisionary jurisdiction is not to conduct a fresh inquiry into the dispute but to examine whether the order of the learned Magistrate is legally sustainable upon the material placed before Court. Equally, this Court, sitting in appeal from the judgment delivered in revision, is not concerned with determining which party's version of the facts ought to have been preferred, but whether the learned High Court Judge properly exercised the revisionary jurisdiction vested in her.

A careful reading of the impugned judgment demonstrates that the learned High Court Judge neither received fresh evidence nor introduced new issues into the inquiry. She had confined herself entirely to the affidavits and documentary productions that had been before the learned Magistrate and examined whether the conclusions reached regarding

² Supra

³ CA (PHC) 147/2009, Decided on 27.09.2017

⁴ CA (PHC) 38/2016, Decided on 06.02.2023

⁵ CA (PHC) 65/2013, Decided on 21.09.2020

possession were reasonably supported by the evidentiary record. That exercise plainly falls within the legitimate scope of the revisionary jurisdiction.

The Appellant nevertheless submits that the learned High Court Judge ought not to have rejected the finding that she had established constructive possession within the meaning of Section 68(3). Reliance is placed upon Deed No. 2687, the alleged delivery of possession together with the keys to the premises, the affidavit of the mortgagee, the police complaint, the Grama Niladhari's statement, the subsequent criminal proceedings and the electricity consumption record, which, it is argued, establish that she remained in constructive possession until the Respondent forcibly entered the premises on 20.01.2016.

However, proceedings under Sections 66 and 68 are concerned with possession and not ownership. The existence of a transfer deed, although relevant, is not conclusive of the question whether the Appellant was in possession immediately before the alleged dispossession. The learned High Court Judge considered the entirety of the documentary evidence and had come to a finding that the Appellant had failed to establish either actual or constructive possession within the statutory period required by Section 68(3). Having examined the material myself, I am unable to conclude that this finding was unsupported by the record or otherwise legally unsustainable.

The Appellant further contends that the learned High Court Judge failed properly to appreciate the documentary evidence relied upon by the Appellant. I find no merit in that submission. The judgment does not demonstrate that the Appellant's documentary productions were ignored. Rather, they were considered together with the larger body of contemporaneous material relied upon by the Respondent. The mere circumstance that the learned High Court Judge attributed greater evidentiary weight to the Respondent's evidence does not establish that the Appellant's evidence was disregarded. Nor was the Judge of the High Court required to discuss individually every document produced before the learned Magistrate. The test is not whether every item of evidence has been separately analyzed, but whether the judgment, read as a whole, demonstrates that the material evidence bearing upon the statutory inquiry was duly considered. In my view, the impugned judgment plainly satisfies that requirement.

The remaining findings of the learned High Court Judge naturally flowed from the appreciation of the evidence. Having concluded that the Appellant had failed to establish possession for the purposes of Section 68(3), the learned High Court Judge proceeded to find that the Respondent had remained in possession of the disputed land until his unlawful

dispossession and that the Appellant had resorted to proceedings under Section 66(1)(b), not for the preventive purpose contemplated by Part VII of the Act, but as a means of obtaining possession of the property. In reaching that conclusion, the learned High Court Judge took into account what she considered to be misleading presentation of facts upon which the Magistrate's order dated 15.12.2016 had been obtained, the subsequent demolition of the dwelling house, and the inconsistent positions adopted by the Appellant as to the circumstances in which the Respondent had entered the property. The Respondent's occupation was further supported by the electoral register for 2015, while no credible evidence had been adduced to establish that he was residing at Meegoda at the material time. In that context, Deed No. 2687 was held, by itself, to be insufficient either to establish the Appellant's possession or to displace the evidence of the Respondent's prior occupation.

Significantly, the Appellant has not identified any specific legal error in the reasoning by which those findings were reached. Nor has the Appellant demonstrated that any of those findings were based upon evidence outside the record, resulted from a misdirection in law or constituted an impermissible exercise of the revisionary jurisdiction. The complaint is, in substance, that the learned High Court Judge ought to have accepted the Appellant's evidence in preference to that of the Respondent. That, however, is not a ground upon which this Court may interfere with a judgment delivered in the exercise of revisionary jurisdiction.

In my view, the learned High Court Judge was entitled to conclude that the learned Magistrate had failed properly to appreciate the cumulative effect of the documentary evidence bearing upon the question of possession and that the statutory requirements for granting relief under Section 68(3) had not been established. The learned High Court Judge therefore exercised the revisionary jurisdiction to correct conclusions that could not reasonably be sustained upon the evidentiary record. I find no basis upon which this Court should interfere with that determination.

Conclusion

For the foregoing reasons, I am unable to conclude that the learned High Court Judge erred in the exercise of the revisionary jurisdiction vested in the Provincial High Court. The Appellant has failed to establish any error of law, jurisdiction or other circumstance warranting the intervention of this Court. Accordingly, the judgment of the learned High

Court Judge dated 17.11.2017 in High Court Revision Application No. HCRA 03/2017 is affirmed and the Appeal is dismissed subject to cost.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal