

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

Court of Appeal Case No.
CA/PHC/219/2020

HC Balapitiya Case No.
REV 975/2018

MC Balapitiya Case No.
3763 (66)

In the matter of an appeal against the Judgment dated 09.09.2020 delivered by the High Court of the Southern Province holden in Balapitiya in Case No. REV 975/2018, in the terms of the Provisions of Court of Appeal (Procedure for appeals from High Courts established by Article 154P of the Constitution) Rules 1988.

Don Jagath Ivon Assalarachchi,
Nekethwatta, Gomate, Bentota.

Petitioner

Vs.

1. Sethawaka Gamage Don Thilakarathne
2. Kotte Arachchilage Tyrley Jayalath

Both of Arachchimulla, Daulana, Bentota.

Respondents

And

3. Manimeldura Prabhath Priyankara Perera,
Dedduwa, Haburugala, Bentota.

3rd Party

And between

Don Jagath Ivon Assalarachchi,
Nekethwatta, Gomate, Bentota.

Petitioner- Petitioner

Vs.

1. Sethawaka Gamage Don Thilakarathne
2. Kotte Arachchilage Tyrley Jayalath

Both of Arachchimulla, Daulana, Bentota.

Respondent- Respondents

And

3. Manimeldura Prabhath Priyankara Perera,
Dedduwa, Haburugala , Bentota.
3rd Party- Respondent

And now between

Don Jagath Ivon Assalarachchi,
Nekethwatta, Gomate, Bentota.
Petitioner- Petitioner- Appellant

Vs.

1. Sethawaka Gamage Don Thilakarathne
2. Kotte Arachchilage Tyrley Jayalath

Both of Arachchimulla, Daulana, Bentota.
Respondent- Respondent- Respondents

And

3. Manimeldura Prabhath Priyankara Perera,
Dedduwa, Haburugala, Bentota.
3rd Party – Respondent- Respondent

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

Counsels: Navin Marapana, P.C. with Uchitha Wickremasinghe and Varuni
 Rathnayake for the Petitioner- Petitioner- Appellant.

 Anuruddha Dharmaratne with Upendra Walgampaya, Hasitha
 Ratnayake and Vidushan Manamperi instructed by G.S Kumudini
 for the 1st & 2nd Respondent- Respondent- Respondents.

Argued: 16.03.2026

Written submissions 02.12.2025 by 1st & 2nd Respondent- Respondent- Respondents.
tendered on: 10.12.2025 by Petitioner- Petitioner – Appellant.

Judgement Delivered: 17.07.2026

Thotawatte, J.

Introduction

The present appeal has been preferred by the Petitioner-Petitioner-Appellant (hereinafter sometimes referred to as the "Appellant") against the judgment dated 09.09.2020 delivered by the learned High Court Judge of the High Court of the Southern Province holden at Balapitiya exercising revisionary jurisdiction under Article 154P(3)(b) of the Constitution, whereby the learned High Court Judge affirmed the order dated 28.03.2018 made by the learned Magistrate of Balapitiya functioning as the Primary Court Judge under the provisions of the Primary Courts' Procedure Act, No. 44 of 1979 (hereinafter referred to as the "PCP Act") and dismissed the revision application preferred by the Appellant.

The proceedings before the Primary Court originated upon an Information and Affidavit dated 04.08.2017 filed by the Appellant under section 66(1)(b) of the PCP Act alleging that the Respondents had obstructed a roadway through which he claimed access to his property. The Appellant sought, *inter alia*, an order directing the Respondents to keep open the gate erected across the disputed roadway and to restrain them from preventing him from using the said roadway.

Being unsuccessful before both the Primary Court and the Provincial High Court, the Appellant has now invoked the appellate jurisdiction of this Court.

By the order dated 04.11.2025, this Court permitted both parties to file written submissions on or before 10.12.2025. Although the submissions were filed out of time, they were accepted as they had been tendered prior to the hearing on 16.03.2026. However, the post-hearing written submissions filed by the Appellant have not been considered, as no leave of Court had been sought or obtained for their filing.

Factual Matrix

The dispute giving rise to the present appeal concerns the use of a roadway situated within an extensive property at Paragahathota, Bentota.

The material presently available discloses that the Appellant's father, Don Amaradasa Asselarachchi, acquired three contiguous allotments of land towards the latter part of the year 1980. Prior to such acquisition those lands had been surveyed and depicted in Plan No. 2803 prepared by Licensed Surveyor W. Seneviratne. Shortly thereafter, the entirety of those lands was leased for a period of ninety-nine years by Lease Agreement No. 13053 dated 31.12.1980 in favour of two Swiss nationals, Hugo Scheidegger and Rico Tarawella. The Respondent- Respondent- Respondents (hereinafter sometimes referred to collectively as the "Respondents" and where necessary, individually as the 1st and 2nd Respondent) maintain that the lease constituted the foundation of their occupation of the property.

The material further reveals that the lessees developed the property by constructing several buildings and remained in occupation for many years. Following the demise of one of the original lessees, Rico Tarawella, the balance leasehold interest was assigned to the 1st Respondent by Lease Agreement No. 6508 dated 06.06.2016. The Respondents accordingly claim possession and occupation of the property through the original lessees and assert that such possession continued uninterrupted at the time the present dispute arose.

The Appellant, on the other hand, claims succession to the ownership of the lands upon the death of his predecessor in title. His case, as disclosed by the Information filed before the Primary Court and the written submissions tendered before this Court, is that he had been using a roadway situated along the western boundary of the leased property to gain access to an adjoining property owned by him and that such use was obstructed by the Respondents on or about 24.06.2017. It is this alleged obstruction which formed the basis of the application instituted under section 66(1)(b) of the PCP Act.

The Respondents dispute that contention. Their position is that, following the demise of Rico Tarawella, the Appellant's actions were directed not merely towards asserting a right of access over the roadway but towards recovering possession of the leased property. It is asserted that the Appellant demanded possession of the property, lodged complaints with the Police, and thereafter entered the premises, accompanied by several persons, despite the Respondents' continued occupation as lessees. In support of that position, the

Respondents rely upon police complaints, inspection reports, and contemporaneous statements.

Accordingly, while the Appellant characterizes the dispute as one concerning obstruction of a roadway, the Respondents contend that it is, in substance, an attempt by the Appellant to interfere with their possession and enjoyment of property held under a subsisting lease.

Progression of Litigation

Proceedings before the Primary Court

The Appellant instituted proceedings before the learned Magistrate of Balapitiya by Information dated 04.08.2017 under section 66(1)(b) of the PCP Act complaining that the Respondents had obstructed the roadway used by him to gain access to his property. Upon considering the material placed before Court, the learned Primary Court Judge issued notices on the Respondents, being satisfied that circumstances existed giving rise to a likelihood of a breach of the peace.

Thereafter, the Respondents entered appearance and the 3rd Party Respondent was permitted to intervene. The parties filed affidavits, counter-affidavits and written submissions before the learned Magistrate. The material before this Court further reveals that although the Respondents consented to an inspection of the locus in quo, the Appellant objected thereto, with the result that no judicial inspection was carried out.

By order dated 28.03.2018, the learned Magistrate dismissed the Appellant's application. From the material presently available, it appears that the principal basis for that determination was the Appellant's failure to properly identify the servient tenement or the roadway forming the subject matter of the application.

Proceedings before the Provincial High Court

Being dissatisfied with the said order, the Appellant preferred Revision Application No. Rev/975/2018 before the Provincial High Court of the Southern Province holden at Balapitiya. Notices were issued upon the Respondents, who thereafter filed objections. Upon completion of written and oral submissions, the learned High Court Judge, by judgment dated 09.09.2020, dismissed the revision application with costs.

From the written submissions tendered before this Court, it appears that the learned High Court Judge affirmed the conclusion reached by the learned Magistrate and further held that the Appellant had failed to establish: (i) use of the roadway during the relevant period prescribed by the statute; (ii) proper identification of the dominant and servient tenements by reference to an acceptable survey plan; and (iii) the existence of any reservation of the alleged right of way over the leased premises.

Proceedings before this Court

Aggrieved by the judgment of the Provincial High Court, the Appellant has preferred the present appeal seeking to set aside both the judgment of the Provincial High Court dated 09.09.2020 and the order of the learned Magistrate dated 28.03.2018.

Grounds of Appeal

The Petition of Appeal discloses several grounds upon which the judgment of the learned High Court Judge is impugned. The Appellant's complaints may be summarized under the following broad heads:

- (a) that the learned High Court Judge failed to appreciate the true nature of the proceedings instituted before the Primary Court under section 66(1)(b) of the PCP Act;
- (b) that the learned High Court Judge erred in holding that the identification of the disputed roadway by means of a survey plan was indispensable for the determination of the dispute;
- (c) that insufficient weight was attached to the two sketches produced before the learned Magistrate together with the police material forming part of the record;
- (d) that the learned High Court Judge incorrectly applied principles governing proceedings under section 68 of the PCP Act instead of those applicable to proceedings relating to the exercise of a right under section 69;
- (e) that the learned High Court Judge failed to apply the principles laid down in *Ramalingam v. Thangarajah*¹, *Ananda Sarath Paranagama v Dhammadhinna Sarath Paranagama and another*² and *Nimalasena Jayakody v. J.M. Mallikaratne*³ relied upon by the Appellant; and

¹ (1982) 02 SLR 693

² CA (PHC) APN 117/2013 Decided on 07.08.2014

³ CA (PHC) 152/2007 Decided on 26.08.2014

- (f) that the learned High Court Judge consequently erred in refusing to interfere with the order of the learned Magistrate.

These grounds substantially correspond with the submissions subsequently advanced on behalf of the Appellant before this Court.

Scope of Appellate Review

Before examining the merits of the several grounds urged on behalf of the Appellant, it is necessary to bear in mind the nature of the jurisdiction presently invoked.

The appeal before this Court is not a direct appeal from the order of the learned Primary Court Judge. Rather, it is an appeal against a judgment pronounced by the Provincial High Court whilst exercising its revisionary jurisdiction under Article 154P(3)(b) of the Constitution. Consequently, the task before this Court is not to undertake a fresh evaluation of the material placed before the learned Magistrate or to substitute its own conclusions upon disputed questions of fact merely because another view may also be possible.

The scope of appellate review in such cases has now become well settled.

In *Nandawathie and Another v. Mahindasena*⁴, this Court observed that an appeal from a revisionary order of the Provincial High Court is not an appeal in the true sense, but is confined to examining the correctness, legality and propriety of the manner in which the learned High Court Judge exercised the revisionary jurisdiction vested in that Court. The Court further emphasized that the Court of Appeal ought not, under the guise of an appeal, to re-hear the evidence led before the Primary Court or to substitute its own findings upon matters falling exclusively within the jurisdiction of the Primary Court.

The same principle has been reiterated in more recent decisions of this Court, including *Jayasekarage Bandulasena and Others v. Galla Kankanamge Chaminda Kushantha and Others*⁵, which has also been relied upon by the Appellant himself in his written submissions before this Court. Therein it was observed that the appellate jurisdiction of this Court is directed towards examining whether the Provincial High Court correctly

⁴ (2009) 02 SLR 218 at page 238

⁵ CA (PHC) 147/2009 Decided on 27.09.2017

exercised its revisionary jurisdiction and not towards conducting what is, in substance, a second appeal from the Primary Court.

Accordingly, unless it is demonstrated that the learned High Court Judge misdirected herself in law, overlooked material evidence, applied erroneous legal principles or otherwise failed to exercise the revisionary jurisdiction according to settled principles, interference by this Court would not ordinarily be warranted.

Nature of Proceedings under Part VII of the Primary Courts' Procedure Act

The jurisdiction conferred upon the Primary Court under Part VII of the PCP Act is a special jurisdiction of a preventive and provisional character. Its object is not to pronounce finally upon proprietary rights or title but to preserve public peace in circumstances where disputes affecting land are likely to occasion breaches of the peace.

This principle has consistently received judicial recognition.

In *Ramalingam v. Thangarajah*⁶, the Supreme Court held that an inquiry under section 66 is confined to determining the matters expressly entrusted to the Primary Court under the statute and that the Judge should not embark upon an extensive inquiry into questions properly falling within the province of the ordinary civil courts.

Similarly, in *Velupillai and Others v. Sivanathan*⁷, Ismail J. observed that the jurisdiction exercised under section 66 is purely preventive and provisional in nature, the function of the Court being to take such measures as are necessary for the preservation of peace pending the final adjudication of the rights of the parties before a competent civil court. The learned Judge further emphasized that the Primary Court is not called upon to determine title or finally adjudicate proprietary rights.

The same distinction was subsequently reaffirmed in *Punchi Nona v. Padumasena and Others*⁸, where this Court carefully distinguished the inquiries contemplated under sections 68 and 69 of the PCP Act. It was held that section 68 concerns disputes relating to possession, whereas section 69 is directed towards determining entitlement to a disputed

⁶ *Supra*

⁷ (1993) 1 Sri L.R 123

⁸ (1994) 2 Sri L.R. 117

right affecting land, preliminary to making an order protecting the exercise of that right until the rights of the parties are finally determined by a competent civil court.

These authorities demonstrate that although proceedings under Part VII are summary in nature, the precise character of the inquiry necessarily depends upon the nature of the dispute disclosed by the information placed before Court. Where the dispute concerns possession, the inquiry proceeds under section 68. Where, however, the dispute concerns a right affecting land other than possession, including a right in the nature of a servitude, the inquiry necessarily attracts section 69.

It is against that legal framework that the several submissions advanced by the Appellant needs to be examined.

The Nature of the Present Dispute

Although the Appellant instituted the proceedings under section 66(1)(b), the relief sought throughout was not recovery of possession of the disputed land. Rather, the Appellant sought an order directing that he be permitted to continue using the disputed roadway and restraining the Respondents from preventing such use. Indeed, before this Court, learned Counsel for the Appellant expressly maintained that the Appellant was not asserting a servitudinal right but was entitled to traverse the roadway by reason of his ownership of the soil.

The material available before this Court nevertheless demonstrates that the real controversy between the parties concerns the existence and exercise of an alleged right to pass over land admittedly occupied by the Respondents under a subsisting lease. Such a dispute is plainly distinguishable from a dispute as to possession.

Whether the Appellant derives that alleged entitlement from ownership, from reservation under the lease, or otherwise, the inquiry necessarily centers upon whether he possesses the legal right claimed. Consequently, the dispute, in substance, is one falling within the contemplation of section 69 of the PCP Act rather than section 68.

The Appellant's criticism that the learned High Court Judge improperly considered principles applicable to section 68 will therefore require examination in the light of the actual nature of the dispute disclosed by the pleadings and the reliefs sought, rather than the terminology employed by the parties.

Analysis of the Grounds of Appeal

Having considered the Petition of Appeal, the written submissions tendered on behalf of the parties and the authorities relied upon, it appears to me that the several grounds urged by the Appellant substantially converge upon one central contention, namely, that both the learned Magistrate and the learned High Court Judge misapprehended the true nature of the dispute and consequently imposed upon the Appellant requirements which, according to him, were unnecessary in an application of the present nature.

The Appellant principally contends that the present dispute was erroneously approached as one involving the establishment of a servitude, whereas his case throughout has been that the disputed roadway forms part of his own land and that, as the owner of the soil, he is entitled to use that roadway without the necessity of establishing any servitudinal right. It is therefore necessary to consider whether that submission can be sustained.

Whether the Learned High Court Judge Misconceived the Nature of the Proceedings

The Appellant submits that the learned High Court Judge erroneously proceeded upon the footing that the Appellant was seeking to establish a servitude of right of way and consequently held that the dominant tenement, servient tenement and the disputed roadway ought to have been identified by means of a proper survey plan.

During the course of oral submissions before this Court, learned Counsel for the Appellant expressly clarified that the **Appellant does not claim any servitude over the disputed roadway**. His position is that no servitude arises since the roadway forms part of the land inherited by the Appellant from his predecessor in title. The Appellant therefore maintains that the Respondents, who claim merely under a lease, cannot prevent the owner of the soil from entering upon or traversing the roadway.

The question before the Primary Court was never whether the Appellant owned the land in the abstract. Equally, it was not whether the Respondents had acquired ownership of the roadway. Those issues are matters properly falling within the jurisdiction of a competent civil court.

The question raised before the Primary Court was whether the Appellant was legally entitled, notwithstanding the Respondents admitted occupation under the lease, to continue using the disputed roadway and whether interference with that alleged right warranted relief under Part VII of the PCP Act.

That inquiry necessarily concerns the existence of the right asserted and not merely the ownership of the soil.

Whether the Appellant was Required to Establish the Existence of the Roadway

The Appellant next contends that the learned High Court Judge erred in holding that the disputed roadway should have been identified by reference to a survey plan.

I am unable to accept that submission.

The relief sought by the Appellant was an order compelling the Respondents to keep open a particular gate and restraining them from interfering with the Appellant's use of a particular roadway. Such an order necessarily operates in respect of a specific and identifiable portion of land.

Where the existence, location and extent of the disputed roadway itself are in issue, the Court cannot effectively pronounce upon the rights asserted unless the subject matter of the dispute is capable of precise identification.

Indeed, section 69(2) itself contemplates an order declaring that a person shall be entitled to exercise **"such right in or respecting the land or any part of the land as may be specified in the order."**

The statutory requirement that the land or part thereof be specified necessarily presumes that the subject matter of the dispute has been sufficiently identified.

It follows that the learned High Court Judge cannot be faulted for considering whether the roadway forming the subject matter of the application had been adequately established.

Whether that identification necessarily required a survey plan in every case is a different question. Nevertheless, where the very identity and location of the roadway remain disputed, the absence of satisfactory material enabling the Court to identify it may legitimately assume considerable significance.

The Appellant's Contention Based upon Ownership of the Soil

A principal contention advanced on behalf of the Appellant is that the disputed roadway forms part of the land to which he succeeded upon the death of his predecessor in title and that, as the owner of the soil, he is entitled to enter upon and use that roadway

notwithstanding the Respondents' occupation under Lease Agreement No. 13053 dated 31.12.1980 and No. 6508 dated 06.06.2016. It is submitted that the Respondents derive no greater rights than the original lessees and, accordingly, possess no legal basis to exclude the Appellant from property in respect of which ownership has at all material times remained vested in him.

Reliance has been placed upon *Saparamadu v. Melder*⁹ and *Fernando v. Wickremasinghe*¹⁰ in support of the proposition that ownership of the soil, by itself, entitles the Appellant to use the roadway and precludes the Respondents from obstructing such use.

I am unable to agree with that submission. The Appellant's argument proceeds upon the assumption that ownership of land necessarily carries with it an unrestricted right to use every part thereof notwithstanding the existence of a subsisting lease. Whilst ownership undoubtedly remains vested in the lessor unless expressly conveyed, the creation of a lease transfers to the lessee the right to exclusive possession and enjoyment of the demised premises for the duration of the lease. A lease transfers to the lessee the right to possession together with the exclusive possession and enjoyment of the leased property during the currency of the tenancy, subject only to such reservations as may be contained in the lease or otherwise recognized by law.

The modern authorities of the Supreme Court have reaffirmed that a lessee under a valid lease is, during the subsistence of the lease, regarded as *dominus* as against all the world, including the lessor, whilst the corresponding obligation of the lessor is to secure to the lessee the *commodus usus*, namely, the peaceful and undisturbed enjoyment of the property. Those principles are fundamentally inconsistent with the proposition that the lessor may, merely because ownership of the soil remains vested in him, exercise an unrestricted right of passage over the leased premises.

Nor do the authorities relied upon by the Appellant support such a proposition. *Saparamadu v. Melder*¹¹ and *Fernando v. Wickremasinghe*¹² were concerned with the competence of a person to maintain an *actio negatoria* in respect of a servitude. Those decisions establish that such an action may be maintained only by the person possessing the soil rights over the servient tenement and not by one enjoying merely a servitudinal right.

⁹ (2004) 3 Sri L.R. 148

¹⁰ (1998) 3 Sri L.R. 37

¹¹ *Supra*

¹² *Supra*

They do not decide that ownership of the soil, standing alone, entitles a lessor to disregard the possessory rights conferred upon a lessee by a valid lease.

Accordingly, I am unable to accept the Appellant's submission that his ownership of the soil, without more, establishes the right asserted before this Court.

Sections 69 and 75 of the Primary Courts' Procedure Act

The Appellant's contention is also difficult to reconcile with the statutory framework embodied in Part VII of the PCP Act.

Section 75 defines a dispute affecting land as including not merely disputes relating to possession but also disputes concerning "any right in the nature of a servitude affecting the land."

Correspondingly, section 69 requires the Primary Court, where the dispute relates to any right affecting land other than possession, to determine who is entitled to that right and thereafter to make such order as the circumstances require.

The significance of these provisions lies in the fact that the inquiry is directed not towards ownership in the abstract but towards entitlement to the particular right asserted.

Although the Appellant expressly renounces any claim founded upon a servitude, he nevertheless seeks a declaration that he is entitled, as against the Respondents, to traverse the disputed roadway during the subsistence of their lease. That, in substance, is the assertion of a specific right in respect of land.

The statute does not permit such a right to be inferred merely because the claimant continues to own the soil. If the Appellant's argument accepted, every owner could rely upon title alone as conclusive proof of every right claimed over land in the possession of another, thereby rendering unnecessary the inquiry which section 69 expressly requires the Court to undertake.

Such an interpretation would defeat the statutory distinction carefully drawn by Parliament between ownership, possession and the various rights capable of existing in respect of land.

The proper inquiry is therefore not whether the Appellant remains the owner of the property, but whether he has established a legal right to exercise the particular user claimed notwithstanding the Respondents' occupation under the lease.

On the material presently before this Court, I am unable to conclude that the learned High Court Judge erred in law in rejecting the broader proposition advanced by the Appellant.

Whether the Learned High Court Judge Properly Exercised Revisionary Jurisdiction

Having considered the grounds urged by the Appellant in their entirety, I am unable to conclude that the learned High Court Judge either misdirected herself in law or exceeded the limits of the revisionary jurisdiction vested in that Court.

It is now trite that the revisionary jurisdiction of the Provincial High Court is not intended to provide a litigant with a second opportunity to canvass the factual merits of the dispute. The jurisdiction is supervisory in nature and is directed towards determining whether the proceedings before the Primary Court disclose any illegality, jurisdictional error, procedural irregularity, perversity or other exceptional circumstance warranting intervention.

In the present case, the learned High Court Judge did not purport to conduct a fresh inquiry into the facts. Rather, the learned Judge examined whether the learned Magistrate had correctly appreciated the nature of the dispute, whether the statutory requirements governing the relief sought had been satisfied and whether the order of dismissal disclosed any error justifying the exercise of revisionary jurisdiction. Such an approach, in my view, falls squarely within the limits of the jurisdiction conferred upon the Provincial High Court.

The Appellant has invited this Court to substitute a different appreciation of the material placed before the learned Magistrate. That, however, is not the function of this Court in an appeal of the present nature. Unless it is demonstrated that the learned High Court Judge misapplied settled principles of law or failed to exercise the revisionary jurisdiction according to law, this Court ought not to interfere merely because another conclusion upon the facts may also have been possible.

Whether the Learned High Court Judge Erred in Affirming the Magistrate's Order

The learned Magistrate dismissed the Appellant's application principally upon the basis that the roadway constituting the subject matter of the dispute had not been properly

identified. The learned High Court Judge, upon consideration of the material placed before her, found no exceptional circumstance warranting interference with that conclusion and further observed that the Appellant had failed to establish the essential factual and legal foundation upon which the relief sought rested. In my opinion, those conclusions cannot be characterized as either arbitrary or manifestly erroneous.

The relief sought by the Appellant was directed towards protecting an alleged right to use a particular roadway over land admittedly occupied by the Respondents under a subsisting lease. Before such a right could be protected under section 69 of the PCP Act, the Court was necessarily required to be satisfied as to the identity of the roadway, the nature of the right asserted and the legal basis upon which such right was claimed.

The Appellant sought to avoid that examination by contending that no servitude arose and that ownership of the soil, by itself, entitled him to traverse the roadway. For the reasons already stated, I am unable to accept that proposition.

Equally, the Appellant has been unable to point to any provision contained in the lease by which the lessor expressly reserved a continuing right of passage over the leased premises. Nor has any other independent legal basis been demonstrated which would entitle the Appellant to exercise the alleged right notwithstanding the Respondents' occupation.

In those circumstances, I am unable to hold that the learned High Court Judge erred in refusing to interfere with the order of the learned Magistrate.

Conclusion

The jurisdiction conferred upon the Primary Court under Part VII of the Primary Courts' Procedure Act is preventive, summary and provisional. It is neither intended nor equipped to determine finally competing proprietary rights. Where the dispute concerns the exercise of a right affecting land other than possession, the Court is required to determine whether the claimant has established entitlement to that particular right for the limited purposes contemplated by section 69 of the Act.

In the present case, the Appellant's principal contention is that his ownership of the soil alone entitles him to enter upon and traverse the disputed roadway notwithstanding the Respondents' occupation under a subsisting lease. In my view, neither the law governing leases nor the statutory scheme embodied in sections 69 and 75 of the Primary Courts' Procedure Act lends support to that proposition.

The authorities *Saparamadu v. Melder*¹³ and *Fernando v. Wickremasinghe*¹⁴ relied upon by the Appellant are concerned exclusively with the law relating to servitudes and the availability of the *actio negatoria*. They establish that such an action lies only at the instance of the owner of the servient tenement. They neither consider nor determine the entirely different question whether a lessor, merely by virtue of retaining ownership of the soil, is entitled to enter upon or traverse premises that have been demised to a lessee under a subsisting lease.

Nor has the Appellant demonstrated that the learned High Court Judge misdirected herself in law, exceeded the limits of the revisionary jurisdiction vested in that Court or overlooked any material circumstance warranting interference with the order of the learned Magistrate.

Accordingly, I see no basis upon which this Court ought to disturb the judgment of the Provincial High Court.

The appeal is accordingly dismissed.

Having regard to the circumstances of this case, I direct that the Appellant shall pay costs to court, fixed at Rs. 50,000/-.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal

¹³ *Supra*

¹⁴ *Supra*