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

Court of Appeal Case No.
CA (PHC) 275/2019

High Court Case No. REV/27/18

Magistrate Court of Kalutara
Case No. 06/18

Officer in Charge,
Police Station,
Kalutara South.

Complainant

Vs.

Welathanthrige Jayalath Botheju,
No. 497, Galle Road,
Kalutara South.

1st Party

M. Haneem M. Rizwan,
No. 25, Muslim Mosque Road,
Godaparahawatta,
Mahaheenatiyangala,
Kalutara South.

2nd Party

AND BETWEEN

Welathanthrige Jayalath Botheju,
No. 497, Galle Road,
Kalutara South.

1st Party- Petitioner

Vs.

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

1st Respondent

2. M. Haneem M. Rizwan,
No. 25, Muslim Mosque Road,
Godaparahawatta,
Mahaheenatiyangala,

Kalutara South.

2nd Party-Respondent

AND NOW BETWEEN

M. Haneem M. Rizwan,
No. 25, Muslim Mosque Road,
Godaparahawatta,
Mahaheenatiyangala,
Kalutara South.

2nd Party-Respondent- Appellant

Vs.

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

1st Respondent- Respondent

2. Welathanthrige Jayalath Botheju,
No. 497, Galle Road,
Kalutara South.

1st Party- Petitioner-Respondent

Before:	Damith Thotawatte, J. K.M.S. Dissanayake, J.
Counsels:	Pasan Weerasinghe with Muhammad Shafras instructed by M.K.M. Farzan for the Appellant. Sachithra Mahanama for the Respondent.
Written submissions tendered on:	12.03.2024 by 2nd Party-Respondent- Appellant
Judgment Delivered:	12.05.2026

Thotawatte, J.

The present appeal has been preferred by the 02nd Party-Respondent-Appellant (hereinafter sometimes referred to as the "Appellant") against the judgment dated 28.11.2019 delivered by the learned High Court Judge of the High Court of the Western Province holden in Kalutara, exercising revisionary jurisdiction under Article 154P(3)(b) of the Constitution, whereby the learned High Court Judge set aside the order dated 26.10.2018 made by the learned Magistrate of Kalutara 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").

Preliminary Objection as to Maintainability of the Appeal

When this matter was taken up for argument on 20.01.2026, the learned Counsel appearing for the Respondent, for the first time, raised a preliminary objection contending that the present appeal had been lodged beyond the period of fourteen days prescribed for preferring an appeal from the High Court to the Court of Appeal and that, accordingly, the appeal was time-barred and incapable of being entertained by this Court.

At the said hearing, learned Counsel for the Respondent acknowledged that written submissions had not been tendered on behalf of the Respondent in relation to the substantive issues arising in the appeal and moved for permission to file written submissions both in respect of the aforesaid preliminary objection and the merits of the appeal prior to making oral submissions.

Learned Counsel for the Appellant informed Court that written submissions had already been filed on behalf of the Appellant in relation to the substantive matter. However, it was moved on behalf of the Appellant that an opportunity be afforded to tender further written submissions addressing the preliminary objection, on the basis that the said objection had been raised for the first time on the date fixed for argument and that the Appellant had thereby been taken by surprise.

In the circumstances, this Court granted both parties leave to file further written submissions in relation to the preliminary objection as well as the substantive issues arising in the appeal. Thereafter, upon the request of learned Counsel appearing for both parties and with their consent, the matter was fixed for judgment on the basis of the written submissions tendered before Court.

However, notwithstanding the opportunity so afforded, neither party proceeded to file any further written submissions thereafter.

Computation of Time and the Objection as to Limitation of the Appeal

The impugned order of the learned High Court Judge had been delivered on 28.11.2019, whereas the Petition of Appeal had been lodged on 17.12.2019. Rule 2(1)(a) of the Court of Appeal (Procedure for Appeals from High Courts) Rules 1988 provides that a Petition of Appeal shall be lodged "within fourteen days from the time of such judgment or order being passed or made." However, the computation of the prescribed period is governed by Rule 3(1) of the said Rules, which expressly provides that in calculating the relevant period "the day on which the judgment/order challenged was pronounced shall be included, whilst all Saturdays, Sundays and public holidays shall be excluded." This position was specifically recognized in ***Ranasinghe Rachchige Mallika and others v. Lasantha De Silva and others***[1] where the Court observed that Rule 3(1) requires the inclusion of the date of the impugned order and the exclusion of Saturdays, Sundays and public holidays in computing the limitation period.

Accordingly, upon computing time in terms of Rule 3(1), the date of the order, namely 28.11.2019, falls to be counted as the first day. Excluding Saturdays, Sundays and the public holiday falling on 11.12.2019, being the Unduvap Full Moon Poya Day reflected in the 2019 Calendar, the fourteenth permissible day fell on 18.12.2019. In those circumstances, the Petition of Appeal lodged on 17.12.2019 had been filed within the period prescribed by Rule 2(1)(a) of the Court of Appeal (Procedure for Appeals from High Courts) Rules 1988 and therefore cannot be regarded as time-barred.

Progression of Litigation

The proceedings before the learned Magistrate's Court of Kalutara had originated upon an information filed by the Officer-in-Charge of the Police Station, Kalutara South, under Section 66 of the PCP Act against the Appellant and the 01st Party-Petitioner-Respondent (hereinafter sometimes referred to as the "Respondent"), in relation to a dispute affecting land.

[1] CA (PHC) 65/2014 Decided on 04.07.2023

Upon notices being issued on the parties, the learned Magistrate had proceeded in terms of the procedure contemplated under the PCP Act and permitted the parties, including the intervening party, to tender affidavits, counter-affidavits, and documentary material in support of their respective claims. Thereafter, upon considering the material placed before Court, the learned Magistrate by order dated 26.10.2018 held that the Appellant was entitled to possession of the disputed portion of land.

Being dissatisfied with the said order, the Respondent invoked the revisionary jurisdiction of the Provincial High Court of Kalutara by way of revision application bearing No. WP/HC/KT/REV/27/2018. The learned High Court Judge, having heard the parties, by judgment dated 28.11.2019 allowed the said revision application and set aside the order of the learned Magistrate, holding that the Respondent was entitled to possession of the disputed portion of land.

Aggrieved by the aforesaid judgment of the learned High Court Judge, the Appellant has preferred the present appeal seeking, *inter alia*, the setting aside of the judgment dated 28.11.2019 and the affirmation of the order dated 26.10.2018 made by the learned Magistrate.

Grounds Urged by the Appellant

The Appellant has urged, *inter alia*, the following grounds of appeal before this Court: -

1. That the learned High Court Judge failed to properly consider the long possession enjoyed by the Appellant in respect of the disputed land.
2. That the learned High Court Judge failed to consider that the Respondent had not specified the date on which the alleged dispossession is said to have occurred.
3. That the learned High Court Judge failed to properly evaluate the documentary material produced by the Appellant in support of his possession of the disputed land.
4. That although the Appellant had identified the specific portion of land in dispute, the learned High Court Judge misdirected himself in holding otherwise.
5. That the learned High Court Judge erred in placing the Respondent in possession of the entirety of the land known as “Goragahawatta” without assigning adequate reasons therefor.

Nature and Scope of the Present Appeal

At the outset, it is necessary to observe that the present appeal arises from a judgment delivered by the learned Provincial High Court Judge in the exercise of revisionary jurisdiction under Article 154P(3)(b) of the Constitution in respect of proceedings instituted under Section 66 of the PCP Act.

Accordingly, the present appeal cannot be approached as though this Court were exercising an unrestricted appellate jurisdiction upon the merits of the factual dispute between the parties. The function of this Court is confined to examining whether the learned High Court Judge, in the exercise of revisionary jurisdiction, had acted within the limits of that jurisdiction and in accordance with the settled principles governing revisionary intervention.

It is well established that revisionary jurisdiction constitutes an extraordinary discretionary jurisdiction which is ordinarily exercised only in exceptional circumstances involving illegality, jurisdictional error, perversity, procedural irregularity, or a manifest miscarriage of justice. Revision is not intended to operate as a mechanism by which a superior court merely substitutes its own factual conclusions for those reached by the original tribunal upon a re-evaluation of the same evidentiary material.

It is further to be borne in mind that proceedings instituted under Section 66 of the PCP Act are preventive and provisional in nature. The jurisdiction thereby exercised is a special quasi-criminal jurisdiction directed primarily towards the preservation of public order and the temporary regulation of possession pending final adjudication of rights by a competent civil court.

Whether the Learned High Court Judge Exceeded the Limits of Revisionary Jurisdiction

The material placed before this Court demonstrates that the learned Magistrate had considered the affidavits, counter-affidavits, documentary material, and submissions tendered by the respective parties before ultimately concluding that the Appellant was entitled to possession of the disputed portion of land.

It appears from the order of the learned Magistrate and from the written submissions tendered on behalf of the Appellant that the learned Magistrate had specifically considered:

- the Appellant's long possession and occupation of the premises;
- the existence of the carpentry business operated by the Appellant upon the land adjoining the disputed premises.
- the inability of the Respondent to specify the date of the alleged dispossession;
- and the uncertainty surrounding the precise identification of the disputed portion of land.

However, the learned High Court Judge, while exercising revisionary jurisdiction, proceeded to reassess these factual matters independently and arrive at a contrary conclusion principally upon his own appreciation of the Police Investigation Officer's report and surrounding circumstances.

In the judgment under appeal, the learned High Court Judge does not appear to have identified any jurisdictional defect, procedural illegality, perversity, denial of natural justice, or manifest misdirection on the part of the learned Magistrate which would warrant revisionary interference. Rather, the learned High Court Judge appears to have preferred a different factual interpretation of the material already evaluated by the learned Magistrate.

Failure to Establish the Requirements of Section 68(3)

A substantial issue raised by the Appellant before both the learned Magistrate and the learned High Court Judge concerned the failure of the Respondent to specify the date on which the alleged dispossession is said to have occurred.

The learned Magistrate had expressly treated that omission as a material deficiency in the Respondent's case. The written submissions tendered on behalf of the Appellant demonstrate that the learned Magistrate had specifically observed that the Respondent had failed to disclose the date of dispossession allegedly caused by the Appellant.

Section 68(3) of the PCP Act contemplates a situation where a person who had previously been in possession is found to have been forcibly dispossessed within a period of two months immediately preceding the filing of the information.

It is true that subsequent judicial authority has recognized that Section 68(3) does not invariably require the disclosure of an exact calendar date of dispossession where the surrounding circumstances sufficiently establish recent dispossession. However, the

authorities equally recognize that the Court must nevertheless be satisfied, upon the material placed before it, that the dispossession complained of had occurred within the statutory period contemplated by Section 68(3).

In the present case, the learned High Court Judge appears to have inferred recent dispossession merely from the circumstance that the Police Investigation Officer had observed recent clearing activities upon the land. In the view of this Court, such inference constituted a reassessment of factual matters already considered by the learned Magistrate and did not disclose any legal or jurisdictional basis upon which the learned Magistrate's findings could properly be disturbed in revision.

Re-Evaluation of Factual Findings by the Learned High Court Judge

This Court further observes that the learned High Court Judge appears to have re-evaluated the evidentiary weight to be attached to the identity and boundaries of the disputed portion of land.

The learned High Court Judge had concluded that the disputed 6.88 perch portion could not be clearly identified and had thereby inferred that the Appellant had occupied a portion of the larger land possessed by the Respondent.

However, the material before Court demonstrates that the Appellant had consistently maintained that he was entitled to and in possession of the disputed portion adjoining his carpentry workshop and that the learned Magistrate, having considered the entirety of the material before him, had accepted that position.

Whether one factual inference was preferable to another was not, in the circumstances of the present case, a matter properly attracting revisionary intervention unless the findings entered by the learned Magistrate could be shown to be perverse, irrational, unsupported by evidence, or otherwise legally untenable. No such finding appears in the judgment of the learned High Court Judge.

In the view of this Court, the learned High Court Judge effectively substituted his own factual conclusions for those already reached by the learned Magistrate without identifying any exceptional circumstance warranting such interference.

Conclusion

For the foregoing reasons, this Court is of the view that the grounds urged by the Appellant are well-founded.

This Court accordingly holds that the learned High Court Judge had exceeded the proper limits of revisionary jurisdiction by re-evaluating factual findings already entered by the learned Magistrate and substituting his own conclusions therefor in the absence of any demonstrated illegality, jurisdictional defect, perversity, procedural irregularity, or other exceptional circumstance warranting revisionary interference.

Accordingly, the appeal is allowed. The judgment of the learned High Court Judge dated 28.11.2019 in case bearing No. WP/HC/KT/REV/27/2018 is hereby set aside. The order of the learned Magistrate of Kalutara dated 26.10.2018 made in case bearing No. 06/18 is hereby affirmed.

In all the circumstances of this case, this Court makes no order as to costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal