

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

In the matter of an application in terms of the Provisions of the state land Recovery of Possession Act 7 of 1979 as amended by Act No 58 of 1981 Act No 29 of 1983 Act No 45 of 1992 Act No 29 of 1997.

**Court of Appeal Case No.:
CA (PHC) 0038/21**

**Provincial High Court of
Nuwara Eliya Case No:
HC/NE/01/2016/REV**

MC Hatton Case No: 94950

**Jayaweera Mudiyanseelage Chandrika
Priyadarshani,**

Competent Authority,
No 55/75,
Vauxhall Street,
Colombo 02.

APPLICANT

Vs.

Selvarj Vigneswaran,
Binoya Lower Division,
Carolina Estate,
Rossalla,
Watawala.

RESPONDENT

AND THEN

In the matter of an application for revision to Revise the Order of the Magistrate court of Hatton in case no 94950 in terms of

Article 154 (P) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with Section 5 of the High Court of the Provinces (Special Provisions) Act, No 19 of 1990.

Selvarj Vigneswaran,

Binoya Lower Division,

Carolina Estate,

Rossalla,

Watawala.

RESPONDENT-PETITIONER

Vs.

Jayaweera Mudiyanseelage Chandrika

Priyadarshani,

Competent Authority,

No 55/75,

Vauxhall Street,

Colombo 02.

APPLICANT-RESPONDENT

AND NOW

In the matter of an Appeal In terms of the provisions of Article 154P(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with

Article 138 of the Constitution against the Order of the Learned High Court Judge of provincial High court of Central province holden in Nuwara Eliya dated 06th August, 2021.

Jayaweera Mudiyanseelage Chandrika

Priyadarshani,

Competent Authority,

No 55/75,

Vauxhall Street,

Colombo 02.

Presently at

Ministry of Plantation's Monitoring
Division,

Ministry of Plantations,

11th Floor, Sethsiripaya,

2nd Stage, Baththaramulla.

APPLICANT-RESPONDENT-APELLANT

Vs.

Selvarj Vigneswaran,

Binoya Lower Division,

Carolina Estate,

Rossalla,

Watawala.

RESPONDENT-PETITIONER-

RESPONDENT

Before : **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel : Newille Abeyrathne Dias, P.C. with
Kaushalyan Abeyrathna Dias instructed
by Suresh Gayan for the Applicant-
Respondent-Appellant.

Niranjan De Silva with Suarashi
Malsha, Thulith Bandara and Janith
Fernando for the Respondent- Petitioner-
Respondent instructed by Isuru
Edirisinghe.

Written Submissions
of the Applicant-Respondent
-Appellant tendered on : 28.07.2026

Written Submissions
of the Respondent-Petitioner
-Respondent tendered on : 27.07.2026

Decided on : 09.10.2026

K. M. S. DISSANAYAKE, J.

When this matter came on before us for argument on 30.09.2025, learned Counsel for the Respondent-Petitioner-Respondent (hereinafter called and referred to as “the Respondent”) raised a preliminary objection to Court as to the maintainability of the instant appeal on the premise that, date of the judgement sought to be impugned in the instant appeal had been wrongly, stated in the prayer ‘b’ to the petition of appeal and as such, the instant appeal should be dismissed *in-limine*.

Also, when this matter came on for hearing into the preliminary objection so raised by the learned Counsel for the Respondent on 26.06.2026, the learned Counsel for the Respondent raised a further preliminary objection as to the amended petition of appeal filed in Court by the Applicant-Respondent-Appellant (hereinafter called and referred to as “the Appellant”) on the premise that it had been filed in Court by the Appellant without leave of Court first had and obtained for that purpose and therefore, it should be rejected.

Counsel urged that, both preliminary objections be heard and determined on the strength of the written submissions and accordingly, a consolidated set of written submissions were furnished to Court by the respective parties. Hence, the order on those two preliminary objections on the strength of the consolidated written submissions, as urged and agreed by respective Counsel.

Both the preliminary objections would I think, call for separate treatment.

The date of the judgement sought to be impugned in the instant appeal had been wrongly, stated in the prayer ‘b’ to the petition of appeal and as such, appeal should be dismissed *in-limine*.

It may now, be examined.

The Appellant in the caption of the appeal appeared on page 2 of the appeal brief had clearly, and unequivocally, stated in no uncertain terms the date

06.08.2021, as the date of the judgement sought to be impugned in the instant appeal by him.

Furthermore, the Appellant had in paragraph 10 of the petition of appeal, appeared on page 3 of the appeal brief too, stated 06.08.2021, as the date of the judgement sought to be impugned in the instant appeal by him.

Moreover, the Appellant had in paragraph 11 of the petition of appeal, appeared on page 3 of the appeal brief too, stated 06.08.2021, as the date of the judgement sought to be impugned in the instant appeal by him.

Hence, the Appellant had not only, in the caption of the petition of appeal but in the body of the petition of appeal also, clearly, and unequivocally, stated in no uncertain terms and without any ambiguity, the date 06.08.2021, being the date of the judgement that the Appellant had in the instant appeal, sought to impugn before this Court.

Besides, upon a careful perusal of the judgement sought to be impugned by the Appellant in the instant appeal which is filed of record, contained on pages from 133 to 142 of the appeal brief, it becomes abundantly, clear that, the date inserted on the 2nd page of the judgement found on page 134 of the appeal brief is the same date as stated in the caption as well as the body of the petition of appeal as aforesaid, namely; 06.08.2021.

Furthermore, the date stated in the last page of the judgement appeared on page 142 of the appeal brief too, is 06.08.2021.

However, it appears on the face of the prayer 'b' of the petition of appeal that a different date to that of the date inserted in the caption of the petition of appeal as well as in the body of the petition of appeal as well as in the judgement enumerated above, had been inserted in the prayer 'b' to the petition of appeal as to the date of the judgement sought to be impugned by the Appellant in the instant appeal, namely; 06.12.2017.

Hence, it clearly, appears that there is an obvious error in prayer 'b' of the petition of appeal with regard to the manner in which the date of the judgement sought to be impugned has been described therein.

However, upon a careful perusal of the petition of appeal and the judgement sought to be impugned in the instant appeal in its totality, it clearly, appears the error so occurred in describing the date of the judgement in prayer 'b' of the petition of appeal is nothing more than a typographical error which can clearly, and easily, be corrected with leave of the Court first had and obtained as provided for by Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990, without causing any prejudice to the Respondent and as held by this Court in **Dias v. Karawita 1999 [1] SLR 98** at Page 102.

Besides, when the Petition of appeal and the Judgement, sought to be impugned are to be read in its correct perspective together with the erroneous prayer 'b' of the petition of appeal, even without an amendment being made to the date erroneously, stated in the in the prayer 'b' of the petition of appeal, this Court can grant relief for; it manifestly, appears from a careful reading of the petition of appeal together with the judgement sought to be impugned with the instant appeal that, all what the Appellant had asked for in prayer 'b' of the petition of appeal was to set aside the judgement delivered by the learned High Court Judge of the Central Province holden in Nuwara Eliya on 06.08.2021.

Besides, it ought to have been within the full knowledge of Respondent that, it was so for; the judgement sought to be impugned in the instant appeal had been pronounced by the learned High Court Judge in the presence of both the Appellant as well as the Respondent at a time where both of them had been duly, represented by respective Counsel in Court.

Hence, it cannot in any manner, be said that the obvious error occurred in prayer 'b' of the petition of appeal, in describing the date of the judgement sought to be impugned in the instant appeal, had caused any prejudice to the Respondent.

In view of all the above facts and circumstance, I would hold that, the preliminary objection so raised by the learned Counsel for the Respondent is devoid of any merit and as such, it ought to be overruled *in-limine*.

Amended petition of appeal had been filed in Court by the Appellant without leave of Court first had and obtained for that purpose and therefore, it should be rejected.

It may now, be examined.

It is to be observed that, subsequent to the preliminary objection being raised as aforesaid by the learned Counsel for the Respondent, the Appellant had furnished to this Court an amended petition of appeal explicitly, seeking in the motion dated 10.10.2025, filed along with the proposed amended petition of appeal, leave of this Court to amend the prayer 'b' of the petition of appeal inserting only the correct date therein and nothing more apparently, under Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990.

Upon a careful perusal of the proposed amended petition of appeal in its totality, it clearly, appears that, all what the Appellant had sought therein, is to amend the date inserted in the prayer 'b' of the petition of appeal only and nothing more.

It appears to this Court that for the very reasons stated by this Court under the first preliminary objection, no prejudice whatsoever, would be caused to the Respondent by allowing the amendment sought therein, by the Appellant, for; it ought to have been within the full knowledge of Respondent that, the judgement sought to be impugned in the instant appeal which had been pronounced by the learned High Court Judge in the presence of both the Appellant as well as the Respondent at a time where both of them had been duly, represented by respective Counsel in Court, had infact, been delivered by Court on the 06.08.2021.

Hence, it clearly, appears that, the next preliminary objection so raised as aforesaid by the learned Counsel for the Respondent, too, is devoid of merit and

as such not entitled to succeed both in fact and law and as such, it too, should be overruled *in-limine*.

In view of the foregoing, I would hold that, none of the preliminary objections is entitled to succeed both in fact and law.

In the result, I would proceed to overrule both of the preliminary objections so raised by the Respondent.

I would acting under Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990 thus, grant leave to the Appellant to furnish to Court an amended petition of appeal.

In view of all the above, circumstances I make no order for costs.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL