

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

Court of Appeal Case No.
CA/PHC/47/2022

Gampaha High Court Revision
Application No. REV 25/2019

Mahara Magistrate's Court No.
25088/18

In the matter of Appeal under Article 156 P
(6) of the Constitution read with the
Provisions of the High Court of the Provinces
(Special Provisions) Act No.19 of 1990.

Officer in Charge,
Police station,
Meegahawatta.

Complainant

Vs.

1. M.A.A.K. Munasinghe of No. 30/F, Udupila,
Delgoda.
2. D.S. Basnayake of No. 35/A, Udupila,
Delgoda.
3. K.A.D. Gamini of No. 30/C, Udupila,
Delgoda.
4. K.A.D.I. Kumarapeli of No. 30, Udupila,
Delgoda.
5. K.A.D.P.I. Kumarapeli of No. 39/7, Udupila,
Delgoda.
6. H.K.S. Kumara of No. 30/E, Udupila,
Delgoda.

1st Party

Vs.

U.K.P.S. Kumara of No. 30/A, Udupila,
Delgoda.

2nd party

And between

M.A.A.K. Munasinghe of No. 30/F, Udupila,
Delgoda.

Petitioner

Vs.

1. D.S. Basnayake of No. 35/A, Udupila,
Delgoda.
2. K.A.D. Gamini of No. 30/C, Udupila,
Delgoda.
3. K.A.D.I. Kumarapeli of No. 30, Udupila,
Delgoda.
4. K.A.D.P.I. Kumarapeli of No. 39/7, Udupila,
Delgoda.
5. H.K.S. Kumara of No. 30/E, Udupila,
Delgoda.
6. U.K.P.S. Kumara of No. 30/A, Udupila,
Delgoda.
7. Officer in Charge,
Police station,
Meegahawatta.

Respondents

And now between

6. U.K.P.S. Kumara of No. 30/A, Udupila,
Delgoda.

2nd Party/6th Respondent/Appellant

Vs.

M.A.A.K. Munasingje of No. 30/F, Udupila,
Delgoda.

1st Party/Petitioner/Respondent

1. D.S. Basnayake of No. 35/A, Udupila, Delgoda.
2. K.A.D. Gamini of No. 30/C, Udupila, Delgoda.
3. K.A.D.I. Kumarapeli of No. 30, Udupila, Delgoda.
4. K.A.D.P.I. Kumarapeli of No. 39/7, Udupila, Delgoda.
5. H.K.S. Kumara of No. 30/E, Udupila, Delgoda.

1st Party/Respondents/Respondents

Officer in Charge,
Police station,
Meegahawatta.

Complainant/Respondent/Respondent

Court of Appeal Case No.
CA/PHC/48/2022

Gampaha High Court Revision
Application No. REV 21/2019

Mahara Magistrate's Court No.
25088/18

In the matter of Appeal under Article 156 P
(6) of the Constitution read with the
Provisions of the High Court of the
Provinces (Special Provisions) Act No.19 of
1990.

Officer in Charge,
Police station,
Meegahawatta.

Complainant

Vs.

1. M.A.A.K. Munasinghe of No. 30/F, Udupila, Delgoda.
2. D.S. Basnayake of No. 35/A, Udupila, Delgoda.

3. K.A.D. Gamini of No. 30/C, Udupila, Delgoda.
4. K.A.D.I. Kumarapeli of No. 30, Udupila, Delgoda.
5. K.A.D.P.I. Kumarapeli of No. 39/7, Udupila, Delgoda.
6. H.K.S. Kumara of No. 30/E, Udupila, Delgoda.

1st Party/Respondents

Vs.

U.K.P.S. Kumara of No. 30/A, Udupila, Delgoda.

2nd Party/Respondent

And between

D.S. Basnayake of No. 35/A, Udupila, Delgoda.

1st Party/2nd Respondent/Petitioner

Vs.

Officer in Charge,
Police station,
Meegahawatta.

Complainant/Respondent

1. M.A.A.K. Munasinghe of No. 30/F, Udupila, Delgoda.
3. K.A.D. Gamini of No. 30/C, Udupila, Delgoda.
4. K.A.D.I. Kumarapeli of No. 30, Udupila, Delgoda.

5. K.A.D.P.I. Kumarapeli of No. 39/7, Udupila,
Delgoda.

6. H.K.S. Kumara of No. 30/E, Udupila,
Delgoda.

1st Party/Respondents/Respondents

U.K.P.S. Kumara of No. 30/A, Udupila,
Delgoda.

2nd Party/Respondent/Respondent

And now between

U.K.P.S. Kumara of No. 30/A, Udupila,
Delgoda.

2nd Party/Respondent/Respondent/
Appellant

Vs.

D.S. Basnayake of No. 35/A, Udupila,
Delgoda.

1st Party/2nd Respondent/Petitioner/
Respondent

Officer in Charge,
Police station,
Meegahawatta.

Complainant/Respondent/Respondent

1. M.A.A.K. Munasingje of No. 30/F, Udupila,
Delgoda.

3. K.A.D. Gamini of No. 30/C, Udupila,
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4. K.A.D.I. Kumarapeli of No. 30, Udupila,
Delgoda.

5. K.A.D.P.I. Kumarapeli of No. 39/7, Udupila,
Delgoda.

6. H.K.S. Kumara of No. 30/E, Udupila,
Delgoda.

1st Party/Respondents/Respondents/
Respondents

Before: Damith Thotawatte, J.

K.M.S. Dissanayake, J.

Counsels: Aruna Ranasinghe instructed by Nipuni Dasanayake for the
Appellant.

Rohan Sahabandu, PC with Chathurika Elvitigala instructed by
Subani Gamage for the 1st Party/2nd Respondent/Petitioner/
Respondent [CA (PHC) 48/2022]

Rajindh Perera instructed by I.W. Gunawardana for the 1st Party/
Petitioner/Respondent [CA (PHC) 47/2022]

Bhagya Dissanayaka for the 1st Party 3rd, 5th, 6th Respondents/
Respondents/Respondents.

Argued: 05.05.2026

Written submissions
tendered on: CA (PHC) 47/2022
21.08.2025 & 11.06.2026 by 2nd Party/6th Respondent/Appellant.
11.08.2025 & 27.05.2026 by 1st Party/Petitioner/Respondent.

CA (PHC) 48/2022
21.08.2025 & 11.06.2026 by 2nd Party/Respondent/Respondent/
Appellant.
06.08.2025 & 26.05.2026 by 1st Party/2nd Respondent/Petitioner/
Respondent.

Judgement Delivered: 05.08.2026

Thotawatte, J.

These appeals arise from proceedings instituted before the learned Magistrate of Mahara under Section 66(1)(a) of Part VII of the Primary Courts' Procedure Act, No. 44 of 1979 (hereinafter referred to as the "PCP Act"), upon an information filed by the Officer-in-Charge of the Meegahawatta Police Station under Case No .25088 concerning the alleged obstruction of a roadway claimed by those designated as of the First Party.

When this appeal was taken up for argument on 05.05.2026 before this court , learned counsel informed the Court that the present appeal, CA (PHC) No. 47/2022, together with CA (PHC) No. 48/2022, arises from the same order of the Magistrate Court of Mahara Case No. 25088, against which two separate revision applications had been filed by **M.A.A.K. Munasinghe** and **D.S. Basnayake** both of the “**1st Party**” in the Case No. 25088 of the Magistrate Court of Mahara. The Learned Judge of the High Court of Gampaha has delivered two separate orders under revision applications No. REV 25/2019 and REV 21/2019, against which appeals CA (PHC) No. 47/2022 and CA (PHC) No. 48/2022 have been filed by U.K.P.S. Kumara of No. 30/A, Udupila, Delgoda originally described as the 2nd Party of Case No. 25088 and described in the respective petitions of appeal as the **2nd Party/6th Respondent/Appellant** in CA (PHC) No. 47/2022 and **2nd Party/Respondent/Respondent /Appellant** in CA (PHC) No. 48/2022 (hereinafter sometimes referred to as the “Appellant”).

On 05.05.2026, counsels appearing for all parties in CA (PHC) No. 47/2022 and CA (PHC) No. 48/2022 agreed that both appeals may be heard together and disposed of by a single consolidated judgment, since they arise from the same proceedings before the learned Magistrate, involve an identical factual background, raise the same questions of law, and the issues arising for determination in both appeals are substantially identical.

Background

The dispute concerns an alleged roadway situated at Udupila, Delgoda. According to the information laid before the learned Magistrate by the Officer-in-Charge of the Meegahawatta Police Station, those of the First Party had complained that they and their predecessors in title had, for several decades, used the disputed roadway as a means of access to the Delgoda-Udupila main road. They alleged that approximately one month prior to the institution of proceedings the Appellant erected a gate across that roadway thereby obstructing their access and creating a dispute likely to occasion a breach of the

peace. Attempts made by the Police to resolve the dispute amicably proved unsuccessful, whereupon the Officer-in-Charge invoked the jurisdiction of the learned Magistrate under Section 66(1)(a) of the PCP Act.

A Police inspection of the location had been carried out thereafter and the Police Inspection Report together with a rough sketch identifying the physical features observed at the location, including the alleged roadway and the gate said to have been erected by the Appellant, had been produced before the learned Magistrate. Those documents formed part of the material considered during the statutory inquiry.

Those of the First Party (hereinafter sometimes referred to collectively as the "Respondents" and where necessary, individually as the 1st, 2nd, 3rd, 4th and 5th Respondent) consistently maintained that the disputed roadway had existed for several decades and was used not merely by themselves but by numerous residents of the locality. In support of that contention, they relied upon survey plans, photographs, affidavits of neighbouring residents, letters from respected members of the locality and, significantly, an affidavit sworn by the Appellant's own father, who was said to be his predecessor in title. Particular reliance was placed upon Plan No. 7077 prepared by Licensed Surveyor L. J. Liyanage, in which the disputed roadway is said to have been identified as Lot No. 8 and described in the accompanying schedule as property intended for common enjoyment. They further asserted that the roadway, commonly known as "Pahalawaththa Para", had been continuously used by successive generations of villagers for more than seventy years.

The Appellant, however, disputed the very existence of the alleged roadway over his property. His position throughout the proceedings was that no legally recognizable footpath existed across his land in the manner alleged. He maintained that the gate had been erected for legitimate purposes, including preventing cattle from entering his property, and that the members of the First Party enjoyed convenient access to the main road by means of another motorable roadway. He therefore contended that the alleged footpath either never existed in the manner asserted or, at the very least, was no longer being used as claimed. He further challenged the evidentiary value of the affidavit made by his father and relied upon affidavits and other documentary material intended to demonstrate that the disputed pathway was neither visible nor in present use.

It is therefore apparent that the controversy before the learned Magistrate was not one concerning title to land. Nor was the Court called upon finally to determine the existence of an servitude. The dispute concerned the alleged obstruction of an existing roadway said

to have been used by the members of the First Party, giving rise to proceedings under Sections 66 to 69 of the PCP Act.

Progression of the Litigation

Upon consideration of the entirety of the material placed before him, the learned Magistrate, by order dated 11.12.2018, declined to grant the relief sought by the members of the First Party. According to the Appellant's case, the learned Magistrate concluded that the First Party had failed to establish their entitlement to continue using the alleged roadway and also took into consideration the existence of another means of access to the main road. Consequently, the gate erected by the Appellant remained undisturbed.

Being dissatisfied with the order of the learned Magistrate, different members of the First Party invoked the revisionary jurisdiction of the High Court by filing revision Applications Nos. REV 21/2019 and REV 25/2019.

The Petitioners of the revision application (Respondents in the instant appeal), contended that the learned Magistrate had failed to determine the issue properly as required by Section 69 of the PCP Act, by attaching undue significance to the existence of an alternative roadway, and thereby reaching a conclusion unsupported by the documentary material produced before Court.

By separate judgments delivered on 13.01.2022, the learned High Court Judge allowed both revision applications, set aside the order of the learned Magistrate and granted relief in favour of the petitioners. It is against those judgments that the present appeals have been preferred.

Grounds of Appeal

Although the Petitions of Appeal and the written submissions raise numerous grounds of challenge to the judgment of the learned High Court Judge, those contentions may conveniently be distilled into the following principal issues for determination in both appeals:

- 1) Whether the learned High Court Judge exceeded the limits of the revisionary jurisdiction by interfering with the findings of the learned Magistrate in the absence of any error of law, jurisdiction or principle.

- 2) Whether the learned Magistrate properly conducted the inquiry required under Sections 66 and 69 of the Primary Courts' Procedure Act, No. 44 of 1979.
- 3) Whether the learned High Court Judge erred in his evaluation of the evidence by attaching undue weight to the affidavit of the Appellant's father whilst disregarding the contrary evidence relied upon by the Appellant.
- 4) Whether the learned High Court Judge erred in finding that the Respondents had established the continued existence and use of the disputed footpath notwithstanding the evidence to the contrary.

The Statutory Scheme under the Primary Courts' Procedure Act

Section 66 of the PCP Act confers upon the Primary Court a special, summary and quasi-criminal jurisdiction intended to provide an expeditious preventive remedy for disputes affecting land which threaten or are likely to threaten a breach of the peace. The jurisdiction is preventive rather than adjudicatory and is not concerned with the final determination of ownership, title or other substantive proprietary rights. Its purpose is to preserve public peace by making provisional orders regulating possession or the exercise of disputed rights until the parties' civil rights are determined by a court of competent jurisdiction. This fundamental character of the jurisdiction was recognized in *Kanagasabai v. Mylvaganam*¹, *Velupillai and Others v. Sivanathan*² and *Punchi Nona v. Padumasena and Others*.³

Where the dispute relates to a right to land other than the right to possession, Section 69 applies. The inquiry is confined to determining, for the limited purpose of preserving the peace, whether the claimant has established that he has acquired the disputed right or is otherwise entitled, for the time being, to exercise that right. In *Wimalawathie and Another v. Dharmadasa*⁴, the Court of Appeal held that, for the purposes of Section 69 of the Primary Courts' Procedure Act, a declaration may be granted where the evidence establishes either that the claimant has acquired the disputed right or is entitled, for the time being, to exercise that right. The Court emphasized that the jurisdiction under Part VII is intended to preserve the status quo and prevent breaches of the peace pending the final adjudication of the parties' substantive rights by a court of competent jurisdiction.

¹ (1976) 78 NLR 280

² (1993) 1 Sri L.R. 123

³ (1994) 2 Sri L.R. 117

⁴ (2020) 3 Sri L.R. 178

Scope of the Revisionary Jurisdiction

Orders made by a learned Magistrate under Part VII of the Primary Courts' Procedure Act are not subject to an ordinary right of appeal. The Provincial High Court is instead vested with an extraordinary and discretionary revisionary jurisdiction, exercisable only in exceptional circumstances to prevent a miscarriage of justice arising from an error of law, excess or failure of jurisdiction, material procedural irregularity, denial of natural justice, misdirection, or findings that are unsupported by the evidence. The Supreme Court in *Kayas v. Nazeer and Others*⁵, relying on the dictum of His Lordship Sansoni C.J. in *Mariam Beebee v. Seyed Mohamed*⁶, reaffirmed that "the object of revision is the due administration of justice and correction of errors". Revision is therefore not a substitute for an appeal nor a rehearing on the merits; its function is to determine whether the learned Magistrate exercised the limited statutory jurisdiction conferred by Part VII according to law, considered the relevant material, applied the correct legal principles and reached a conclusion reached findings reasonably supported by the evidence before the Court. Where the learned Magistrate has acted without jurisdiction, committed a material error of law or procedure, failed to consider relevant evidence, taken account of irrelevant matters, or reached a conclusion that cannot be sustained on the evidentiary record, the High Court is entitled to intervene in revision. Such a limited revisionary jurisdiction gives effect to the legislative purpose of Part VII, namely, the prompt preservation of the peace by means of summary and provisional orders, leaving the parties' substantive rights to be finally determined in the ordinary civil courts.

The Appellant submits that the learned High Court Judge simply preferred one body of evidence over another and thereby converted the revision into an appeal. The Respondents, on the other hand, maintain that the learned Magistrate failed properly to appreciate the evidence bearing upon the continued existence and user of the disputed footpath and that the learned High Court Judge therefore acted well within the limits of the revisionary jurisdiction.

Scope of Appellate Jurisdiction of the Court of Appeal

In *Nandawathie and Another v. Mahindasena*⁷, His Lordship Ranjith Silva J., considering the role of the Court of Appeal in hearing an appeal from a judgment of the Provincial High

⁵ (2004) 3 Sri L.R. 202

⁶ 68 NLR 36, S.C. No. 94-63 decided on 17 November 1965

⁷ (2009) 2 Sri L.R. 218

Court delivered in the exercise of its revisionary jurisdiction under Article 154P(3)(b) of the Constitution, observed that the legislative scheme contemplates a progressively limited scope of review. The Provincial High Court, in revision, is concerned with the legality and propriety of the order made by the Primary Court rather than its factual correctness. Correspondingly, an appeal to the Court of Appeal is not a further examination of the proceedings before the Primary Court. The function of this Court is confined to determining whether the learned High Court Judge correctly exercised the revisionary jurisdiction vested in that Court according to law. It is therefore not for this Court to re-evaluate the evidence, determine whether the learned Magistrate ought to have reached a different conclusion on the facts, or substitute its own assessment of the merits. These principles have been consistently followed and reaffirmed in subsequent decisions of the Court of Appeal⁸, which have repeatedly emphasized that appellate intervention is warranted only where the Provincial High Court has erred in the exercise of its revisionary jurisdiction by acting without or in excess of jurisdiction, committing an error of law, material irregularity or impropriety, denying natural justice, or otherwise occasioning a miscarriage of justice. Such an interpretation alone gives effect to the legislative intention that proceedings under Part VII of the Primary Courts' Procedure Act remain summary, expeditious and preventive in character.

Analysis

The Appellant contends that the learned High Court Judge, instead of confining himself to the proper limits of revisionary jurisdiction, merely preferred the affidavits relied upon by the Respondents to those relied upon by the Appellant and thereby substituted his own findings of fact for those of the learned Magistrate. The Respondents, on the other hand, maintain that the learned Magistrate failed properly to evaluate the cumulative effect of the affidavits, documentary productions and other contemporaneous material said to establish the existence and continued use of the disputed footpath.

Upon a careful examination of the order of the learned Magistrate, it is difficult to discern whether the learned Magistrate adequately considered the cumulative effect of the

⁸ *Jayasekarage Bandulasena and others v. Galla Kankanamge Chaminda Kushantha and others*, CA (PHC) 147/2009 Decided on 27.09.2017, *Weerappulige Ashoka Weerasinghe v. Wijamunige Charlis Godalhena*, CA PHC NO 138/2016 Decided on 08.08.2023, *Ranawana Hewa Vitharanalage Anoma Geethanjali Samarasena v. Officer in Charge, Police Station, Kandy*, CCA PHC 01-2020 Decided on 13.10.2022, *Hettiarachchige Chandana Kumarasinghe v. R.D. Somadasa and another*, CA PHC 35-2016, Decided on 04.04.2022, *Muthusami Loganathan v. Walpale Gedara Malani Manjalika and others*, CA PHC 203/2019, Delivered on 04.04.2023

affidavits and documentary material placed before Court. The order largely consists of a summary of the evidence adduced by the parties, without any meaningful analysis of that evidence or any indication as to which items of evidence were accepted or rejected and for what reasons. Apart from referring to the existence of an alternative access road, the order does not clearly identify the factual findings upon which the conclusion was reached or the evidentiary basis for those findings. Consequently, the reasoning process adopted by the learned Magistrate is not readily ascertainable from the face of the order.

It appears that the principal ground upon which the learned Magistrate refused relief to the 1st Party was the existence of an alternative means of access to his land. However, the mere existence of an alternative route does not, without more, furnish a proper basis for refusing relief under Section 69 of the Primary Courts' Procedure Act. The statutory inquiry is directed to determining the party entitled, for the time being, to exercise the disputed right, rather than whether another means of access is available. Questions concerning the existence of an alternative route assume significance in a civil action founded upon a claim to a right of way of necessity, but do not ordinarily arise for determination in proceedings under Section 69 of the Act. This principle was recognized in *Amarathunga Arachchige Podimahattaya Perera v. Amarathunga Arachchige Danawansa Perera*⁹, where the Court held that the existence of an alternative road is not a matter for consideration in such proceedings.

In those circumstances, I am unable to accept the Appellant's contention that the learned High Court Judge approached the matter as though exercising ordinary appellate jurisdiction. The learned Judge neither received fresh evidence nor has undertaken a fresh inquiry. His consideration was confined exclusively to the affidavits, documentary productions and other material that had been placed before the learned Magistrate. The mere fact that the learned High Court Judge examined that material does not, in itself, demonstrate that he contravened the limits of the revisionary jurisdiction. On the contrary, where the reasoning of the subordinate court does not disclose whether the material evidence has been properly evaluated, a revisional court is entitled, and indeed obliged, to examine the evidentiary basis of the impugned order in order to determine whether it is legally sustainable.

A significant item of evidence before the learned Magistrate, supporting the case of the 1st Party Respondents, was the affidavit of the Appellant's predecessor in title, namely his

⁹ CA (PHC) 42/2007, Decided 22.05.2017

father, in which it was stated that a common pathway existed over the Appellant's land. This was plainly material evidence bearing directly upon the central issue in dispute. However, the order of the learned Magistrate contains no analysis of this affidavit, nor does it disclose any reason for rejecting or attaching little weight to it. The omission to address such a material piece of evidence leaves it unclear whether it was considered at all. In these circumstances, it cannot properly be said that the learned High Court Judge merely arrived at conclusions different from those of the learned Magistrate upon the same evaluation of the evidence. Rather, the learned High Court Judge appears to have examined and evaluated material evidence which the learned Magistrate had failed to address, for reasons that are not apparent from the order itself.

I am unable to accept the Appellant's contention that the learned High Court Judge attached undue weight to the affidavit of the Appellant's father whilst disregarding the contrary affidavits and documentary evidence produced by the Appellant. A reading of the impugned judgment does not support the proposition that the learned High Court Judge founded his decision solely, or even principally, upon that affidavit. Rather, the judgment demonstrates that the affidavit of the Appellant's predecessor in title was considered together with the survey plans, photographs, the Police inspection report, the affidavits of several independent persons and the other documentary productions placed before the learned Magistrate. The affidavit was plainly a material piece of evidence, emanating from the person who had formerly owned the land over which the disputed roadway was alleged to pass, and the learned High Court Judge cannot be faulted for attaching due evidentiary weight to it. The Appellant's complaint is, in reality, directed not at any failure to consider his evidence, but at the weight attributed to the competing bodies of evidence. In ***Kandiah Velauthapillai Vel Hospital v. Kathiresu Balasingam et al***¹⁰, this Court recognized that the credibility of affidavit evidence depends upon its intrinsic quality and probative value rather than the number of affidavits filed, observing that "*evidence is to be weighed and not counted.*" The Court upheld the intervention of the Provincial High Court where the learned Primary Court Judge had rejected the affidavit of the immediate predecessors in title without valid reason and had failed properly to appreciate the evidentiary material as a whole.

¹⁰ CA (PHC) 07/2012 Decided on 09.10.2020

Conclusion

For the reasons set out above, I hold that the Appellant has failed to establish that the learned High Court Judge erred in the exercise of the revisionary jurisdiction vested in the Provincial High Court. None of the grounds advanced in the Petitions of Appeal or elaborated in the written submissions discloses any basis upon which this Court should interfere with the judgment under appeal.

Accordingly, the judgment of the learned High Court Judge dated 13.01.2022 in High Court Revision Application Nos. REV/21/2019 and REV/25/2019 is affirmed.

Consequently, CA (PHC) No. 47/2022 and CA (PHC) No. 48/2022 are dismissed subject to costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal