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

In the matter of an Appeal against the judgment of the Provincial High Court of Ratnapura established under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Article 154 P (3) thereof, and made in the case bearing No. පුනි 08/2019.

Court of Appeal Case No: CA/PHC/75/2021

High Court of Ratnapura Case No: පුනි/08/2019

Magistrate Court of Ratnapura Case No: 27678/A

(Private) Section 66 of the Primary Court Procedure Act

Alaka Appuhamilage Nandani Alwis,
No:69,
Hakamuva watte,
Pahala Hakmuwa,
Ratnapura.

Petitioner

Vs

1. **SENAKA WERAPITIYA,**
   Werapitiya Walawuwa,
   Katandola, Ratnapura.

2. **SHYAMINI TENNAKOON GUNARATHNE**
   No. 472/3/5,
   Inigala Road, Katugastota,
   Kandy.

Respondents

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1. **SENAKA WERAPITIYA,**
   Werapitiya Walawuwa, Katandola, Ratnapura.

2. **SHYAMINI TENNAKOON GUNARATHNE**
   No. 472/3/5,
   Inigala Road, Katugastota,
   Kandy.

Respondents-Petitioners

Vs

ALAKA APPUHAMILAGE NANDANI ALWIS
No. 69,
Hakamuva watte,
Pahala Hakmuwa,
Ratnapura.

Petitioner-Respondent

AND NOW

2. **SHYAMINI TENNAKOON GUNARATHNE**
   No. 472/3/5,
   Inigala Road, Katugastota,
   Kandy.

Respondent-Petitioner-Appellant

Vs

ALAKA APPUHAMILAGE NANDANI ALWIS
No. 69,
Hakamuva watte,
Pahala Hakmuwa,
Ratnapura.

Petitioner-Respondent-Respondent

1. **SENAKA WERAPITIYA,**
   Werapitiya Walawuwa, Katandola, Ratnapura.

Respondent-Petitioner-Respondent

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

Counsel : Sandeepani Wijesooriya with Supun Rathnayake for the 2nd Respondent–Petitioner-Appellant.
Ovini Haththotuwa for the Petitioner-Respondent-Respondent on the instructions of Lakmini Amarasinghe of the Legal Aid Commission of Sri Lanka.
Respondent-Petitioner-Respondent is absent and unrepresented.

Argued on	:	12.01.2026
Written Submissions of the Respondent-Petitioner-Appellant tendered on	:	15.05.2025
Written Submissions of the Petitioner-Respondent-Respondent tendered on	:	08.05.2025 and 21.04.2026
Written Submissions of the 1st Respondent-Petitioner-Respondent tendered on	:	Not tendered
Decided on	:	08.05.2026

K. M. S. DISSANAYAKE, J.

Instant appeal arises from an order dated 20.07.2021 made by the learned High Court Judge of the Sabaragamuwa Province holden at Rathnapura (hereinafter called and referred to as the HC order) in an application in revision bearing No. HCR/RA/08/2019, preferred to it by the 2nd Respondent-Petitioner-Appellant and the 1st Respondent-Petitioner-Respondent against an order dated 21.12.2018 (hereinafter called and referred to as the MC order) made by the learned Additional Magistrate of Rathnapura (hereinafter called and referred to as the learned Additional Magistrate) in the proceedings initiated before it by the Petitioner-Respondent-Respondent by filing information thereat under and in terms of section 66(1)(b) of the Primary Courts Procedure Act No. 44 of 1979 (hereinafter called and referred to as the Act) citing therein the 2nd Respondent-Petitioner-Appellant and the 1st Respondent-Petitioner-Respondent respectively,

as the 1st and 2nd Respondents thereto whereby, the learned Additional Magistrate had having held that the Petitioner-Respondent-Respondent had been in possession of the land in dispute and had been dispossessed by the Respondents within a period of two months immediately, before the date on which the information was filed under section 66 of the Act, made a determination to that effect.

It is this order of the learned Additional Magistrate that the 1st and 2nd Respondent-Petitioners to the revision application filed before the High Court of Rathnapura had sought to impugn before it on a number of grounds urged by them in their petition dated 22.01.2019 filed thereat. However, the learned High Court Judge of Rathnapura had by the impugned order, proceeded to dismiss the application in revision holding that the 1st and 2nd Respondent-Petitioners had not disclosed any exceptional circumstances warranting the invocation of the extra-ordinary revisionary jurisdiction vested in it in revision of the MC order as urged by the 1st and 2nd Respondent-Petitioners thereto. It is this order of the learned High Court Judge of Rathnapura that the 2nd Respondent-Petitioner-Appellant now, seeks to canvas before us on a number of grounds of appeal urged in paragraph 6(i) to (vii) of the petition of appeal dated 05.08.2021 filed of record.

The first ground argued before us by the learned Counsel for the 2nd Respondent-Petitioner-Appellant (hereinafter called and referred to as 'the Appellant') at the hearing of this appeal is that the learned Additional Magistrate had misdirected herself when she had proceeded to make a determination under section 68(3) of the Act, notwithstanding the fact that, the Petitioner-Respondent-Respondent had in the information filed before the Magistrate Court under section 66(1)(b) of the Act, sought relief under section 68(1) of the Act, and the learned High Court Judge of Rathnapura too, had misdirected herself, when she had proceeded to dismiss the application in revision filed before it by them by affirming the MC order.

It may now, be examined.

A careful perusal of the grounds urged by the 1st and 2nd Respondent-Petitioners in their revision application filed before the High Court of Rathnapura, it clearly, and unequivocally, shows that a ground as such had never been urged by them in their petition before the High Court of Rathnapura thereby, for her consideration and determination in the application in revision and in the result, the learned High Court Judge of Rathnapura had not proceeded to consider and make a determination on a ground as such and therefore, this Court would not in law, be in a position to consider the legality of a findings as such in the absence of a finding as such arrived at by the learned High Court Judge of Rathnapura in the impugned order.

What is more, it clearly, appears from a careful perusal of the grounds of appeal urged in paragraph 6(i) to (vii) of the petition of appeal forwarded to this Court by the Appellant, that a ground as such had never been urged in her petition of appeal filed before this Court too. Hence, there has been no ground as such urged by the Appellant in the instant appeal too, in her petition of appeal.

Besides, the question whether or not the matter comes under section 68(1) of the Act or section 68(3) thereof, is not a pure question of law to be raised for the first time in appeal but a mixed question of fact and law and therefore, the Appellant is not entitled to raise a question as such mixed with fact and law for the first time in appeal before this Court and hence, it should be rejected *in-limine.*

The rest of the grounds of appeal argued by the Appellant at the hearing of this appeal before us was centred upon sections 66(5) and (6) of the Act wherein, it was contended by the Appellant that learned Additional Magistrate had erred in law when she had failed to follow the procedure laid down by part VII of the Act in that, it was contended that the parties were not afforded an opportunity to file counter-objections thereby, depriving them of their right to file counter-affidavit as provided for by section 66 of the Act.

It may now, be examined.

Section 66(5) of the Act reads thus;

> "(5) Where any affidavits and documents are filed on the date fixed for filing them, the court shall, on application made by the parties filing affidavits, grant such parties time not exceeding two weeks for filing counter-affidavits with documents if any. The Judge of the Primary Court shall permit such parties or their attorney-at-law to peruse the record in the presence of the Registrar for the preparation of the counter-affidavits."

In the light of the section 66(5) of the Act, where any affidavits and documents are filed on the date fixed for filing them, the court shall, **on application made by the parties filing affidavits**, grant such parties time not exceeding two weeks for filing counter-affidavits with documents if any, which clearly, and unequivocally, shows that Court shall grant such parties not exceeding two weeks for filing counter-affidavits with documents if any, **only on application made thereto by the parties filing affidavits**. [Emphasis is mine]

Upon a careful perusal of the record of the Magistrate Court, it clearly, appears that no party had made an application to Court to file counter-affidavits with documents if any, and hence, the Appellant cannot now, be permitted to allege in appeal that the learned Additional Magistrate had failed to comply with section 66(5) of the Act in the absence of any application therefor made to Court by any of the parties thereto, as required by section 66(5) of the Act.

I would therefore, hold that the ground of appeal argued by the Appellant based on section 66(5) of the Act, too, is not entitled to succeed both in fact and law and as such, it too should be rejected.

Let me now, examine the contention based on section 66(6) of the Act and it reads thus,

> "(6) On the date fixed for filing affidavits and documents, where no application has been made for filing counter-affidavits, or on the date fixed

for filing counter-affidavits, whether or not such affidavits and documents have been filed, the court shall before fixing the case for inquiry make every effort to induce the parties and the persons interested (if any) to arrive at a settlement of the dispute and if the parties and persons interested agree to a settlement the settlement shall be recorded and signed by the parties and persons interested and an order made in accordance with the terms as settled."

It was held by this Court in CA(PHC)78/2005 and CA(PHC)78A/2005-CA Minutes Dated 21.05.2019 that compliance by Court of section 66(6) of the Act is not mandatory but directory and non-compliance would not vitiate an order made by the learned Magistrate under Part VII of the Act.

Besides, the Appellant had not in any manner, raised any objection to Court for the assumption of the special jurisdiction vested in Court under Part VII of the Act at the time the non-compliance of section 66(6) of the Act had taken place and thus, the Appellant had thereby, acquiesced to the special jurisdiction vested in the learned Additional Magistrate under Part VII of the Act thereby, clearly, submitting herself to the special jurisdiction of Court vested in it under Part VII of the Act and therefore, the Appellant was deemed in law to have waved her right to raise any objection to the assumption of special jurisdiction by the learned Additional Magistrate vested in her under Part VII of the Act subsequent thereto.

In view of the foregoing, I would hold that the next contention advanced by the Appellant in appeal before us too, cannot sustain both in fact and law and as such it too, should be dismissed *in-limine*.

Hence, I would see no error in the findings of both the learned Additional Magistrate as well as the learned High Court Judge of Rathnapura in this regard.

Hence, I would hold that the learned High Court Judge of Rathnapura was right in dismissing the application in revision for; the order sought to be revised is not

one which is palpably wrong or not one which tend to shock the conscience of the Court or not one which would tend to cause a grave miscarriage of justice to the Appellants.

I would therefore, hold that the instant appeal is not entitled to succeed both in fact and law and therefore, it ought to be dismissed.

A further reason for the above conclusion is manifest on an examination of the provisions of Part VII of the Act.

The extra-ordinary revisionary jurisdiction was exclusively, vested with the Court of Appeal before the enactment of the 13th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka. However, after the enactment of the 13th Amendment to the Constitution, the revisionary jurisdiction is now, vested with the High Court of the Province concurrently, with the Court of Appeal.

After an exhaustive analysis of all the authorities on this, it was held in **Rustom vs. Hapangama & Company (1978-79) 2 SLR 225,** that "the powers by way of revision conferred on the Appellate Court are wide and can be exercised whether an appeal has been taken against an order of the original Court or not. **However, such powers would be exercised only in exceptional circumstances where an appeal lay and as to what such exceptional circumstances are dependent on the facts of each case".** [emphasis is mine]

Court in **Rustom vs. Hapangama & Co (Supra)** further observed in the following manner; "The trend of authority clearly, indicates that where the revisionary powers of the Court of Appeal are invoked, the practice has been that these powers will be exercised if there is an alternative remedy available, only if the existence of special circumstances are urged necessitating the indulgence of this Court to exercise its powers in revision."

It was further observed by Court in the decision in **Rustom Vs. Hapangama & Company(Supra)** that, "This Court has the power to act in revision even though the appeal is available, in appropriate cases. The question which has now to be

decided is whether the instant case is an appropriate case in which we should exercise our discretionary powers of revision. In his petition and affidavit the petitioner has not set out the reasons for his seeking this method of rectification of the order rather than the ordinary method of appeal. Nor has he set out any exceptional circumstances as to why we should grant him the indulgence of exercising our revisionary powers when he could have appealed against the order with leave".

It was held by Court in **Dharmaratne and Another Vs. Palm Paradise Cabanas Ltd and Others 2003 (3) SLR 24** at page 30 that "Thus, the existence of exceptional circumstances is the process by which the Court selects the cases in respect of which this extra-ordinary method of rectification should be adopted. If such a selection process is not there, revisionary jurisdiction of this Court will become a gateway for every litigant to make a second appeal in the grab of a revision application or to make an appeal in situations where the legislature has not given right of appeal. The practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed. The words used by the legislature do not indicate that it ever intended to interfere with this 'rule of practice'."

It was held in **Urban Development Authority vs. Ceylon Entertainments Ltd. and another reported in 2002 [B.L.R]** at page 66 that "the petitioner who invokes the revisionary jurisdiction of this Court should expressly set out the exceptional circumstances and an express pleading to that effect is a *sine quo non*, for this Court to consider the relief claimed by the petitioner. In the absence of an express plea, this Court would be precluded from considering the relief claimed in the application".

Let me now, quote a passage from the decision in **Perera v. Muthalib 45 NLR 412** "I would invite attention to the observations made by Wood-Renton J. in the King v. Nordeen. He said; I do not think that that power (i.e. , revisionary power)

is at all limited to those cases in which either no appeal lies or for some reason or other an appeal has not been taken", but he went on to add that this power would be exercised only when a strong case is made out "amounting to a positive miscarriage of justice in regard to either the law, or the judge's appreciation of the facts. In the case I am dealing with I should have felt compelled to give relief solely on the ground that what may well be said to be a failure of justice has been brought to the notice of this Court, and technical rules must make way for the granting of redress in such a case. There has been a violation of the fundamental rule of judicial procedure that a person sought to be affected by an order shall first be heard. But, in this instance there is yet another ground upon which this application for revision ought to be exercised and that is that the petitioner had no knowledge of the order made against him till the time for preferring an appeal had elapsed."

In the case of **Attorney-General v. Podi Singho 51 NLR 385** it was held that "even though the revisionary powers should not be exercised in cases when there is an appeal and was not taken, the revisionary powers should be exercised only in exceptional circumstances such as (a) miscarriage of justice (b) where a strong case for interference by the Supreme Court is made out or (c) where the applicant was unaware of the order." Court also observes that "the Supreme Court in exercising its powers of revision is not hampered by technical rules of pleading and procedure."

In **Bank of Ceylon vs Kaleel and others 2004 [1] SLR 284**, at page 287 it was stated that, "In the circumstances this Court will not interfere by way of revision when the law has given the plaintiff an alternate remedy and when the plaintiff has not shown the existence of exceptional circumstances warranting the exercise of revisionary jurisdiction. In any event, for this Court to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it. In other words

the order complained of is of such a nature which would have shocked the conscience of Court."

In **Thilagaratnam Vs. E.A.P. Edirisingha 1982 [1] SLR, P56**, it was observed that "though the Appellate Courts' powers to act in revision were wide and would be exercised whether an appeal has been taken against the order of the original court or not, such powers would be exercised only in exceptional circumstances. There were no exceptional circumstances in this case to justify the exercise of the Court's powers of revision."

In **Cadaman Pulle Vs. Ceylon Paper Sacks Ltd 2001 [3] SLR, P112**, it was held that "no exceptional circumstances are disclosed why his application for revisionary relief should be entertained after the lapse of nearly two years. The existence of exceptional circumstances is a pre-condition for the exercise of the powers of revision."

The Supreme Court, in the case of **Rasheed Ali Vs. Mohamed Ali 1981 [1] SLR, P262**, held that, "the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. Where the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily, the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternate remedy such as the right to file a separate action except when non-interference will cause a denial of justice or irremediable harm..... The fact that a Judge's order is merely wrong is not a sufficient ground for exercising the powers of revision."

The Supreme Court in **AG. Vs. Najimudeen-SC Appeal No. 62/2016-SC Minute of 13-03-2020** observed that, "the Defendant has had an alternative remedy available. In the instant case, what the Provincial High Court was called upon to exercise was its revisionary jurisdiction. The Defendant has not been successful in convincing Court that the grounds he had urged have any exceptional

character which is sufficient to move Court to exercise its discretionary revisionary power. Thus, this Court has no reason to disagree with the conclusion of the Provincial High Court that there are no exceptional circumstances to invoke the revisionary jurisdiction of the Court. In these circumstances and for the foregoing reasons, the appeal is dismissed without costs."

In **Geethani Nilushika Vs. Waruni Harshika-SC Appeal No. 93/2017-SC Minute of 18.06.2021** Court observed that; "**Revision is a discretionary remedy. A party cannot invoke this extraordinary jurisdiction of the Appellate Court as of right. When a right of appeal is available against a Judgment or an Order, a party seeking to come before Court by way of revision shall explain in the petition why he did not exercise his right of appeal. In the revision application filed before the High Court there was no such explanation at all**."

In the case of **Seylan bank Vs. Thangaveil 2004 [2] SLR, 101** wherein Court held that, "no revision lies. The petitioner has not resorted to his statutory right of appeal with leave of court. He has not set out in his petition for revision any exceptional circumstances."

See also; **Hotel Galaxy (Pvt) Ltd Vs. Mercantile Hotels Management Ltd. 1978 (1) SLR 05, Janita Vs. Abeysekara (Sri skantha Law Report Vol iv Page 22)**, and **Thilagaratnam Vs. Edirisinghe 1982 (1) SLR 56.**

In the light of the principle laid down by Court in the aforesaid decisions, an Appellate Court can exercise its revisionary jurisdiction conferred on the Appellate Court **only and only, in exceptional circumstances, where an alternative remedy lay.** [emphasis is mine]

Section 67(1) and (2) of the Act enacts thus;

"(1) Every inquiry under this Part shall be held in a summary manner and shall be concluded within three months of the commencement of the inquiry.

(2) The Judge of the Primary Court shall deliver his order within one week of the conclusion of the inquiry."

Section 68(2) of the Act enacts thus;

"(2) An order under subsection (1) shall declare any one or more persons therein specified to be entitled to the possession of the land or the part in the manner specified in such order **until such person or persons are evicted therefrom under an order or decree of a competent court, and prohibit all disturbance of such possession otherwise than under the authority of such an order or decree**." [Emphasis is mine]

Section 69(2) of the Act enacts thus;

"(2) An order under this subsection may declare that any person specified therein shall be entitled to any such right in or respecting the land or in any part of the land as may be specified in the order **until such person is deprived of such right by virtue of an order or decree of a competent court, and prohibit all disturbance or interference with the exercise of such right by such party other than under the authority of an order or decree as aforesaid**." [Emphasis is mine]

Section 74(1) and (2) of the Act enacts thus;

"(1) An order under this Part shall not affect or prejudice any right or interest in any land or part of a land which any person may be able to establish in a civil suit; and it shall be the duty of a Judge of a Primary Court who commences to hold an inquiry under this Part to explain the effect of these sections to the persons concerned in the dispute.

(2) An appeal shall not lie against any determination or order under this Part."

This Court observed in **Mansoor and Another V. O.I.C. Avissawella Police & Another [1991] 2 SLR 75** that, "In terms of section 67(1) an inquiry under this Part has to be held in a "summary manner" and has to be concluded within three months of the commencement of the inquiry. Section 74(2) provides that an appeal will not lie against any determination or order under this Part. **It appears from section 74(1) that the remedy available to a person affected by an order after such a summary inquiry is to establish his right or interest to the land in a civil suit. A Judge of the Primary Court is specially required to explain the effect of this provision to the persons concerned in the dispute. Therefore, according to the legislative schemes an order made by the Primary Court in a proceeding under Part VII will be operative only till the dispute affecting land is finally resolved on a "civil suit". The phrase "civil suit" is clearly referable to an action filed in a regular Court exercising civil jurisdiction.** [Emphasis is mine]

It was held in **Punchi Nona v. Padumasena and Others 1994 [2] SLR 117** at page 122 that, "The jurisdiction conferred on a Primary Court under section 66 is a special jurisdiction. It is quasi-criminal jurisdiction. **The primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land. The Court in exercising this jurisdiction is not involved in an investigation into title or the right to possession which is the function of a civil Court**." [Emphasis is mine]

Hence, it is manifest that the primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land and that the Court in exercising this jurisdiction is not involved in an investigation into title or the right to possession which is the function of a civil Court and that hence, the remedy available to a person affected by an order after such a summary inquiry held in the proceedings under Part VII of the Act, is to

establish his right or interest to the land in a civil suit and that a Judge of the Primary Court is specially required to explain the legal effect of those provisions quoted above, to the persons concerned in the dispute and therefore, according to the legislative scheme, an order made by the Primary Court in a proceeding under Part VII will be operative only till the dispute affecting land is finally resolved on a "civil suit". The phrase "civil suit" is clearly referable to an action filed in a regular Court exercising civil jurisdiction.

It is significant to observe that, the learned Additional Magistrate had in no uncertain terms, explained the effect of those provisions contained in Part VII of the Act to the parties to the proceedings before him including the Appellant and therefore, it is well within the Appellant's knowledge that the remedy available to him affected by the order of the learned Additional Magistrate after such summary inquiry is to establish his right or interest to the land in dispute in a civil suit in a regular Court exercising civil jurisdiction.

It was in paragraph 22 of her petition filed before the High Court of Rathnapura that the Appellant had disclosed that civil action bearing No. 34214/L had been instituted by her in the relevant District Court in respect of the land in dispute and therefore, the Appellant had availed herself of the proper and effective remedy so provided for by the Part VII of the Act to establish his right or interest to the land in dispute in a civil suit in a regular Court exercising civil jurisdiction and therefore, learned High Court Judge of Rathnapura was entirely, right in refusing to act in revision of the MC order in the absence of the exceptional circumstances warranting the invocation of the extra-ordinary revisionary vested in it.

In the circumstances, it clearly, appears that, the Appellant had not shown in his application in revision filed before the High Court of Rathnapura any exceptional circumstances warranting the High Court of Rathnapura to exercise its extra-ordinary revisionary jurisdiction vested in it to revise and set aside the order of the learned Additional Magistrate for; **an Appellate Court can exercise**

its revisionary jurisdiction conferred on it only and only, in exceptional circumstances, where an alternative remedy lay. [Emphasis is mine]

Hence, I would hold that the application in revision filed by the Appellant in the High Court of Rathnapura seeking to revise and set aside the order of the learned Additional Magistrate, cannot in any manner, sustain both in fact and law and as such it ought to have been dismissed on this ground too, by the High Court of Rathnapura as rightly, done by the learned High Court Judge of Rathnapura.

I would therefore, see no reason why this Court should interfere with the order of the learned High Court Judge of Rathnapura dismissing the application in revision filed by the Petitioner who is now, the Appellant to the instant appeal.

In view of all the facts and circumstances enumerated above, I would hold that the instant appeal is not entitled to succeed both in fact and law on the ground enumerated above, too.

In the circumstances, I would proceed to dismiss the instant appeal with costs fixed at Rs. 50,000/-.

I would affirm both the HC order and the MC order.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL