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

In the matter of application for appeal against the order dated 26th of November 2018 delivered by the High Court of the North Western Province Holden at Kurunegala.

Court of Appeal Case No:
CA (PHC) 234/18

HC Kurunegala Case No:
HCR 45/2015
MC Kurunegala Case No:
33247/L/11

1. Noor Mohomed Maharoof,
   No. 55, Chathurasra Mawatha,
   Kurunegala.

2. Noor Mohomed Mashahir.
   No. 11, 3rd Cross Road, Colombo 11.

Petitioners

Vs.

1. Pathirennehelage Nimal Rajapaksha,
   203, Colombo Road, Waduragala,
   Kurunegala.

2. Seiyadu Mohomed Mohomed Nisaihar alias Safeer.
   No. 22, Main Street, Kurunegala.

Respondents

AND BETWEEN IN THE HIGH COURT

1. Pathirennehelage Nimal Rajapaksha,
   203, Colombo Road, Waduragala,
   Kurunegala.

2. Seiyadu Mohomed Mohomed Nisaihar alias Safeer.
   No. 22, Main Street, Kurunegala.

Respondent - Petitioners

Vs.

1. Noor Mohomed Maharoof,

No. 55, Chathurasra Mawatha,
Kurunegala.

2. Noor Mohomed Mashahir.
No. 11, 3rd Cross Road, Colombo 11.

Petitioner - Respondents

AND NOW BETWEEN THE IN THE COURT OF APPEAL

1. Pathirennehelage Nimal Rajapaksha,
203, Colombo Road, Waduragala,
Kurunegala.

2. Seiyadu Mohomed Mohomed Nisaihar alias Safeer,
No. 22, Main Street, Kurunegala.

Respondent – Petitioner - Appellants

Vs.

1. Noor Mohomed Maharoof,
No. 55, Chathurasra Mawatha, Kurunegala.

2. Noor Mohomed Mashahir.
No. 11, 3rd Cross Road, Colombo 11.

Petitioner – Respondent - Respondents

Before: Damith Thotawatte, J.

K.M.S. Dissanayake, J.

Counsels: Sapumal Bandara with Lakshitha Edirisinghe for the Respondent-Petitioner- Appellants.

Hejaaz Hisbullah with Ms. Nehansa Instructed by D. Dias for the 1st and 2nd Petitioner- Respondent- Respondents.

Argued:	10.09.2025
Written submissions tendered on:	19.12.2023 by Petitioner-Respondent- Respondents. 01.11.2023 by Respondent- Petitioner-Appellants.
Judgement Delivered:	12.12.2025

Thotawatte,J.

This appeal is against the order dated 26.11.2018 pronounced in favour of the Petitioner-Respondent-Respondents (hereinafter sometimes referred to collectively as the "Respondents" and where necessary, individually as the 1st, and 2nd Respondents) by the learned High Court Judge of the Provincial High Court of Wayamba holden at Kurunegala, exercising revisionary jurisdiction under Article 154P(3)(b) of the Constitution, whereby the said Court upheld the order dated 22.05.2015 made by the learned Magistrate of the Magistrate's Court of Kurunegala acting as the Primary Court Judge under the provisions of the Primary Courts' Procedure Act, No. 44 of 1979 (hereinafter sometimes referred to as the "PCP Act").

The information under Section 66(1)(b) of the PCP Act was lodged before the Magistrate's Court of Kurunegala by the Respondents on or about 19th May 2011. It was alleged therein that the Respondent–Petitioner–Appellants (hereinafter collectively referred to as the "Appellants," and individually as the 1st and 2nd Appellants where relevant) had, on 09th April 2011, unlawfully removed the existing boundary fence and erected a new fence, thereby appropriating a portion of the land belonging to a brother of the Respondents presently residing in Australia, and as such the Respondents have been dispossessed from the said portion of the land (hereinafter referred to as the "disputed portion of the land").

Initially, after an inquiry, the learned Magistrate acting as the Primary Court Judge had delivered an order dated 25th November 2011, dismissing the case on the grounds that the disputed portion of the land cannot be correctly identified. Consequent to an order made by the Provincial High Court, the Magistrate Court of Kurunegala has re-considered the matter and had delivered the order dated 22.05.2015 holding that the disputed fence should be removed and the disputed portion of the land to be restored to the Respondents.

Being dissatisfied with the order of the learned Magistrate, the Appellants had invoked the revisionary jurisdiction of the Provincial High Court of Kurunagala. The learned High Court judge of Kurunegala, delivering her order dated 26.11.2018, has dismissed the revision application.

Being aggrieved by the said order of the learned Judge of the High Court, the Appellants have preferred this appeal seeking to set aside the order of the learned High Court Judge and the order of the learned Magistrate inter alia on the following grounds.

The Honorable Judge of the Provincial High Court has failed to consider;

a. The exceptional circumstances outlined by the Appellants in the paragraph 13 of the Revision Application.
b. The fact that there existed no breach of peace or imminent breach of peace with regard to the property subject matter to the action.
c. The Respondents has no right of action to institute and proceed with the case bearing No. 33247/L/11 before the Magistrate's Court of Kurunegala in terms of the Primary Courts Procedure Act No. 44 of 1979.
d. The Respondents did not have possession of the property subject matter to the action.

In ***Nandawathie and Another*** v. ***Mahindasena***[1] His Lordship Ranjith Silva, J. analyzing the duty of an appellate court when sitting in appeal regarding a Judgement or order of the Provincial High Court delivered exercising revisionary jurisdiction under Article 154P(3)(b) of the Constitution, has stated;

> "*When an order of a Primary Court Judge made under this chapter is challenged by way of revision in the High Court the High Court Judge can examine only the legality of that order and not the correctness of that order. The High Court may be able to prevent a breach of the peace by issuing interim stay orders or by allowing an interim order made by the Primary Court Judge to remain in force. But what is the position when a person aggrieved by such an order made in revision by the High Court is also appealed against to the Court of Appeal. Is the Court of Appeal vested with the power to re-hear or allow the parties to re-agitate the main case by reading and evaluating the evidence led in the case in the Primary Court or is it that the Court of Appeal is restricted in its scope and really have the power only to examine the propriety or the legality of the order made by the learned High Court*

[1]2009 02 SLR 218 at page 238 CA PHC 242/2006 CAM 04.05.2009

judge in the exercise of its revisionary jurisdiction. I hold that it is the only sensible interpretation or the logical interpretation that could be given otherwise the Court of Appeal in the exercise of its appellate jurisdiction may be performing a function the legislature, primarily and strictly intended to avoid. For the reasons I have adumbrated I am of the opinion that this particular right of appeal in the circumstances should not be taken as an appeal in the true sense but in fact an application to examine the correctness, legality or the propriety of the order made by the learned High Court Judge in the exercise of its revisionary powers".

The judgment contains a clear, authoritative exposition by His Lordship Ranjith Silva, J. on:

1. The appellate jurisdiction invoked in these circumstances is of a restricted character.
2. The Court is disallowed from re-opening the evidentiary record or undertaking a factual re-evaluation, functions reserved exclusively for the Primary Court.
3. The appellate court's remit extends solely to an examination of the legality, propriety, and procedural correctness of the High Court's order made in revision, and does not permit an inquiry into the correctness of the Primary Court's factual findings.
4. The appellate court must avoid performing a function the legislature "primarily and strictly intended to avoid"

The instant appeal must be approached within the limited framework applicable to appeals from Provincial High Court orders made in the exercise of revisionary jurisdiction under Article 154P(3)(b). The jurisprudence is unequivocal. A consistent line of authority —*Jayasekarage Bandulasena et al.* v. *Galla Kankanamge Chaminda Kushantha et al.*[2], *Wijamunige Charlis Godalhena (Deceased) at el.* v. *Weerappulige Ashoka Weerasinghe*[3], *Ranawana Hewa Vitharanalage Anoma Geethanjali Samarasena* v. *Officer in Charge, Police Station, Kandy*[4], *R.D. Somadasa and another* v. *Additional Commotional of Agrarian Service and another*[5], and *Muthusami Loganathan v. Walpale Gedara Malani Manjalika and another*[6],establishes that such appeals are not "true appeals" in the classical sense.

[2]CA (PHC) 147/2009 CAM 27.09.2017

[3]CA (PHC) NO. 138/2016 CAM 08.08.2023

[4] CA (PHC) 01/2020 CAM 13.10.2022

[5]CA PHC 35/2016, CAM 04.04.2022

[6]CA (PHC) 203/2019, CAM 04.04.2023

The Court of Appeal is confined to reviewing the correctness, legality, propriety, and regularity of the High Court's exercise of revision.

The Court therefore has no jurisdiction to re-hear the matter, re-evaluate the evidence, or correct errors (if any) of the Magistrate or Primary Court. Its sole task is to ascertain whether the High Court properly exercised its revisionary powers, including whether it correctly assessed the presence or absence of exceptional circumstances warranting intervention. In the absence of demonstrable illegality, impropriety, irregularity, or misdirection by the High Court in applying the principles of revision, the appellate court must refrain from interference.

Accordingly, unless the Appellant can demonstrate a manifest error amounting to a miscarriage of justice in the High Court's exercise of its revisionary jurisdiction, the appeal must necessarily fail.

It is stated in the paragraph 16 (b) of the petition of appeal submitted to this court that;

"The Honorable Judge of the Provincial High Court has failed to consider the exceptional circumstances outlined by the Appellants in the paragraph 13 of the Revision Application".

However, on perusal of paragraph 13, it appears that although described as exceptional circumstances, what is contained are merely grounds of appeal.

In ***Dharmaratne and Another*** v. ***Palm Paradise Cabanas Ltd and Others***[7] His Lordship Gamini Amaratunga, J. observed 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 garb of a revision application or to make an appeal in situations where the legislature has not given right of appeal"

If exceptional circumstances are not required, the revisionary jurisdiction would inevitably be used as a substitute for a full appeal, allowing parties to obtain appellate review in situations where the law has neither granted nor intended to grant such a right. This would disrupt the statutory appeal structure and defeat its intended purpose. As such,

[7](2003) 3 SLR 24

"the existence of exceptional circumstances is a precondition for the exercise of the powers of revision"[8].

It is now well-settled that the revisionary jurisdiction is an extraordinary and residual remedy, exercisable only upon the demonstration of exceptional circumstances. In order to succeed, an applicant must establish fundamental illegality, procedural impropriety, jurisdictional error, or such grave and irremediable prejudice that non-intervention would result in a miscarriage of justice. The courts have further held that revision lies only where the circumstances disclose denial of justice, irremediable harm, or a defect incapable of being remedied through the ordinary appellate structure. Thus, intervention is justified only if allowing the impugned order to stand would be unjust, inequitable, or legally intolerable, and not where the complaint concerns mere error, disagreement, or dissatisfaction with factual evaluation.[9]

In ***Hon. Attorney General*** v. ***Thusaya Hakuru Weerarathne and another***[10], His Lordship Justice Sasi Mahendran, reaffirmed the governing limits of the revisionary jurisdiction by adopting and quoting with approval the dictum of His Lordship Sarath N. Silva, C.J., in ***Athurupana*** v. ***Premasinghe***[11], in the following terms:

> "Every illegality, impropriety or irregularity does not warrant the exercise of revisionary jurisdiction. Such jurisdiction will be exercised only where the illegality, impropriety or irregularity in the proceedings has resulted in a miscarriage of justice, by the party affected being denied what is lawfully and justly due to that party. In such event the Court will in revision set right the illegality, impropriety or irregularity by passing any judgment or making any order as the interests of justice may require."

The learned High Court Judge has properly evaluated the evidence presented and has come to the correct conclusion that the Appellant has failed to establish any grounds that could be considered as exceptional grounds.

Further the learned High Court Judge has also observed that the learned Magistrate acting as the Primary Court Judge had correctly decided that the ownership of the relevant land is immaterial to a matter relating to proceedings under Section 66 of the

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[8] *Caderamanpullev. Ceylon Paper Sacks Ltd* (2001) 3 SLR 112 at Page 116

[9] *Rasheed Ali* v. *Mohamed Ali* (1981) 1 SLR 29, *Balasingham Mylooran* v. *Paranitharan*, CA CPA 0050-2023 CAM 07.02.2024

[10] CA (PHC) APN CPA-168/2017, CAM 14.05.2025

[11] SC Appeal No. 21/2002, SCM 14.05.2004 (2004 BLR 60 at 63)

PCP Act and that the documentation submitted supporting Appellants' claim by them does not refer to the portion of land from which the Respondents had been dispossessed.

Therefore, it is evident that no exceptional circumstances had been disclosed that would warrant the learned High Court Judge's exercise of revisionary jurisdiction to set aside the order of the learned Magistrate. Accordingly, the learned High Court Judge was correct in declining to interfere with that order.

In view of the foregoing reasons, we see no reason for us to set aside the order of the learned Magistrate dated 22.05.2015 as well as the order of the learned High Court Judge dated 26.11.2018.

The appeal is dismissed with costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal