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

In the matter of an appeal in terms of Section 11 of the High Court of the Provinces (Special Provinces) Act No. 19 of 1990 read with Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Nekathimulla Manannalage Wasantha Pushpakumara,**
Daugalagama,
Kalawana.

**CA No. CA/PHC/0019/2017**
**M.C. Kalawana Case No. 9816 (66)**
**H.C. Rathnapura Case No. HCR/REV/11/2011**

**PETITIONER**

**v.**

**Wadduwage Siripala**
Elawella, Daugalagama,
Kalawana.

**RESPONDENT**

**AND**

**Wadduwage Siripala**
Elawella, Daugalagama,
Kalawana.

**RESPONDENT – PETITIONER**

**v.**

**Nekathimulla Manannalage Wasantha Pushpakumara,**
Daugalagama,
Kalawana.

**PETITIONER – RESPONDENT**

**AND NOW**

**Wadduwage Siripala (Deceased)**
Elawella, Daugalagama,
Kalawana.

**Wadduwage Sunil Wijayananda**
No. 290,
Delgoda,
Kalawana.

**SUBSTITUTED RESPONDENTS – PETITIONER – APPELLANT**

**v.**

**Nekathimulla Manannalage Wasantha Pushpakumara,**
Daugalagama,
Kalawana.

**PETITIONER - RESPONDENT – RESPONDENTS**

| | | |
|---|---|---|
| **BEFORE** | : | M. Sampath K. B. Wijeratne J. &<br>M. Ahsan. R. Marikar J. |
| **COUNSEL** | : | Anuruddha Dharmaratne with Chaminda Seneviratne for the Respondent – Petitioner – Appellant.<br><br>Wishwa Jayaweera for the Petitioner - - Respondent - Respondent. |
| **ARGUED ON** | : | Concluded through Written Submissions |
| **WRITTEN SUBMISSIONS** | : | 04.05.2023 and 16.10 2024 (By the Appellant)<br><br>17.07.2023 and 08.10.2024 (By the Respondent) |
| **DECIDED ON** | : | 06.12.2024 |

**M. Sampath K. B. Wijeratne J.**

**Introduction**

In this appeal, the Respondent–Petitioner–Appellant (hereinafter referred to as the 'Appellant') seeks to challenge the judgment delivered by the learned High Court Judge of Ratnapura on 9th January 2017. In the impugned judgment, the learned High Court Judge refused to revise the order made by the learned Magistrate of Kalawana on 12th January 2011, in an application filed under Section 66(1)(b) of the Primary Courts Procedure Act No. 44 of 1979. (hereinafter referred to as the 'Primary Courts Procedure Act').

The Petitioner further seeks to have the aforementioned order of the learned Magistrate set-aside.

**Factual background**

The Petitioner – Respondent – Respondent (hereinafter referred to as the 'Respondent') initiated proceedings in the Magistrate's Court of Kalawana on 31st March 2010, against the Appellant. It was asserted that the Respondent and their predecessors in title had maintained uninterrupted possession of the land, as described in the schedule attached to the information filed, for a period of 50 years. According to the affidavit[1], submitted by the original Respondent, the disputed portion of the land, known as *'Daugalakadewatta'*, forms part of a larger land.

In response, the Appellant filed a counter-affidavit, disputing several claims made in the Respondent's affidavit and asserting that no breach of the peace[2] had occurred. Accordingly, the Appellant sought the dismissal of the Respondent's application. On the same day the Respondent also filed a counter-affidavit[3].

Following an inquiry, the learned Magistrate declared that the original Respondent is entitled to possess the disputed land.

The aggrieved Appellant sought the High Court to revise the order of the learned Magistrate, but was refused.

The Appellant appealed the decision to this Court.

When the matter was taken up for argument on 4th September 2024, both parties agreed to conclude the argument through further written submissions and to file consolidated submissions. Consequently, both parties submitted their respective written submissions, and the matter was fixed for judgment.

**Analysis**

***Breach of the peace***

[1] At page 130 of the appeal brief.
[2] At page 151 of the appeal brief.
[3] At page 128 of the appeal brief.

This is an application arising from the information filed by the Respondent under Section 66(1)(b) of the Primary Courts Procedure Act.

In the case of *Jayasinghe and others v. Loku Bandara*[4] (C.A.), His Lordship Samayawardhane J. (as His Lordship then was), having scrutinized Section 66(1)(a) and (b) of the Primary Courts Procedure Act, the repealed Section 62 of the Administration of Justice Law, and the corresponding Section 145 of the Code of Criminal Procedure in India, held that '*When first information is filed under Section 66 (1) of the Primary Couts Procedure Act, irrespective of whether the first information was filed by the Police or a party to the dispute, the Magistrate is automatically vested with jurisdiction under Section 66(2) to inquire into and determine the matter. There is no further requirement for the Magistrate to ascertain whether the breach of the peace is threatened or likely.'*

In any event, I am content with the available evidence that there was a potential breach of the peace, as the learned Magistrate correctly concluded.

***Identity of corpus***

The Appellant argued that the Respondent failed to adequately establish the identity of the *corpus*. As a result, the learned Magistrate erred in identifying the subject land in this application and the identification was based solely on the observations made by the Police.

According to the information filed by the Respondent, the disputed portion of land is stated to be 7 perches. However, the Respondent's affidavit states that the disputed allotment measures 14.63 perches, which is part of a larger land totalling 77 acres, 3 roods, and 7 perches. In contrast, the Police Officer who investigated the Respondent's complaint estimated the disputed portion of land to be approximately 20 perches.

However, as correctly observed by the learned Magistrate, the boundaries of the

[4] [2019]2 Sri L.R. page 202.

disputed land stated by both the Appellant and the Respondent are identical. These boundaries are; to the North by the road leading to Elawella, to the East by the Kalawana – Weddagala main road, to the South by N.A. Dawithsingho's land, and to the West by Cyril Abeywickrema's land. Even according to the sketch submitted by the Police Officer who conducted the investigations, two sides of the disputed portion of land face a road, while the other two sides face lands. According to the sketch, the land on the two sides is owned by the Plaintiff. The land to the South, as per the boundaries stated by both the Appellant and the Respondent, is owned by N.A. Dawithsingho, who is the father of the Respondent who is also the predecessor in title of the Respondent. Therefore, in the sketch, three of the boundaries align with the ones described above.

The Respondent has not described the land according to a survey plan. Furthermore, the extent of 7 perches is given as an approximate value, as is the case with the Police Officer, who also mentioned the extent as an estimate. It is only the Appellant who has described the given extent in accordance with the preliminary plan made in the partition action No. 4826/P of the District Court of Rathnapura.

According to the Appellant's affidavit, the name of the land is *'Daugalakadewatta*,' which is the same name stated by the Respondent in his affidavit. However, according to the Appellant's title deed No. 2610, dated 26th August 1979[5], the name of the land, which is described as having an extent of 14.63 perches, *is 'Delgodanindagama alias Hettipathira alias Parakoluwawe Henyaya,'* which covers an area of 77 acres, 3 roods, and 7 perches. Therefore, the title deed does not substantiate the Appellant's claim.

For the foregoing reasons, I am satisfied that the learned Magistrate has sufficiently identified the corpus for the purpose of an application under Section 66(1) of the Primary Courts Procedure Act.

[5] At page 136 of the appeal brief.

***Possession within the relevant period***

The Appellant contends that he had been in possession of the subject matter of this application, and during the preliminary survey in the partition action No. 4826/Partition conducted from 16th January 1997 to 10th February 1997, he claimed Lot No. 32 in Plan No. 233, dated 11th May 1997. In support of this contention, the Appellant submitted the plan and the report from the aforementioned partition action[6].. The Appellant argued in his written submission[7] that, in terms of Section 18(2) of the Partition Law, the preliminary plan and its report can be used as evidence of the facts stated therein. However, under Section 18(2) of the Partition Law, this rule of evidence applies only within the partition action itself and does not extend beyond it.

Furthermore, it is acknowledged that the partition action was dismissed by judgment dated 11th February 2009 upon failure to prove the *corpus* to the satisfaction of Court[8]. The learned District Judge observed that the plaintiffs, including the Appellant (who was the 2nd Plaintiff in the partition action), sought to partition land with an extent of about 77 acres, which is an undivided portion of land totalling over 500 acres, a claim that is not permissible under the partition law.

Be that as it may, in the statement made to the Police on 10th April 2010, in response to the complaint made by the Respondent, the Appellant claimed to have obtained title to the disputed land through the District Court action, a claim that is factually incorrect.

The Appellant contends that, since then, he and his heirs have continued to be in possession of the land in dispute.

[6] *Vide* pages 200 to 202 of the appeal brief.
[7] At paragraph 15 of the Appellant's final written Submission.
[8] *Vide* pages 204 to 207 of the appeal brief.

The Appellant submitted that the original Appellant transferred the subject matter of this application to the substituted Appellant by deed No. 536, dated 9th April 2012. However, this transaction took place after the order of the learned Magistrate of Kalawana was delivered on 12th January 2011. It is also important to note that, although the Appellant stated that the original Appellant's title to the disputed portion of land was transferred to the substituted Appellant[9], the title deed of the original Appellant has four other co-owners. According to the title deed of the original appellant, the extent of the land is 77 acres, 3 roods, and 7 perches, of which he is a co-owner.

In addition to the statements made in the affidavits and the surveyor's report, which mention that the original Appellant made a claim to Lot No. 32 of Plan No. 233 in 1997 and that the Appellant possessed the subject matter of this application, the Appellant has not presented any other evidence to establish his possession. Even if it is assumed that the subject matter of this application is Lot 32 of Partition Plan No. 233, the attached report only establishes possession as of the date of the survey in 1997 and not as of the relevant period under Section 68, which requires possession to be established two months prior to the date of filing the information.

According to Plan No. 233, the subject matter of the partition action was described as *'Delgodanindagama alias Hettipathira alias Parakoluwawe Henyaya'.* This is also the name of the land in the original Appellant's title deed No. 2610, dated 26th August 1979. However, in the Appellant's affidavit, the subject land is referred to as *'Daugalakadewatta'.* As a result, there cannot be a dispute between the Appellant and the Respondent regarding the name of the subject matter.

In the first complaint made to the Police on 23rd March 2010[10], the Respondent stated that he had possessed the land named *'Daugalakadewatta'* for well over

[9] At paragraph 18 of the Appellant's final Written submission.
[10] At page 114 of the appeal brief.

40 years, and that the disputed portion was part of the same land. It was also stated that the subject matter of the partition action involved land named *'Hettipathira,'* with an extent of 77 acres, 3 roods. According to the Respondent, the disputed portion of his land was wrongfully included in the corpus of the partition action.

In my view, the aforementioned Plan No. 233, made in the partition action, supports the Respondent's contention. It appears that Lot No. 32, the strip of land below the road marked as Lot 35, with an extent of 14.63 perches, is part of a larger lot that was not included in the *corpus* of the partition action. This position is further supported by the sketch prepared by the Inquiring Officer. Even in the sketch, the disputed portion is shown as part of a larger parcel of land held and possessed by the Respondent.

As previously stated in this judgment, the partition action was dismissed. Therefore, the inclusion of the disputed portion in the preliminary plan prepared for the partition action holds no weight in determining the title. Above all, as held by Sharvananda J. (as His Lordship then was) in the case of *Ramalingam v. Thangarajah*[11] (S.C.) '*Evidence bearing on title can be considered only when the evidence as to possession is clearly balanced and the presumption of possession which flows from title may tilt the balance in favour of the owner and help deciding the question of possession'.*

In this instance, there is no balance of evidence regarding possession therefore, evidence on title cannot be considered.

In any event, evidence related to the partition action cannot be given any weight in the present case, as that action pertained to a different land, which, according to the Appellant's own affidavit, is not the subject land of the instant appeal.

The Respondent has submitted six letters from the Grama Niladharis who served in the Grama Niladhari Division where the disputed land is situated, to establish

[11] [1982] 2 Sri L.R. 693, at page 699.

his father's possession[12]. However, under Section 68(1)(3) of the Primary Courts Procedure Act, the relevant period to be considered is the two months immediately prior to the filing of the application. In this case, the information was filed on 31st March 2010[13].. Therefore, the only letter that falls within the relevant period is the one issued by W. M. C. Wijethunga, Grama Niladhari of Daugalagama – 196F, Kalawana. This letter confirms that the land was possessed by N.M. Dawithsingho, the father of the Respondent.

Based on the above analysis, I am convinced that the learned Magistrate of Ratnapura arrived at the correct conclusion in his order dated 12th January 2011.

He rightly determined that the Respondent maintained continuous possession and that there was no evidence to suggest the Appellant was dispossessed during the relevant period, thereby affirming the Respondent's possession.

In the revision application filed against the said order, the learned High Court Judge of Rathnapura, after analysing the facts relevant to the learned Magistrate's order, dismissed the revision application on the grounds that there were no materials that would shock the conscience of the Court.

As held by His Lordship Sharvananda C.J. in the case of *Hotel Galaxy Limited v. Mercantile Hotel Management Limited*[14];

'*It is settled law that the exercise of revisionary powers of the appellate court is confined to cases in which exceptional circumstances exist warranting its intervention.'*

In the case of *Caderamanpulle v. Ceylon Paper Sacks Ltd*[15] (C.A.) His Lordship Nanayakkara J., held that;

[12] At pages 120 to 126 of the appeal brief.
[13] *Vide* the order at page 212 of the appeal brief.
[14] [1987]1 Sri L.R. 6.
[15] [2001]3 Sri L.R. 112 at p. 116.

*'When the decided cases cited before us are carefully examined, it becomes evident in almost all the cases cited, that powers of revision had been exercised only in a limited category of situations. The existence of exceptional circumstances is a pre -condition for the exercise of the powers of revision and absence of exceptional circumstances in any given situation results in refusal of remedies.'*

Hence, based on the reasons articulated above, this Court finds that there are no grounds to interfere with the impugned orders made by either the learned High Court Judge or the learned Magistrate.

Consequently, I hold that this appeal must fail.

Appeal dismissed, subject to cost of Rs. 50,000/-.

**JUDGE OF THE COURT OF APPEAL**

**M. Ahsan. R. Marikar J.**

I Agree.

**JUDGE OF THE COURT OF APPEAL**