

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

**Court of Appeal Case No.
CA (PHC) 107/2017**

Provincial High Court Kalmunai
Case No. EP/HC/REV/156/2016
Magistrate Court of Kalmunai Case
No. 80650/PVT/2015

In the matter of an Appeal under Article 138 of the Constitution of Sri Lanka read with the provisions of Provincial High Courts (Special Provisions) Act No. 19 of 1990 from the High Court of Kalmunai Case no. EP/HCK/189/16.

Ahamedlebbe Azeeza,
No. 199B, Main Street,
Kalmunai- 07.

First Party

Vs.

1. S.M.M. Faleel,
Manager,
2. Employee (name not known) of Hatton National Bank,
3. Employee (name not known) of Hatton National Bank,

All of them are of Hatton National Bank,
Kalmunai.

Second Party

And Between

Ahamedlebbe Azeeza,
No. 199B, Main Street,
Kalmunai- 07.

First Party- Petitioner

Vs.

1. S.M.M. Faleel,
Manager,
2. Employee (name not known) of Hatton
National Bank,
3. Employee (name not known) of Hatton
National Bank,

All of them are of Hatton National Bank,
Kalmunai.

Second Party- Respondents

4. Hon. Attorney General
AG's Chamber,
Colombo 12.

Respondent

And Now Between

Ahamedlebbe Azeeza,
No. 199B, Main Street,
Kalmunai- 07.

First Party – Petitioner- Appellant

Vs.

1. S.M.M. Faleel,
Manager,
2. Employee (name not known) of Hatton
National Bank,
3. Employee (name not known) of Hatton
National Bank,

All of them are of Hatton National Bank,
Kalmunai.

Second Party- Respondents- Respondents

4. Hon. Attorney General
AG's Chamber,
Colombo 12.

Respondent-Respondent

Before: **Damith Thotawatte, J.**
K.M.S. Dissanayake, J.

Counsels: Rudane Zahir with Janeef Fazi for the Appellant.

Priyantha Alagiyawanna with Sahan Gunasekara instructed by
Suraj Dissanayake for the Second Party – Respondent-
Respondents.

Written submissions 29.10.2024 & 27.03.2026 by Second Party – Respondents -
tendered on: Respondents.
27.09.2024 by First Party- Petitioner- Appellant.

Judgment Delivered: 19.05.2026

Thotawatte, J.

Introduction

The instant appeal arises from the judgment of the learned Judge of the Provincial High Court of the Eastern Province holden at Kalmunai dated 07.03.2017 delivered in Revision Application No. EP/HCK/REV/156/2016, filed by the First Party – Petitioner- Appellant (hereinafter sometimes referred to as the “Appellant”) whereby the learned High Court Judge affirmed the order of the learned Magistrate of Kalmunai dated 17.12.2015 made in proceedings instituted under Section 66(1)(b) of the Primary Courts’ Procedure Act, No. 44

of 1979 (hereinafter sometimes referred to as the “PCP Act”) in favour of the Second Party- Respondents- Respondents (hereinafter sometimes referred to as the “Respondents”).

Factual Background

The material before Court discloses that the Appellant and her daughter had mortgaged the subject property to Hatton National Bank as security for a loan facility amounting to approximately Rs. 20 million by Mortgage Bond No. 12406 dated 16.07.2012. Both parties appear to have proceeded on the basis that the subject matter was the same mortgaged land and building/wedding hall situated in Kalmunai, which had been mortgaged to Hatton National Bank and later subjected to parate execution.

Following default in repayment, the Respondent Bank had invoked the provisions of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990 and proceeded to sell the mortgaged property by public auction pursuant to parate execution proceedings, the said auction having been conducted on 20.12.2013.

The Appellant nevertheless maintained that she continued to remain in possession of the premises, which had allegedly been utilized as a wedding hall together with residential and business activities, and contended that the Respondents had sought to disturb such possession through intimidation and exclusion from the premises.

Procedural Path

The proceedings before the learned Magistrate had been instituted by the Appellant on 23.03.2015 alleging that the Respondent Bank and its employees had interfered with her possession of the disputed premises, thereby occasioning a threatened breach of the peace. The Appellant sought relief in respect of possession of the property under Section 66 of the Primary Courts’ Procedure Act.

Upon inquiry conducted on affidavits, counter-affidavits and written submissions, the learned Magistrate by order dated 17.12.2015 held that the Respondent Bank was in possession of the disputed premises and permitted the Bank to continue in possession thereof. The learned Magistrate further observed that the Appellant had already challenged the parate execution proceedings before the Commercial High Court of Colombo and that proceedings under Section 66 were not the appropriate forum to determine the propriety of such execution proceedings.

Being dissatisfied with the said order, the Appellant preferred Revision Application No. EP/HCK/REV/156/2016 before the Provincial High Court of the Eastern Province holden at Kalmunai. The learned High Court Judge, upon consideration of the material placed before Court and the principles governing revisionary jurisdiction, dismissed the application and affirmed the order of the learned Magistrate.

Being aggrieved thereby, the Appellant has instituted the present appeal.

Grounds of Appeal

The principal contention advanced on behalf of the Appellant is that the courts below had failed to properly appreciate that the Appellant remained in possession of the disputed premises as at the date of institution of proceedings under Section 66 of the Primary Courts' Procedure Act. It was further contended that the Respondent Bank had failed to establish lawful possession and that possession could only have been obtained through proceedings under Section 16 of the Recovery of Loans by Banks (Special Provisions) Act.

Conversely, the Respondents contended that possession had already been secured by the Bank following the parate execution proceedings and public auction conducted in December 2013, nearly fifteen months prior to the institution of proceedings before the learned Magistrate. The Respondents further submitted that the Appellant had already invoked the jurisdiction of the Commercial High Court challenging the parate proceedings and that no exceptional circumstances had been demonstrated to justify revisionary intervention.

Analysis of grounds

At the outset, it must be observed that proceedings under Section 66 of the Primary Courts' Procedure Act are preventive and provisional in character. The object of the jurisdiction conferred upon the Primary Court is not to adjudicate title or finally determine proprietary rights, but to preserve public order by preventing breaches of the peace arising in respect of disputes affecting land.

In *Punchi Nona v. Padumasena and Others*¹ and in a host of other judgments, it has been observed that the jurisdiction exercised under Section 66 is quasi-criminal in nature² and is intended primarily for the prevention of breaches of the peace³ pending the final adjudication of rights by a competent civil court.

Section 68(1) of the Primary Courts' Procedure Act requires the Court to determine who was in possession of the land "on the date of the filing of the information under section 66". Further, Section 68(3) restricts restoration of possession to situations where forcible dispossession had occurred within two months immediately preceding the filing of the information.

The decision in *Ramalingam v. Thangarajah*⁴ makes it abundantly clear that the principal inquiry under the statutory scheme concerns actual possession as at the date of institution of proceedings and not questions relating to title or ultimate proprietary entitlement⁵.

Having considered the material placed before Court, it is apparent that the disputed premises had been mortgaged to the Respondent Bank and subjected to parate execution proceedings long prior to the filing of the information before the learned Magistrate. The learned Magistrate had accepted the position that the Respondent Bank had secured possession following the auction conducted on 20.12.2013. The learned High Court Judge, in revision, had independently evaluated the material and affirmed that conclusion.

Significantly, the learned High Court Judge had also observed that the Appellant had already instituted proceedings before the Commercial High Court of Colombo challenging the parate execution and public auction proceedings. In such circumstances, the legality or propriety of the parate execution was plainly not a matter falling for determination

¹ (1994) 2 Sri.L.R 117

² *Dasanayake Mudiyansele Ariyaratne and another v. Dasanayake Mudiyansele Somaweera and others* CA (PHC) 89/2015 Decided on 25.05.2018, *Nishshanka Wickramanayake v. Hemasiri Jayawardhane* CA (PHC) 49/2006 Decided on: 04.10.2017

³ *K.S.M. Hemantha Sanjeewa Bandara and others v. Rev. Urulewatte Darma Keerthi* CA (PHC) 103/2012 and CA (PHC) 170/2012 (connected appeals) Decided on 23.11.2020, *Jayantha Wickremasinghe Gunasekara alias Kananke Dhammadinna v. Jayatissa Wickremasinghe Gunasekara and others* C.A. (PHC) APN 17/2006 Decided on 30.09.2011

⁴ (1982) 2 Sri L.R. 693

⁵ *Balasooriya Arachchilage Gamini vs. Chandrasekara Mudiyansele Chaminda Shelton and others* CA (PHC) 06/2018 Decided on 08.08.2023

within the limited possessory inquiry contemplated under Section 66 of the Primary Courts' Procedure Act.

With regard to the Appellant's contention that possession could only have been obtained through proceedings under Section 16 of the Recovery of Loans by Banks (Special Provisions) Act, it is necessary to distinguish between the statutory entitlement to invoke Section 16 proceedings for delivery of possession and the factual question whether possession had already been secured independently following the parate execution and public auction proceedings. In the instant case, both the learned Magistrate and the learned High Court Judge appear to have accepted that the Respondent Bank had already obtained possession following the auction. Accordingly, the mere availability of Section 16 proceedings does not necessarily mean that recourse thereto was mandatory before the Respondent Bank could assert possession in proceedings under Section 66 of the Primary Courts' Procedure Act. Further, the inquiry before the learned Magistrate concerned possessory status for preventive purposes and not the final legality or regularity of the parate execution proceedings.

This Court is further mindful that the present appeal arises from a judgment delivered by the Provincial High Court in the exercise of revisionary jurisdiction. Revision is an extraordinary and discretionary remedy exercisable only in exceptional circumstances⁶ involving illegality, jurisdictional error or manifest injustice.

The authorities of *Rustom v. Hapangama & Co.*⁷, *Hotel Galaxy (Pvt) Ltd. v. Mercantile Hotels Management Ltd.*⁸ and *Dharmaratne and Another v. Palm Paradise Cabanas Ltd. and Others*⁹ reaffirm that revisionary jurisdiction is not intended to function as a substitute for ordinary appellate procedures.

It is well settled that a Provincial High Court exercising revisionary jurisdiction in a Section 66 matter is confined to examining the legality, propriety, regularity, and jurisdictional correctness of the order made by the learned Magistrate, and does not function as a court

⁶ *K.W. Ranjith Samarasinghe v. K. Wilbert* CA (PHC) 127/99 Decided on 28.03.2011, *Mukan Loganathan and others Vs A.P.H.De V.Gunawardena* CA (PHC) 55/2011 Decided on 01.08.2014

⁷ (1978-79-80) 2 Sri L.R. 352

⁸ (1987) 1 Sri L.R. 5

⁹ (2003) 3 Sri L.R. 24

of ordinary appeal to re-evaluate evidence or substitute its own findings merely because another view is possible¹⁰.

The submissions advanced before this Court substantially seek a re-evaluation of factual findings relating to possession. Such an exercise falls outside the proper scope of appellate scrutiny in the present procedural position, particularly where concurrent findings have been reached by both the learned Magistrate and the learned High Court Judge.

Conclusion

Upon consideration of the entirety of the material placed before this Court, I am unable to conclude that the learned High Court Judge had acted upon any erroneous principle of law, failed to exercise jurisdiction vested by law, or occasioned any miscarriage of justice warranting appellate interference.

Accordingly, this Court is of the view that no sufficient basis has been established to interfere with either the order of the learned Magistrate dated 17.12.2015 or the judgment of the learned High Court Judge dated 07.03.2017.

For the aforesaid reasons, the appeal is dismissed subject to cost fixed at Rs.50,000/- to be paid to the state by the Appellant.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal

¹⁰ *Nandawathie and Another v. Mahindasena* (2009) 2 Sri L.R. 218; *Muthusami Loganathan v. Walpale Gedara Malani Manjalika and Others*, CA (PHC) 203/2019 Decided on 04.04.2023; *Hettiarachchige Chandana Kumarasinghe v. R.D. Somadasa and Others*, CA (PHC) 35/2016 Decided on 04.04.2022.