

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

*In the matter of an appeal in terms of the
Article 154G (6) of the 13th Amendment of
the Constitution of the Democratic Socialist
Republic of Sri Lanka.*

The Officer in Charge,
Police Station,
Ginigathhena.

Court of Appeal Case No:

CA/PHC/0108/2014

COMPLAINANT

Vs.

High Court of Kandy

Case No: Rev/09/2002

1. Arumugam Thawabalan,
Bagathuluwa, Ginigathhena.

Primary Court of Hatton

Case No: 89901

2. Withanage Premarathne,
Bagathuluwa, Ginigathhena.

1ST PARTY

1. Galappaththi Merenchige
Karunarathne,
Bagathuluwa, Ginigathhena.

2. Subramaniyam Ambiga,
Bagathuluwa, Ginigathhena.

2ND PARTY

3. Arumugam Kandasami,
Bagathuluwa, Ginigathhena.

4. Bethmage Ariyawathi Rajapakshe,
Bagathuluwa, Ginigathhena.

INTERVENING PARTY

AND

1. Galappaththi Merenchige
Karunarathne

2. Subramaniyam Ambiga,
Bagathuluwa, Ginigathhena.

2ND PARTY-PETITIONERS

Vs.

1. Arumugam Thawabalan,
Bagathuluwa, Ginigathhena.

2. Withanage Premarathne,
Bagathuluwa, Ginigathhena.

1ST PARTY-RESPONDENTS

3. Arumugam Kandasami,
Bagathuluwa, Ginigathhena.

4. Bethmage Ariyawathi Rajapakshe,
Bagathuluwa, Ginigathhena.

INTERVENING PARTY-RESPONDENTS

The Officer in Charge,
Police Station,
Ginigathhena.

COMPLAINANT-RESPONDENT

The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENT

AND BETWEEN

1. Galappaththi Merenchige
Karunarathne

2. Subramaniam Ambiga,
Bagathuluwa, Ginigathhena.

2ND PARTY-PETITIONER-APPELLANTS

Vs.

1. Arumugam Thawabalan,
Bagathuluwa, Ginigathhena.

2. Withanage Premarathne,
Bagathuluwa, Ginigathhena.

1ST PARTY- RESPONDENT-

RESPONDENTS

3. Arumugam Kandasami,
Bagathuluwa, Ginigathhena.

4. Bethmage Ariyawathi Rajapakshe,
Bagathuluwa, Ginigathhena.

**INTERVENING PARTY-RESPONDENT-
RESPONDENTS**

AND NOW BETWEEN

1. Galappaththi Merenchige
Karunarathne

**2ND PARTY-PETITIONER-APPELLANT-
APPELLANT**

Vs.

1. Arumugam Thawabalan,
Bagathuluwa, Ginigathhena.

2. Withanage Premarathne,
Bagathuluwa, Ginigathhena.

**1ST PARTY- RESPONDENT-
RESPONDENT-RESPONDENTS**

3. Arumugam Kandasami,
Bagathuluwa, Ginigathhena.

4. Bethmage Ariyawathi Rajapakshe,
Bagathuluwa, Ginigathhena.

**INTERVENING PARTY- RESPONDENT-
RESPONDENT-RESPONDENTS**

Before : Sampath B. Abayakoon, J.

: Amal Ranaraja, J.

Counsel : Sandamal Rajapakse with Savana Ranathunga for
the 2nd Party-Petitioner-Appellant-Appellant

: M.D.J. Bandara for the 1st Party, 1st and 2nd
Respondent-Respondents and 3rd and 4th Respondent-
Respondents

Argued on : 24-10-2024

Decided on : 21-11-2024

Sampath B. Abayakoon, J.

This is an appeal preferred by the 2nd party-petitioner-appellant-appellant (hereinafter referred to as the appellant) on the basis of being aggrieved of the order dated 01-08-2014 by the learned Provincial High Court Judge of the Central Province holden in Kandy.

From the impugned order, the learned High Court Judge has refused to issue notice of the revision application filed before the Provincial High Court by the appellant.

The matter relating to the above-mentioned order was a matter arising out of an application made to the Magistrate's Court of Hatton by the Officer-in-Charge of Hatton Police Station in terms of the Primary Courts Procedure Act (hereinafter referred to as the Act).

Although facts had been reported in terms of section 66(1) of the Act, it is clear from the certified copy of the Magistrate's Court case record, in fact, the dispute between the parties had been over a blocking of a right of way enjoyed by the 1st party named in the application before the Magistrate's Court by the 2nd party named therein. The appellant is one of the persons mentioned as the 2nd party in the application.

It is clear from the order pronounced by the learned Magistrate of Hatton on 05-02-2002 in his capacity as the Primary Court Judge of Hatton, that the learned Magistrate has correctly considered the facts placed before him in terms of section 69 of the Act. It has been determined that the 2nd party mentioned in the information filed before the Primary Court had illegally blocked the right of way used by the 1st party by erecting a fence on the center line of the six feet wide access used by them. Accordingly, it has been ordered that the said disruption shall be removed. It has been also directed that the order shall be in effect until and unless changed by a competent Court.

When the appellant sought to challenge the order of the learned Primary Court Judge before the Provincial High Court of the Central Province holden in Kandy by way of a revision application, the learned High Court Judge, after having considered the facts and the circumstances has refused to issue notice in that regard, and had dismissed the same by his order dated 26-02-2002.

The appellant has challenged the said refusal by way of an appeal to the Court of Appeal, where the Court of Appeal by the judgment dated 06-11-2013 had set aside the order of the learned Provincial High Court Judge, and has directed that the learned High Court Judge should consider whether there are exceptional circumstances to allow the application after issuing notice to the parties and should enter a judgment.

When the matter was referred back to the Provincial High Court of the Central Province holden in Kandy, the learned presiding High Court Judge by his order dated 01-08-2014 has determined that there is no purpose in issuing notice on an order made in terms of section 66 of the Primary Court Procedure Act, 12 years after the impugned order, and has refused to issue notice of the revision application.

It is against that order; the appellant has preferred the instant appeal to this Court.

At the hearing of this appeal, this Court heard the submissions of the learned Counsel for the appellant as well as the submissions of the learned Counsel who represented the 1st party respondent-respondent in this regard.

Although we find that the learned High Court Judge of the Provincial High Court of the Central Province holden in Kandy may be wrong when he refused to issue notice on the basis that 12 years had lapsed from the Primary Court

order, hence, no purpose would be served even if notice is to be issued, this Court is unable to agree that decision alone should provide a basis for the appellant to succeed in this application.

It is the view of this Court that the impugned order by the learned Magistrate of Hatton, which was temporary in nature, is a fact that needs to be considered together with the relevant facts and circumstances in deciding whether the appellant has provided to this Court, a basis to interfere with the order by the learned Magistrate of Hatton. It becomes so since, whatever the order that the learned High Court Judge may have given, ultimately it is the order made by the learned Magistrate of Hatton, which would be the order that needs to be considered.

It is amply clear from the information provided to the Magistrate's Court of Hatton in terms of the Primary Court Procedure Act that a clear dispute has arisen which may cause disturbance of peace as a result of the appellant erecting concrete polls on the center line of the access road used by the other party mentioned in the application filed by the police.

The learned Magistrate of Hatton has well considered all the facts and the circumstances that led to the dispute, and after being satisfied that this dispute has arisen due to the reasons as stated above, has directed that the disturbances caused to the right of way should be removed. It has been specifically stated that the order should be kept effective until and unless changed by an order from a competent Court.

It is the view of this Court that it is up to the appellant to go before a competent Court of First Instance that has the jurisdiction to go into the rights of the parties and get the dispute resolved.

For the reasons as considered above, this Court finds no reason to interfere with the order of the learned Primary Court Judge as well as the Learned High Court Judge.

Accordingly, the appeal is dismissed for want of merit.

The Registrar of the Court is directed to communicate this judgment to the Provincial High Court of the Central Province holden in Kandy and to the Magistrate's Court of Hatton for information and necessary action.

Judge of the Court of Appeal

Amal Ranaraja, J.

I agree.

Judge of the Court of Appeal