

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

In the matter of an appeal in terms of Section 11(1) of the High Court of the provinces (Special Provisions). Act No. 19 of 1990 against an Order dated 31.01.2020 of the Provincial High Court of Kandy Exercising revisional jurisdiction in terms of Article 145(3) (b) of the Constitution.

**CA (PHC) 02-2020**

**HC Kandy**  
**Case No. PHC 107/2018**

**Primary Court Kandy**  
**Case No. 11424/2018**

Officer –in – Charge  
Katugastota Police Station  
Katugastota.

**Informant / Petitioner**

**Vs**

Kulugamana Walakadawatte Gedera  
Kusumalatha  
No. 28/1, Suduhumpola,  
Vihara Road,  
Kandy.

**1<sup>st</sup> Party –Repondent**

Dulwala Hemachadrage Ariyaratna  
Mettanananda  
No. 51,  
Hiriyalagammana,  
Werellagama

**2<sup>nd</sup> Party – Respondent**

**AND BETWEEN**

Dulwala Hemachadrage Ariyaratna  
Mettanananda  
No. 51, Hiriyalagammana,  
Werellagama.

**2<sup>nd</sup> Party – Respondent –Petitioner**

**Vs**

Kulugamana Walakadawatte Gedera  
Kusumalatha  
No. 28/1 Suduhumpola,  
Vihara Road,  
Kandy.

**1<sup>st</sup> Party – Respondent Respondent**

Officer – in – Charge  
Katugastota Police Station,  
Katugastota.

**Informant/Petitioner – Respondent**

**AND NOW BETWEEN**

Dulwala Hemachadrage Ariyaratna  
Mettanananda  
No. 51, Hiriyalagammana  
Werellagama.

**2<sup>nd</sup> Party – Respondent – Petitioner –  
Appellant**

**Vs.**

Kulugamana Walakadawatte Gedera  
Kusumalatha  
No. 28/1, Suduhumpola,  
Vihara Road,  
Kandy.

**1<sup>st</sup> Party – Respondent – Respondent  
Respondent**

Officer- in –Charge  
Katugastota Police Station,  
Katugastota.

**Informant /Petitioner – Respondent-  
Respondent**

Before : **Hon. M Sampath K. B Wijeratne, J.(CA)**  
: **Hon. M. Ahsan R. Marikar, J.(CA)**

Counsel : P. Radhakrishnan for the 2<sup>nd</sup> Party-Petitioner  
Appellant instructed by Nuwan Athulath  
Mudali.

Ravendra Weerasinghe for the 1<sup>st</sup> Party  
Respondent – Respondent instructed by  
Udeni Gallage through the Legal Aid  
Commision.

Written Submissions : 1<sup>st</sup> Party Respondent-Respondent –  
Respondent filed on 08.04.2024

2<sup>nd</sup> Party Respondent-Petitioner-Appellant on  
05.03.2024

Argued on : 23.10.2024

Decided on : 20.12.2024

**M. Ahsan R. Marikar, J. (CA)**

### **Introduction**

- 1) The 2<sup>nd</sup> Party Respondent-Petitioner Appellant (hereinafter referred to as the Appellant) has made this appeal against the Order made by the Learned High Court Judge of *Kandy* on 31<sup>st</sup> January 2020 dismissing the revision application made against the Magistrate's Order dated 15<sup>th</sup> October 2018.
- 2) The dispute had arisen in the instant action under Section 66 of the Primary Court's Procedure Act No. 44 of 1979.
- 3) In the instant appeal the Appellant had sought the following reliefs in the prayer of the petition dated 17<sup>th</sup> February 2020;

- (i) Issue Notice on the 1<sup>st</sup> Party Respondent-Respondent-Respondent;
- (ii) Set aside the Order dated 31.01.2020 in Central Province Provincial High Court of *Kandy* Case No. Revision 107/2018;
- (iii) Set aside the Order dated 15.10.2018 in Magistrates Court *Kandy* Case No 11424/2018;
- (iv) Make Order that the 2<sup>nd</sup> Party Respondent-Petitioner-Appellant is entitled to possession of the land in question under Act No.44 of 1979;
- (v) Grants costs, and
- (vi) Such other and further reliefs.

**Facts of this case**

- 4) The Appellant had contended that proceedings were held between the Appellant and the 1<sup>st</sup> Party Respondent-Respondent-Respondent (hereinafter referred to as the Respondent) under Section 66 of Primary Courts' Procedure Act No 44 of 1979 before the Magistrate's Court of *Kandy* after facts were reported by the officer in charge of *Kathugastota* Police Station.
- 5) The said matter had been instituted due to a dispute between the Appellant and the Respondent over the possession of the disputed property pertinent to the Magistrate's Court Case No. 11424/18.
- 6) In the said matter, the Learned Magistrate, after the inquiry, had granted possession to the 1<sup>st</sup> Party Respondent in the Magistrate's Court proceedings.
- 7) Aggrieved by the said Order, the Appellant had preferred a revision application in the Provincial High Court of *Kandy* and the Learned High Court Judge in the said revision matter had dismissed the application made by the Appellant on the grounds that there are no exceptional

circumstances supported by the Appellant to grant relief under revisionary jurisdiction.

- 8) On the said grounds, the Appellant has preferred this appeal to set aside the Order of the Learned High Court Judge dated 31<sup>st</sup> January 2020 and the Learned Magistrate's Order dated 15<sup>th</sup> October 2018.
- 9) The Appellant had preferred this appeal on the grounds that she paid Rs. 150 000/- as advance money to the predecessors in title with the intention of purchasing the disputed land. Thereafter, continuously possessed the said land in question.
- 10) According to the Appellant, the Learned High Court Judge had erred in law by failing to take cognizance of the fact that the Learned Magistrate had failed to determine who was in possession under the provisions of Section 66(i) of the Primary Courts' Procedure Act.
- 11) Furthermore, the Appellant had contended that, when taking into account the facts on which the Learned Magistrate had based his conclusion in the Order dated 15/10/2018, it appeared that the Learned Magistrate had failed to evaluate the evidential value referred to in the affidavits and had held contrary to the facts produced by the Appellant.
- 12) On the said facts, the Appellant has preferred this appeal to set aside the Orders made by the Learned High Court Judge and the Learned Magistrate.

### **Disputed Facts**

- 13) In light of the pertinent facts of this case, the arguments advanced by counsels for both the Appellant and the Respondent, and the documentary evidence submitted, to grant the reliefs prayed for in the petition of appeal, the following disputed points must be scrutinized in order to arrive at my conclusion.

- (i) Had this dispute arisen to be considered under Section 66(1) of the Primary Courts' Procedure Act and was there a breach of peace?
- (ii) Has the High Court Judge erred when delivering the Order dated 31<sup>st</sup> January 2020 dismissing the Appellant's revision application?
- (iii) Can the Appellant maintain this action as per the prayers sought in the instant appeal?

**I. Had this dispute arisen to be considered under Section 66(1) of the Primary Courts' Procedure Act and was there a breach of peace?**

- 14) Section 66(1) of the Primary Courts' Procedure Act outlines the conditions under which legal action may be initiated under the Primary Court Procedure. Action may be initiated by a Peace Officer following a complaint from a party in the event of a breach of the peace or a dispute over land possession arises. Alternatively, when a breach of peace occurs, a party may file an information by affidavit at the Primary Court, as provided under Section 66(1)(b) of the Primary Courts' Procedure Act.
- 15) In the present case, the *Katugasthota* Police had initiated the action under the Primary Courts' Procedure by submitting an information report to court.
- 16) Thereafter, this inquiry had been taken up by the Magistrate and concluded by way of written submissions and the Learned Magistrate was satisfied that there had been an imminent breach of peace.
- 17) The Learned Magistrate had perused the complaints lodged by the 1<sup>st</sup> Party Respondent with the Police, which encompassed incidents such as, the possession prior to the complaint made by the parties to *Katugasthota* police and the dispute over possession between the

Appellant and the Respondent, which had given rise to a breach of the peace.

**II. Has the High Court Judge erred when delivering the order dated 31<sup>st</sup> January 2020 dismissing the Appellant's revision application?**

- 18) The Learned High Court Judge had very well considered the Order made by the Learned Additional Magistrate of *Kandy*.
- 19) The Learned Additional Magistrate of Kandy had perused all the documents submitted before him and had concluded that the Appellant's claim of having paid an advance of Rs. 150,000/- for the disputed property was unsubstantiated and the Appellant in the instant action had failed to prove that he had been in possession of the property for a period of two months prior to the complaint lodged with the police.
- 20) Furthermore, the Learned Additional Magistrate had observed that there were cases pending in the District Court concerning the disputed property.
- 21) On these grounds, it is evident that the Appellant must assert his rights in a different forum if there was an agreement to sell the disputed property.
- 22) Thus, the Learned High Court Judge had correctly determined that there were no grounds to invoke revisionary jurisdiction, as no exceptional circumstances had been presented to warrant the consideration of the application before the Judge of the High Court.

**III. Can the Appellant maintain this action as per the prayers sought in the instant appeal?**

- 23) It is crucial to observe that, since this is an application for revision, exceptional circumstances must be demonstrated to justify the invocation of revisionary jurisdiction in granting relief to the party.
- 24) In the instant action, the High Court Judge has also specified that the Appellant had failed to show any exceptional grounds
- 25) In the case of **Caderamanpulle vs. Ceylon Paper Sacks Ltd** <sup>1</sup> ;

*“The existence of exceptional circumstances is a precondition for the exercise of the powers of revision”.*

As Per Nanayakkara, J;

*“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”*

And it is decided in **Hotel Galaxy Ltd v Mercantile Hotel Management Ltd** <sup>2</sup>; as per Sharvananda CJ;

*“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.”*

- 26) Therefore, it is evident, as established by settled legal principles, that exceptional circumstances must be demonstrated to justify the consideration of a revision application. In the instant action, I find no

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<sup>1</sup> [2001] 3 SLR 116

<sup>2</sup> [1987] 1 SLR 006



such exceptional grounds that would warrant the intervention of this Court.

- 27) Thus, I do not see any reason to interfere with the Orders delivered by Learned High Court Judge and the Learned Magistrate.

**CONCLUSION**

- 28) In the said circumstances, I dismiss the petition dated 17<sup>th</sup> February 2020 subject to payment of Rs. 75 000/- cost payable to the Respondent.

**Judge of the Court of Appeal**

**M Sampath K. B. Wijeratne, J. (CA)**

I agree.

**Judge of the Court of Appeal**

