

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

In the matter of an application for Revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka to be read with the provisions of the Act No. 19 of 1990.

Abdul Waahid Ruhul Haq,  
Ambalandowa,  
Guruthulawa.

**Petitioner**

**Vs.**

**CA (CPA) 96 - 2022**

**HC Badulla Case No.**

**HCRA -47-2020**

1. Abdul Wahidu Jailabdeen
2. Segu Dawood Sithy Fareeda
3. Jailabdeen Mohamed Zihad,
4. Jailabdeen Mohamed Ziham,
5. Jailabdeen Mohamed Zihan,

**Primary Court**  
**Welimada**

**Case No. 42651/19**

All of No. 186, Galgoda Guruthalawa.

**Respondents**

1. J. Zihana  
No. 186, Galgoda,  
Guruthalawa.
2. Sithy Misriya  
Gagloda,  
Guruthalawa.
3. Abdul Wahid Mohamed Mubarak  
No. 186,  
Guruthalawa.
4. Abdul Wahid Razik  
No. 04, Kalaapura,  
Nuwara Eliya.

5. Abdul Wahid Rubiyan Umma  
215, Silmiya Pura,  
Boragaskatiya.
6. Abdul Wahid Mohamed Sameem  
No. 186, Siya ul Haq Manzil,  
Guruthalawa.
7. K. Chandrawadini  
No. 186, Galgoda,  
Guruthalawa.

**Intervenant Parties**

**AND BETWEEN**

1. Abdul Waahidu Jailabdeen
2. Segu Dawood Sithy Fareeda,
3. Jailabdeen Moahamed Zihad,
4. Jailabdeen Mohamed Ziham
5. Jailabdeen Mohamed Zihan,

**And**

6. J. Zihana

All of No. 186, Galgoda, Guruthalawa

**1<sup>st</sup> to 5<sup>th</sup> Respondent – Petitioners and  
1<sup>st</sup> Intervenant Party – Petitioner**

**Vs.**

1. Abdul Waahid Ruhul Haq,  
Ambalandowa,  
Guruthulawa.

**Petitioner – Respondent**

2. Sithy Misriya,  
Gagloda,  
Guruthalaawa.
3. Abdul Wahid Mohamed Mubarak  
No. 186,  
Guruthalaawa.
4. Abdul Wahid Razik,

No. 04, Kalaapura,  
Nuwara Eliya.

5. Abdul Wahid Rubiyan Umma,  
No. 215, Silmiya Pura,  
Boragaskatiya.
6. Abdul Wahid Mohamed Sameen  
No. 186, Siya ul Haq Manzil,  
Guruthalawa.
7. K. Chandrawadini  
No. 186, Galgoda,  
Guruthalawa.

**Intervenient Party- Respondents**

8. Hon. Attorney General  
Attorney General Department,  
Colombo 12.

**Respondent**

**AND NOW BY AND BETWEEN**

1. Abdul Waahidu Jailabdeen
2. Segu Dawood Sithy Fareeda
3. Jailabdeen Moahamed Zihad,
4. Jailabdeen Mohamed Ziham,
5. Jailabdeen Mohamed Zihan,

**And**

6. J. Zihana  
All of No. 186,  
Galgoda,  
Guruthalawa.

**1<sup>st</sup> to 5<sup>th</sup> Respondent-Petitioner-  
Petitioners and 1<sup>st</sup> Intervenient Party –  
Petitioner- Petitioner.**

**Vs**

1. Abdul Waahid Ruhul Haq  
Ambalandowa,  
Guruthulawa.

**Petitioner – Respondent  
Respondent**

2. Sithy Misriya  
Gagloda,  
Guruthalaawa.
3. Abdul Wahid Mohamed Mubarak  
No. 186,  
Guruthalaawa.
4. Abdul Wahid Razik  
No. 04, Kalaapura,  
Nuwara Eliya.
5. Abdul Wahid Rubiyan Umma,  
No. 215, Silmiya Pura,  
Boragaskatiya.
6. Abdul Wahid Moahamed Sameem,  
No. 186, Siya ul Haq Manzil,  
Guruthalawa.
7. K. Chandrawadini,  
No. 186, Galgoda,  
Guruthalawa.

**Intervient Party – Respondent –  
Respondents**

8. Hon. Attorney General  
Attorney General Department,  
Colombo 12.

**Respondent - Respondent**

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

Counsel : Nuwan Bopage for the 1<sup>st</sup> – 5<sup>th</sup> Respondent –  
Petitioners and 1<sup>st</sup> Intervenant Party  
Petitioner- Petitioner.

Riad Ameen with Sajith Nawaratne for the  
Petitioner – Respondent-Respondent  
instructed by A H Jiffry

Written submissions : Petitioner-Respondent-Respondent  
on 08.11.2024

Argued on : 15.10.2024

Decided on : 22.11.2024

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

**Introduction**

- 1) The petition is filed by the 1<sup>st</sup> to 5<sup>th</sup> Respondent-Petitioner-Petitioners and Intervenant Party- Petitioner-Petitioner (hereinafter referred to as “Petitioners”) challenging the Order made in a revision application by the Learned High Court Judge of *Badulla* on 25<sup>th</sup> August 2022 in terms of Section 66 application under the Primary Courts’ Procedure Act No. 44 of 1979.
- 2) The said reliefs sought by the Petitioners in their petition dated 8<sup>th</sup> September 2022 is as follows;
  - a) Issue notice on the Respondents,
  - b) Set aside and/or vacate and/or review the Order of the Provincial High Court of the Uva Province Holden in Badulla dated 25.08.2022 in case bearing No HCRA/47/2020 and the Order of the Learned Primary Court Judge of Welimada in the case bearing No 42651 dated 29.09.2020,

- c) Grant an interim Order in the first instance staying the operation of the Order dated 25.08.2022 of the case bearing No. HCRA/47/2020 in the Provincial High Court of Badulla and the Order of the Learned Primary Court Judge of Welimada in the case bearing No.42651 dated 29.09.2020 until the hearing and determination of this application,
- d) Grant an interim Order directing the parties to maintain the status quo until the final hearing and determination of this application,
- e) In the alternative direct the Provincial High Court of Uva Province Holden in Badulla to re-hear the case on its merits
- f) Grants costs, and,
- g) Grant such other and further reliefs that may seem meet.

### **Facts of this case**

- 3) The Petitioner-Respondent-Respondent (hereinafter referred to as "Respondent") had contended that he instituted action in terms of section 66(1)(b) Primary Courts' Procedure Act No. 44 of 1979 before the Magistrate's Court of *Welimada* by way of a private plaint. The dispute that had arisen between the Petitioners and the Respondents concerned the possession of the land shown in Plan No. 4538 which had been surveyed on 5<sup>th</sup> June 2003, which had been referred to in page number 206 of the brief.
- 4) The said land was possessed under a permit obtained by the father of both the 1<sup>st</sup> Petitioner and the Respondent. The said permit is referred to on page number 284 of the brief. Both parties have admitted that their father had demised in the year 2004.
- 5) Upon that, the Respondent's possession was disturbed by the Petitioners. The fence erected by the Respondent was removed by the

Petitioners. Due to that there was an imminent danger of breach of peace. On the said grounds, the Respondent had made several complaints and filed a private information under the Provisions of Section 66 Primary Courts' Procedure Act.

- 6) However, as per Petitioners the Learned Magistrate had failed to consider the facts pertinent to this action and had decided to grant the possession to the Respondent.
- 7) Aggrieved by the said decision, the Petitioners had filed a revision application before the Provincial High Court of *Badulla* and Petitioners contended that the Learned High Court Judge had erred and/or had misdirected in Law and had failed to appreciate the facts pertinent to the matter in dispute and dismissed the Petitioners' application.
- 8) On the aforesaid grounds the instant revision application had been filed by the Petitioners to obtain the reliefs prayed for in the revision application dated 8<sup>th</sup> September 2022.
- 9) In their statement of objections, the Respondents have rejected the said facts related to the petition and contended that the Petitioners have suppressed material facts and misrepresented facts to court.
- 10) Further, the Petitioners have failed to demonstrate the existence of exceptional circumstances that would warrant the invocation of the revisionary jurisdiction of this court.
- 11) Moreover, the Respondents were wrongfully dispossessed by the Petitioners.
- 12) The Learned Magistrate appropriately evaluated the facts and relevant documents, leading to the rightful restoration of possession to the Respondents. The Learned High Court Judge also upheld the said Judgement.
- 13) Therefore, the Respondents have prayed that the application made by the Petitioners should be dismissed.

**Disputed facts**

- 14) This matter was taken up for argument on 15<sup>th</sup> October 2024 and the argument was concluded on the same date. Both parties agreed to file written submissions, however, only the Respondents have filed their written submissions.
- 15) In considering the facts, documents and the Orders made by the Learned Magistrate and the High Court Judge to warrant the intervention of this court in exercising its extra ordinary revisionary powers, the following disputed points should be considered.
- i) Had this dispute arisen to be considered under Section 66(1) of the Primary Court Procedure Act and was there a breach of peace?
  - ii) Had the Learned Magistrate and Learned High Court Judge considered the facts related to this dispute acting under Section 66(1) of the Primary Court Procedure Act?
  - iii) If not, can the Petitioners get reliefs prayed for in the petition dated 8<sup>th</sup> September 2022?

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

- 16) 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.



- 17) In the present case, the Respondent initiated the action under the Primary Courts' Procedure by submitting private information to the court.
- 18) Therefore, this inquiry had been taken up by the Magistrate and concluded by way of written submissions.
- 19) On the said context, this action had been instituted under the Primary Courts' Procedure Act. The Learned Magistrate had satisfied that there had been imminent breach of peace.
- 20) The Learned Magistrate had perused the complaints made to the Police by the Respondents which included incidents such as, cutting down tea bushes, damaging a parapet wall, threatening the Respondents, provoking the parties which could have caused breach of peace.
- 21) Although, this action was filed in the Magistrate's Court by way of a private information there had been incidents between the Respondents and the Petitioners that could have caused breach of peace in the event the Learned Magistrate had not intervened.

**II. Had the Learned Magistrate and Learned High Court Judge considered the facts related to this dispute acting under Section 66(1) of the Primary Courts' Procedure Act?**

- 22) Upon reviewing the Learned Magistrate's Order dated 29th September 2020, it is evident that the Magistrate issued a well-reasoned decision, carefully considering the facts and relevant documents. In the Order, the Magistrate examined the parties' rights, noting that the 1<sup>st</sup> Petitioner and Respondent are siblings, and that the property in question, a state land, had been issued a permit to their father, the said permit is annexed to the case brief at page 284.

- 23) The permit holder, Abdul Wahid, the father of the 1<sup>st</sup> Petitioner and the Respondent had demised on 15<sup>th</sup> June 2004. The death certificate had been produced at the Magistrate Courts as 1B2.
- 24) The argument put forward by the Petitioners' counsel is that in the said permit, Abdul Wahid had nominated his son Abdul Wahidu Jailabdeen, the 1<sup>st</sup> Petitioner as the nominee.
- 25) However, after the demise of Abdul Wahid in the year 2004, the 1<sup>st</sup> Petitioner had not taken any steps to obtain a valid permit in his name as the nominee.
- 26) Therefore, given that 10 years have passed with respect of the title, it is submitted that the decision should be taken by the Divisional Secretary who is entitled to determine the rightful ownership of the disputed land.
- 27) Thus, this is a separate matter to be decided in a different forum. Beside these issues, the Learned Magistrate noted that, prior to the incident; the Respondents had been in possession of the property for a period of two months. This fact was corroborated by Plan No. 4538, dated 5<sup>th</sup> June 2003, on which the Respondents and Petitioners had divided their respective lots and had been in occupation for an extended period.
- 28) It is important to note that under the Primary Courts' Procedure, Section 66 provides only a temporary measure to preserve the *status quo* between the parties. The rights of the parties, based on the available evidence, should ultimately be determined by the Divisional Secretary, as the property in question belongs to the State.
- 29) The Learned High Court Judge had correctly considered the Order made by the Magistrate and had decided that the Learned Magistrate had correctly evaluated the facts and the documents and there was no legal ground to revise the said Order under Revisionary Jurisdiction

and/or no exceptional ground had been taken up by the Petitioners at the High Court.

30) Therefore, I concur with the Learned High Court Judge's decision to dismiss the revision application filed by the Petitioners.

31) At this juncture, I am of the view that there is no reason to interfere neither with the Order of the Learned Magistrate dated 29th September 2020 nor with the Order of the Learned High Court Judge dated 25th August 2022.

**III. If not, can the Petitioner get reliefs prayed for in the petition dated 8<sup>th</sup> September 2022?**

32) In the instant action, I have already analyzed that the Learned High Court Judge and the Magistrate had acted in accordance with the provisions of the Primary Courts' Act No. 44 of 1979

33) In the petition, filed by the Petitioners the position that had been taken up is that the Learned Magistrate and the High Court Judge had erred and misdirected themselves when reaching at their conclusions. However, I find no evidence of misdirection, nor do I believe that either the Learned High Court Judge or the Learned Magistrate erred in law or fact in arriving at their conclusions.

34) Based on available documents, Police investigation notes, complaints made to the Police and on perusal of all the other documents, the Learned Magistrate had issued a well-reasoned Order and arrived at her conclusion correctly. The said conclusion was based on the following judgements;

35) It is decided in the case of ***Ramalingam v Thangarah***<sup>1</sup>;

*"In an inquiry into a dispute as to the possession of any land, where a breach of peace is threatened or is likely under Part VII, of the Primary Courts Procedure Act, the*

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<sup>1</sup> [1982] 2 SLR 694

*main point for decision is the actual possession of the land on the date of the filing of the information under section 66; but, where forcible dispossession took place within two months before the date on which the said information was filed.”*

And in the case of **Punchi nona v. Padumasena and others** <sup>2</sup> Ismail J articulated as follows;

*The primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land. The Court in exercising this jurisdiction is not involved in an investigation into title or the right to possession which is the function of a civil Court. He is required to take action of a preventive and provisional nature pending final adjudication of rights in a civil Court. It was therefore incumbent upon the Primary Court Judge to have initially satisfied himself as to whether there was a threat or likelihood of a breach of peace and whether he was justified in assuming such a special jurisdiction under the circumstances. The failure of the judge to satisfy himself initially in regard to the threat or likelihood of the breach of peace deprived him of the jurisdiction to proceed with the inquiry and this vitiates the subsequent proceedings. For these reasons, acting in revision, I set aside the Order of the Primary Court Judge dated 30.1.90.”*

- 36) In terms of the aforesaid decisions, it has been specifically stated that the Magistrate should satisfy him or herself initially in regard to threat or likelihood of a breach of peace. In failing, action under Section 66 cannot be maintained.
- 37) In addition to the aforementioned facts, it is imperative to note that, as this is a revision application, there must be exceptional circumstances present to justify the exercise of revisionary jurisdiction in granting relief to a party.

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<sup>2</sup> [1994] 2 SLR 122

- 38) In the case of **Caderamanpulle vs. Ceylon Paper Sacks Ltd** <sup>3</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>4</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.”*

- 39) 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 such exceptional grounds that would warrant the intervention of this Court.
- 40) Thus, I do not see any reason to interfere with the Orders delivered by Learned High Court Judge and the Magistrate. The Petitioners had prolonged this matter for a long period unnecessarily and made this application without any merit.

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

<sup>4</sup> [1987] 1 SLR 006

**CONCLUSION**

- 41) In the said circumstances, I dismiss the petition dated 8<sup>th</sup> September 2022 subject to payment of Rs. 150 000/- cost payable to the Petitioner-Respondent-Respondent and the 2<sup>nd</sup> to 7<sup>th</sup> Intervient Party-Respondent-Respondents.

**Judge of the Court of Appeal**

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

I agree.

**Judge of the Court of Appeal**

