

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

In the matter of an application for  
appeal against the order dated  
03.04.2018 delivered by the High  
Court of the North Western  
Province Holden at Kurunegala.

Officer in Charge  
Police Station  
Alawwa.

**Complainant**

**Court of Appeal**  
**Case No: CA(PHC) 88/2018**

**HC Kurunegala**  
**Case No: HCR 62/2016**

**MC Polgahawela**  
**Case No. 18776/66**

**Vs.**

1. Morawaka Vidnelage Siriyawathie  
Boyawalana,  
Keppitiwalana.
2. Wedamuni Nilamelage Mayura  
Srinath Wijepala,  
Boyawalane,  
Keppitiwalana.
3. Madurapperuma Arachchilage  
Ajantha  
Ihala Narangamuwa,  
Giriulla.

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

1. Warnakula Arachchilage Asoka  
Ranaweera  
No. 35, School Junction,  
Keppitiwlana.
2. Nikalansuriya Mudiyanseage

Sumithra Chandani  
No. 35, School Junction  
Keppitiwalana.

3. Gammanage Sudath Sanjeewa  
Pushpa Kumara  
Keppitiwalana,  
Alawwa.
4. Keppitipolage Mahesha  
Dharmarathna,  
Keppitiwalana,  
Alawwa.

**2<sup>nd</sup> Party**

5. Kurugamage Kusumawathie  
Jamwatta,  
Humbuluwa,  
Alawwa.

**Intervenient - Party**

**AND BETWEEN IN THE HIGH COURT**

1. Morawaka Vidanelage  
Siriawathie,  
Boyawalana,  
Keppitiwalana.
2. Wedamuni Nilamelage Mayura  
Srinath Wijepala  
Boyawalana,  
Keppitiwalana.
3. Madurapperuma Arachchilage  
Ajantha  
Kumuduni Madurapperuma  
Ihala Narangamuwa  
Giriulla.

**1<sup>st</sup> Party - Petitioners**

**Vs**

1. Warnakula Arachchilage Asoka  
Ranaweera  
No. 35, School Junction,  
Keppitiwlana.
2. Nikalansuriya Mudiyansele  
Sumithra Chandani  
No. 35, School Junction,  
Keppitiwlana.
3. Gammanage Sudath Sanjeewa  
Pushpa Kumara  
Keppitiwalana,  
Alawwa.
4. Keppitipolage Mahesha  
Dharmarathna  
Keppitiwalana,  
Alawwa.

**2<sup>nd</sup> Party – Respondents**

5. Kurugamage Kusumawathie  
Jamwatta,  
Humbuluwa,  
Alawwa.

**Intervenant – Respondent**

6. Officer in Charge  
Police Station,  
Alawwa.

**Complainant - Respondent**

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

Counsel: Sapumal Bandara with Lakshitha  
Edirisinghe for the 1<sup>st</sup> Party Petitioner –  
Appellant instructed by Niroshan  
Goonethilake

Chula Bandara with Bahagya  
Gunawardena for the 2<sup>nd</sup> Party  
Respondent – Respondent.

Written Submissions : By 1<sup>st</sup> Party Petitioner-Appellants on  
24.04.2023  
  
By 2<sup>nd</sup> Party Respondent-Respondents on  
22.09.2023

Argued on : 11.06.2024

Decided on : 19.07.2024

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

**Introduction**

- 1) The Appellant has made this appeal against the order made by the Learned High Court Judge of Kurunegala on 8<sup>th</sup> May 2018 dismissing the revision application made against the Magistrate's order dated 26<sup>th</sup> May 2016.
- 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 1<sup>st</sup> party Petitioner Appellants had sought the following reliefs prayed for in the prayer of the petition dated 22<sup>nd</sup> May 2018;
  - a) To accept this appeal;
  - b) To grant reliefs prayed for in the Revision application of the Appellants;

- c) Grant Costs and;
- d) Grant such other and further reliefs.

**Facts of this case**

- 4) The Appellant had contended that proceedings were held between the Appellant and the Respondents under Section 66 of Primary Courts' Procedure Act No 44 of 1979 before the Magistrate Court of Polgahawela, after facts were reported by the officer in charge of Alawwa.
- 5) The said matter had been instituted due to a dispute between the Appellant and the Respondent over the possession of the subject matter pertinent to the Magistrate Court Case No. 18776/66.
- 6) In the said matter, possession had been granted to the 2<sup>nd</sup> party, 1<sup>st</sup> and 2<sup>nd</sup> Respondents, in the Magistrate Court proceedings. Aggrieved by the said order, the Appellant had preferred a revision application in the Provincial High Court of Kurunegala and the Learned High Court Judge in the said revision matter had dismissed the application made by the Petitioner.
- 7) On the said grounds the Petitioner has made this appeal against the said order.
- 8) Considering the facts pertinent to this case and the written submissions, the following disputed facts need to be considered to arrive at my conclusion.
  - (i) Has the High Court Judge erred when delivering the order dated 8<sup>th</sup> May 2018 dismissing the Appellant's revision application?
  - (ii) Can the Appellant maintain this action as per the prayers sought in the instant appeal?

**I) Has the High Court Judge erred when delivering the order dated 8<sup>th</sup> May 2018 dismissing the Appellant's revision application?**

- 9) In the instant action, this appeal is preferred by the 1<sup>st</sup> party Petitioners. Therefore, hereinafter the said 1<sup>st</sup> party Petitioners will be referred to as Petitioners, the 2<sup>nd</sup> party Respondents as Respondents, and the intervenient Respondent-Respondent as intervenient Respondent.
- 10) The Petitioners have made this application by a petition dated 22<sup>nd</sup> May 2018 against the order of the Learned High Court Judge of Kurunegala dated 8<sup>th</sup> May 2018.
- 11) The High Court order had been made on a revision application made by the Petitioners against the order of the Magistrate of Polgahawela. In the said order, the Magistrate had discussed the rights of the possession of the subject according to Section 66 and 68 of Primary Courts' Procedure Act and granted possession to the Respondents.
- 12) Aggrieved by the said order, the Appellants in the instant action had preferred a revision application to the Provincial High Court of Kurunegala to revise the said order.
- 13) To revise the Magistrate's order under a revision application, the Petitioners have to satisfy court that there are exceptional grounds, illegality and procedural impropriety.
- 14) On perusal of the High Court Judge's order, the Learned High Court Judge had carefully considered the Magistrate's order and decided that there are no exceptional circumstances, illegality and/or impropriety to revise the order given by the Magistrate.
- 15) When considering the High Court Judge's order and the Magistrate's order the Learned Magistrate had written a well-

considered order considering the party who had possession for two months prior to the dispute that had arisen between the parties.

- 16) Therefore, I do not see any merit in the instant application to consider the appeal preferred against the order made by the Learned High Court Judge.

**II) Can the Appellant maintain this action as per the prayers sought in the instant appeal?**

- 17) It is interesting to note the prayers of the petition dated 22<sup>nd</sup> May 2018. In the said prayers the Petitioner had specifically requested to grant all the reliefs in the revision application filed by the Petitioner. However, the Petitioner has failed to inform the court about the existence of the revision application filed against the Respondents by the Petitioners and its current stage.
- 18) Furthermore, as per the Learned Magistrate's order, since there is a dispute between the parties for the title, the parties should resolve their rights at the appropriate forum.
- 19) In the said circumstances, the Petitioners have not sought any reliefs in the instant application for this court to grant.
- 20) In relation to that, I draw my attention to two judgements. In the case of **Surangi V Rodrigo**<sup>1</sup>. As per Gamini Amarathunga, J;

*“The learned counsel for the petitioner submitted that issues are not restricted to pleadings and cited several cases in support. There is no question about the correctness of this legal position. What is material to consider is whether the mere framing of an issue without amending*

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<sup>1</sup> [2003] 3 SLR 35

*the prayer would help the petitioner. Section 40(e) of the Civil Procedure Code enacts that the plaintiff shall contain a demand of the relief which the plaintiff claims. This is the prayer. No court is entitled or has jurisdiction to grant reliefs to a party which are not prayed for in the prayer to the plaintiff”.*

- 21) And in the case of ***Inaya and another V Fathima***<sup>2</sup> Andrew Somawansa, J (P/CA) held;

*“It appears that in the absence of a prayer seeking leave to appeal from a specific order made by the original Court and without praying to set aside that order one cannot seek a declaration and for directions to be given to the trial Judge as the Petitioner is seeking to do in the instant application”*

- 22) Thus, as per the aforesaid judgments, if reliefs are not claimed in the petition, an application cannot be maintained.
- 23) Further, considering the orders of the Learned Magistrate and High Court Judge, I do not see any merit to set aside or to revise the said orders.

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<sup>2</sup> [2006] 2 SLR 124



**CONCLUSION**

- 24) In view of the aforesaid facts, I dismiss the petition dated 22<sup>nd</sup> May 2018 subject to payment of cost of Rs. 25 000/-

**Judge of the Court of Appeal**

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

I agree

**Judge of the Court of Appeal**