

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

In the matter of an application in  
terms of Article 154(P)(6) of the  
Constitution read with the Section 9  
of the Provisions of Act No. 19 of  
1990

Officer-in-Charge  
Police Station, Tangalle.

Complainant

CA (PHC) 05/ 2019

High Court of Tangalle (Revision) No:  
11/17 (Rev:)  
Magistrate Court Tangalle Case No. 23135

Vs.

1. Andrahennadige Peter Silva,  
East Kudawella,  
Nakulugamuwa.

1<sup>st</sup> Party

2. Denagama Vitharanage Ajith  
Pushpakumara, "Siri Nivasa"  
East Kudawella, Nakulugamuwa

2<sup>nd</sup> Party

3. Andrahennadige Ranjane  
"Mayuri", East Kudawella  
Nakulugamuwa.

3<sup>rd</sup> Party

4. Andrahennadige Ratnasiri,  
East Kudawella,  
Nakulugamuwa

4<sup>th</sup> Party

AND

Denagama Vitharanage Ajith  
Pushpakumara, "Siri Nivasa"  
East Kudawella, Nakulugamuwa.

2<sup>nd</sup> Party Petitioner

Vs.

1. Andrahennadige Peter Silva,  
East Kudawella,  
Nakulugamuwa.  
**1<sup>st</sup> Party Respondent**
2. Andrahennadige Ranjanee  
“Mayuri”, East Kudawella  
Nakulugamuwa  
**3<sup>rd</sup> Party Respondent**
3. Andrahennadige Ratnasiri  
East Kudawella,  
Nakulugamuwa.  
**4<sup>th</sup> Party Respondent**
4. Officer-in-Charge  
Police Station, Tangalle.  
**Complainant-Respondent**

**AND NOW**

Denagama Vitharanage Ajith  
Pushpakumara, "Siri Nivasa"  
East Kudawella, Nakulugamuwa.  
**2<sup>nd</sup> Party Petitioner-Appellant**

Vs.

1. Andrahennadige Peter Silva,  
East Kudawella,  
Nakulugamuwa.  
**1<sup>st</sup> Party Respondent-Respondent**
2. Andrahennadige Ranjanee  
“Mayuri”, East Kaduawella,  
Nakulugamuwa  
**3<sup>rd</sup> Party Respondent-Respondent**
3. Andrahennadige Ratnasiri,  
East Kaduawella,  
Nakulugamuwa  
**4<sup>th</sup> Party Respondent-Respondent**

4. Officer-in-Charge  
Police Station, Tangalle.  
Complainant-Respondent-Respondent

Before: **Damith Thotawatte, J.**  
**Sarath Dissanayaka, J.**

Counsel Jacob Joseph with Chandrika Silva for the 2<sup>nd</sup> party Petitioner-Appellant.  
Buddika Gamage with Pradeep Alvitigala for the 1<sup>st</sup> Party Respondent-Respondent.

Argued 23-06-2025

Written submissions tendered on: 10-04-2024 and 30-07-2025 By the 2<sup>nd</sup> party Petitioner-Appellant

Judgement  
Delivered on: 27-08-2025

**D. Thotawatte, J.**

This is an appeal filed by the 2<sup>nd</sup> Party Petitioner–Appellant (hereinafter referred to as “the Appellant”) against the judgment of the Learned High Court Judge of Tangalle dated 02.01.2019, whereby the revision application filed by the Appellant was dismissed by the learned High Court Judge after considering the merits of the application.

The revision application arose from the order of the Learned Magistrate of Tangalle dated 26.04.2017 in Case No. 23135, made under Section 69 of the Primary Courts’ Procedure Act, No. 44 of 1979 (Hereinafter sometimes referred to as “PCP Act”), after inquiring into information filed by the Officer in Charge of Tangalle Police Station.

The Learned Magistrate, upon considering the affidavits and documentary material filed by all parties, determined that the roadway depicted in Plan No. 2009/61 (marked as 1P2 and 3P2) constituted a right of way possessed by the 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Party Respondents, and that they were entitled to use the said roadway until such rights are displaced or by a competent civil court.

The Appellant, being aggrieved, invoked the revisionary jurisdiction of the High Court. The High Court, having examined the impugned order, refused to interfere, inter alia holding that no exceptional circumstances were shown to warrant the exercise of revisionary jurisdiction.

The Appellant has now come before this Court, urging that the Learned High Court Judge erred in upholding the Magistrate's determination, and submits inter alia that:

1. The Learned Magistrate wrongly relied on an adverse inference arising from the refusal of the site inspection;
2. Affidavits, deeds and counter-affidavits filed by the Appellant were disregarded;
3. The Learned Magistrate has not properly considered the provisions of Section 69 of the PCP Act.
4. A binding authority of the Supreme Court in *Ramalingam v. Thangarajah*<sup>1</sup> was overlooked, and reliance was placed instead on *Ananda Sarath Paranagama v. Dhammadinna Paranagama*<sup>2</sup>;
5. The Respondents had an alternative roadway, thereby disentitling them from claiming a servitude of necessity; and
6. The disputed corpus was not properly identified.

### **The Factual Background**

The proceedings were initially instituted in the Magistrate's Court of Tangalle under Case No. 23135, upon information filed on 25.11.2016 by the Officer-in-Charge of the Tangalle Police Station, in terms of Section 66(1)(a) of the Primary Courts' Procedure Act, No. 44 of 1979 (hereinafter referred to as the "PCP Act"). The said information stated that one Andrahennadige Peter Silva (hereinafter referred to as "the Respondent") had lodged a complaint alleging that the Appellant was obstructing his attempts to clear obstacles from a ten-foot-wide roadway leading to his house. The Police have further informed that efforts to amicably resolve the dispute had failed, and that there existed a likelihood of a breach of the peace, necessitating the intervention of the Court.

Upon receipt of the information, the Learned Magistrate assumed jurisdiction under Section 66 PCP Act and issued initial orders on the same day. The 1<sup>st</sup> Party Respondent filed an affidavit asserting that he and the other Respondents had long enjoyed

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<sup>1</sup>[1982] 2 SLR 693

<sup>2</sup>CA (PHC) APN 117/2013

uninterrupted use of the said roadway, depicted in Plan No. 2009/61 (marked as 1P2 and 3P2). The Appellant was alleged to have encroached upon the roadway by parking his lorry thereon, and by obstructing access with a fence and a gate.

The Appellant had stated that the land in question belonged to him and that no servitude of right of way existed. He relied on his deeds, a sketch plan (2P1), and further asserted that the Respondents had an alternative access road from the southern boundary. He further contended that the survey plan relied upon by the Respondents (marked as 1P2 and 3P2) was fraudulent and had been prepared without notice to him.

The 3<sup>rd</sup> and 4<sup>th</sup> Party Respondents intervened in the MC Tangalle case No. 23135, asserting their entitlement to the same roadway as shown in the Plan marked 1P2 and 3P2. Further, they had stated that it constituted the sole access to their lots.

### **Proceedings before the Magistrate's Court**

The parties were directed to file affidavits, counter-affidavits, and documents. Several attempts were made to resolve the dispute by way of settlement. On 08.03.2017, the Magistrate suggested a site inspection, which the Appellant refused to consent to.

Thereafter, upon written submissions, the Learned Magistrate delivered his order on 26.04.2017. He held that:

1. The disputed roadway depicted in Plan 1P2 was in fact possessed and used by the 1<sup>st</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Party Respondents.
2. The Respondents were entitled to exercise their right of way under Section 69 PCP Act.
3. The Appellant's objections did not demonstrate sufficient cause to deny such right of way.

Accordingly, the Magistrate recognised the Respondents' right to the roadway, subject to final adjudication by a competent civil court.

### **Revision Application before the High Court**

Being aggrieved by the order of the Learned Magistrate, the Appellant preferred a revision application to the High Court of Tangalle, contending that:

- The Learned Magistrate has failed to consider the relevant provisions of Section 69 of the PCP Act.

- the Magistrate had drawn an unlawful adverse inference based on the refusal of the Appellant for the site inspection;
- Deeds produced by the Respondents did not disclose any servitude;
- the existence of an alternative road disentitled the Respondents from claiming servitude of necessity; and
- The order was contrary to established authority, particularly *Ramalingam v. Thangarajah*<sup>3</sup>.

The High Court, by judgment dated 02.01.2019, dismissed the revision application. The Learned High Court Judge reasoned that:

1. The Magistrate was correct in proceeding under Section 69 of the PCP Act since the matter concerned a right of way in the nature of a servitude, not possession.
2. The refusal of site inspection was not taken in isolation but considered in the totality of evidence, thus, no unlawful or adverse inference had been drawn based on the refusal of the Appellant for the site inspection.
3. The Magistrate had evaluated affidavits, documents, and submissions in accordance with the summary procedure mandated by Section 67 PCP Act.
4. Reliance on *Ananda Sarath Paranagama v. Dhammadinna Paranagama*<sup>4</sup> was proper, as the Magistrate's duty was only to prevent breach of peace by summary determination, not to conduct a full trial akin to a District Court action.
5. No exceptional circumstances were disclosed to warrant revision, in line with the principles in *Ratnayake v. Padmini de Silva*<sup>5</sup>.

The revision application was accordingly dismissed, with the stay order earlier issued being dissolved.

### Submissions of the Appellant

The Appellant, by his written submissions dated 10-04-2024 and further written submissions dated 30-07-2025, has advanced the following principal arguments against the High Court judgment:

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<sup>3</sup>*Supra*

<sup>4</sup>*Supra*

<sup>5</sup>[1990] 2 SLR 191

### 1. Improper reliance on refusal of site inspection

- It was contended that the Learned Magistrate placed undue emphasis on the Appellant's refusal to consent to a site inspection and wrongly drew an adverse inference against him.
- Reliance was placed on *Hewagarusinge Sugathadasa and two others v. Wijayamunige Anulawathi and another*<sup>6</sup> and where it was observed that the refusal of site inspection alone cannot attract adverse inference.

### 2. Failure to evaluate affidavits and deeds

- The Appellant argued that neither the Magistrate nor the High Court properly considered the affidavits, counter-affidavits, deeds, and complaints filed by him, which demonstrated that:
  - the Respondents' deeds contained no servitude,
  - the disputed roadway was not depicted in his lot,
  - the Respondents had forcibly cleared his barbed wire fence after the Court issued notice without an interim order, and
  - the Respondents had an alternative access road (Olukku Road).

### 3. Error in applying Sections 67 and 69 of the PCP Act

- According to the Appellant, the learned Magistrate has failed to make the determination as to the right of way claimed by the Respondents in terms of Section 67 of the Primary Court Procedure Act (paragraph 5 of the W/S dated 30<sup>th</sup> July 2025)
- The Appellant relied on *David v. Gnanawathie*<sup>7</sup> to argue that failure to properly describe the roadway rendered the Respondents' claim defective.

### 4. Disregard of binding precedent

- The Appellant submitted that the Magistrate failed to apply the ratio of *Ramalingam v. Thangaraja*<sup>8</sup>, and instead relied on *Ananda Sarath Paranagama v. Dhammadinna Paranagama*<sup>9</sup>, which he argued was per incuriam.

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<sup>6</sup>CA (PHC) 45-2011 Decided on 07-06-2018

<sup>7</sup>[2000] 2 SLR 353

<sup>8</sup>[1982] 2 SLR 693

<sup>9</sup>CA (PHC) APN 117/2013 decided on 07.08.2014

## 5. Existence of an alternative road

- It was contended that since the Respondents had an alternative access road, they were not entitled to claim a servitude of necessity, citing *Tressila v. Hathrusinghe*<sup>10</sup>.

## 6. Improper identification of corpus

- The Appellant argued that the Respondents failed to comply with Section 41 CPC, read with Section 78 PCP Act, in giving a proper schedule describing the disputed roadway, which was fatal to their claim.

On these grounds, the Appellant urged that the High Court judgment be set aside and the appeal allowed.

## ANALYSIS AND DETERMINATION OF ISSUES

### Applicability of Section 69 of the PCP Act

The information filed by the Officer-in-Charge of Tangalle Police Station, as well as the affidavits of the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Party Respondents, clearly established that the dispute concerned a **right of way** in the nature of a servitude. The question was not *who was in possession of the land*, but whether the Respondents were entitled to exercise the right of access over the Appellant's land.

Section 75 of the PCP Act defines a "dispute affecting land" to include disputes "as to any right in the nature of a servitude affecting the land". It follows that the Magistrate was correct in applying Section 69. The High Court was equally correct in affirming that determination.

### Alleged Adverse Inference on Refusal of Site Inspection

The Appellant argued that the Magistrate improperly drew an adverse inference under Section 114(f) of the Evidence Ordinance owing to his refusal of the site inspection.

It is to be admitted that the learned Magistrate has indeed made a speculative remark regarding the motive of the Appellant in objecting to a step which would help to bring better clarity to the issue. In *Hewagarusinge Sugathadasa and two others v. Wijayamunige*

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<sup>10</sup> (2024/2025 BALR 490)



*Anulawathi and another*,<sup>11</sup> it was emphasised that refusal of site inspection cannot, in isolation, give rise to adverse inference. However, His Lordship Justice Janak De Silva has also stated that “The Appellants submit that the Respondents objected to a site inspection although the Appellants were willing, which shows bad faith on the part of the Respondents. There may be some merit in this submission if taken in isolation. However, section 72 of the Act directs the Judge to make a determination and order after examination and consideration of (a) the information filed and the affidavits and documents furnished (b) such other evidence on any matter arising on the affidavits or documents furnished as the court may permit to be led on that matter and (c) such oral or written submission as may be permitted by the Judge of the Primary Court in his discretion.”

The High Court Judge had carefully analysed this point and held that the Magistrate had not relied solely on the adverse inference, but considered the totality of the affidavit and documentary evidence. Further, in the present case, the Magistrate expressly stated that his order was not based solely on the refusal of inspection. Thus, this ground is devoid of merit.

### **Failure to Consider Affidavits and Deeds**

The Appellant had further contended that the High Court failed to consider affidavits, deeds, and police notes tendered by him.

It is well established that proceedings under Part VII of the PCP Act are **summary in nature**. Section 67 expressly requires the conclusion of inquiry within three months, based on affidavits, documents, and limited oral submissions. As observed in *Kanagasabai v. Mylvaganam*<sup>12</sup>, the Magistrate is not called upon to conduct a full civil trial, but to make a provisional determination to prevent breach of the peace. In *Punchi Nona V Padumasena*<sup>13</sup> it is held that the jurisdiction under Section 66 of the Primary Courts’ Procedure Act is a special, quasi-criminal jurisdiction designed solely to prevent breaches of the peace in land disputes. It does not empower the Primary Court to decide questions of title or ownership, which fall within the domain of the civil courts. The judge’s duty is limited to making provisional and preventive orders until the civil courts adjudicate the substantive rights of the parties.

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<sup>11</sup>CA(PHC) 45/2011Decided on: 7th June 2018

<sup>12</sup>[1976] 78 NLR 280

<sup>13</sup>[1994] 2 Sri.L R 117.

## Disregard of Binding Precedent

It was argued that the Magistrate disregarded *Ramalingam v. Thangarajah*<sup>14</sup>, which was a Supreme Court case and decided to follow *Ananda Sarath Paranagama v. Dhammadinna Paranagama*<sup>15</sup>, which was a Court of Appeal case (paragraph 15 (i) of the petition). This is an absurd argument, as *Ramalingam v. Thangarajah*<sup>16</sup> dealt with possession disputes, and it is *Ananda Sarath Paranagama v. Dhammadinna Paranagama*<sup>17</sup> which has dealt with a right of way, and as such, the learned Magistrate has followed the correct authority.

The ratio of *Ramalingam v. Thangarajah*<sup>18</sup> was that the Judge must decide who was in possession (or deemed to be) at the date of filing information, irrespective of ownership, with time-limits being directory. The ratio of *Ananda Sarath Paranagama v. Dhammadhinna*<sup>19</sup> was that the Judge must determine entitlement to the right “for the time being,” not by applying strict civil standards of proof (e.g., prescriptive servitude), but by recognising existing enjoyment of the right to prevent breaches of the peace.

The High Court rightly observed that *Ramalingam* concerned time limits under Section 68, whereas the present matter was under Section 69. *Ananda Sarath Paranagama* clarified the scope of revision and the Magistrate’s limited duty in the PCP Act inquiries. The reliance on that case was not per incuriam, but correct, as the dispute was in the nature of a servitude, not possession.

## Existence of Alternative Roadway

The Appellant asserted that the Respondents had an alternative road (Olukku Road) and hence were disentitled to claim a servitude of necessity, citing *Tressila v. Hathrusinghe*.

In *Warnakulasuriya Gertrute Tressila and another v. Ruwani Dilhara Rukmali Hathrusinghe*,<sup>20</sup> the Plaintiff sought a declaration that the Defendants were not entitled to a right of way across the Plaintiff’s land, under *actio negatoria*, a Roman–Dutch law principle recognised in Sri Lankan jurisprudence as the legal remedy available to an owner

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<sup>14</sup>[1982] 2 SLR 693

<sup>15</sup>CA (PHC) APN 117/2013 decided on 07.08.2014

<sup>16</sup>*Supra*

<sup>17</sup>*Supra*

<sup>18</sup>*Supra*

<sup>19</sup>*Supra*

<sup>20</sup>SC Appeal No. 221/2016 Decided on: 22.08.2024

of land to declare that his or her property is free from a servitude wrongfully claimed by another.

This argument again strays into the domain of substantive civil rights. Section 74 of the PCP Act explicitly provides that orders made thereunder do not prejudice the parties' rights to seek relief in a civil court. The Magistrate's role is preventive and provisional, not determinative of title or permanent servitude. Whether an alternative road exists, and whether the Respondents are thereby disentitled from claiming a servitude of necessity, are questions to be tried in a District Court action and not within the narrow compass of the PCP Act proceedings.

In *R. Malkanthi Silva v. L.G.R.N. Perera (deceased) and Abeykoon Don Sunil Silva and others*,<sup>21</sup> the Appellant repeatedly contended that the Respondent possessed two other roadways, and therefore had no necessity to use Lot 30. In response, the Respondent maintained that her claim to Lot 30 was not advanced by way of necessity, and hence the existence of alternate access routes was immaterial to her entitlement. The Supreme Court, in its final determination, upheld the orders of the Primary Court and the Court of Appeal's recognizing the Respondent's right of way over Lot 30, and expressly directed the Appellant not to obstruct the Respondent's use of Lot 30 as a roadway leading to her land. Thus, while not expressly articulating a ratio on alternate roads, the Court's reasoning and outcome clearly demonstrate that the presence of alternative access did not negate the Respondent's entitlement, thereby accepting the Respondent's submission on this point.

Hence, the High Court was correct to reject this contention.

### **Improper identification of the corpus**

The Appellant argued that the Respondents failed to comply with Section 41 Civil Procedure Code, which needs to be read with Section 78 of the PCP Act, in giving a proper schedule describing the disputed roadway, which was fatal to their claim.

Section 41 of the Sri Lankan Civil Procedure Code requires that in actions concerning a specific portion of land, the plaint must describe that land as precisely as possible, either by its physical metes and bounds or by referencing a sufficiently clear sketch, map, or plan. This requirement ensures that the boundaries and extent of the property are

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<sup>21</sup>SCAppeal 181/2010, Decided on: 23.07.2024

accurately defined, which is crucial for the court to properly execute a decree and avoid ambiguity in the judgment.

In a civil action in the District Court seeking recognition of a *real right* (a servitude) over another's land, which would result in the creation of an affirmation of a permanent right attached to the land, the absence of a precise description would make the decree uncertain and unenforceable in practice, since the Fiscal would have no clear land boundaries to execute against.

A proceeding under Part VII of the PCP Act regarding a dispute concerning a right of way in the nature of a servitude under Section 69 of the PCP Act is for an order of temporary character to maintain peace and regulate possession or use temporarily until rights are determined by a competent civil court. As such, since an order does not determine substantive rights, compliance with Section 41 of the CPC is unnecessary so long as the disputed right in the nature of a servitude can be identifiable physically on the ground by any means.

### Existence of Exceptional Circumstances for Revision

It is by now settled law that the revisionary jurisdiction of the Superior Courts is extraordinary, discretionary, and not to be invoked as a matter of course. As held in *Ramalingam v. Thangarajah*<sup>22</sup>, procedural lapses such as non-compliance with time-limits under Sections 66 and 67 of the Primary Courts' Procedure Act are mere irregularities, not illegalities, and do not divest the Court of jurisdiction unless prejudice or injustice is shown. In *Ratnayake v. Padmini de Silva and another*<sup>23</sup>, the Court of Appeal reaffirmed that non-compliance with every rule of procedure does not destroy jurisdiction; revisionary powers will only be exercised where the defect constitutes an illegality that has occasioned a failure of justice or prejudiced substantial rights. Most recently, in *Ananda Sarath Paranagama v. Dhammadhinna Sarath Paranagama and others*,<sup>24</sup> the Court emphasised that a revision application is confined to correcting illegalities and patent irregularities of such magnitude as to warrant intervention, and that the remedy cannot be used as a substitute for appeal or as a routine second look at a concluded judgment. Thus, the principle consistently affirmed is that revision lies only where an illegality or fundamental irregularity with jurisdictional consequence is demonstrated,

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<sup>22</sup> [1982] 2 Sri LR 693

<sup>23</sup> [1990] 2 Sri LR 191

<sup>24</sup> CA (PHC) APN 117/2013 Decided on 07.08.2014

causing prejudice or a miscarriage of justice, and its exercise lies within the discretion of the Court.

The Appellant has failed to show that the Magistrate acted without jurisdiction, failed to exercise jurisdiction, or acted with material irregularity. His complaints are directed to factual evaluation, not to jurisdictional error or illegality.

Accordingly, I agree with the learned High Court Judge's conclusion that no exceptional circumstances existed to warrant interference with the order of the learned Magistrate.

## **Conclusion**

Upon a careful and anxious consideration of the submissions made by the learned Counsel for the Appellant, the observations of the Respondents, the documentary material placed before the Court, and the judgment of the Learned High Court Judge dated 02.01.2019, this Court is satisfied that the High Court committed no error in law or fact in dismissing the revision application.

For the aforesaid reasons, I am not inclined to interfere with the decisions of the learned Judge of the High Court. Accordingly, this appeal is dismissed without cost.

**Judge of the Court of Appeal**

**Sarath Dissanayaka, J.**

I agree

**Judge of the Court of Appeal**