

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

An Appeal from an Order made by the High Court of the North Western Province in Kurunegala in the exercise of its Revisionary jurisdiction under Article 154 P of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA (PHC) 19/2021

Provincial High Court (Kurunegala)
Case No. HCR 11/2019

Magistrate's Court (Kurunegala) Case
No. 30525/18

Officer-in-Charge,
Police Station,
Polgahawela.

Informant Complainant

1. Athugal Pedilage Nalaka Prasanna
Hemachandra,

2. Athugal Pedilage Durayalage
Hemachandra,

Both of;
No.208/15, Jayawadana Mawatha,
Polgahawela.

1st Party Respondent

Vs.

Mohommadu Yadu Begam,
No. 40, Oruliyadda,
Polgahawela.

2nd Party Respondent

AND BETWEEN

Mohommadu Yadu Begam,
No. 40, Oruliyadda,
Polgahawela.

2nd Party Respondent-Petitioner

Vs.

1. Athugal Pedilage Nalaka Prasanna
Hemachandra,

2. Athugal Pedilage Durayalage
Hemachandra,
Both of;
No.208/15, Jayawadana Mawatha,
Polgahawela.

1st Party Respondents-Respondents

Officer-in-Charge,
Police Station,
Polgahawela.

Informant Complainant-Respondent

AND NOW BETWEEN

Mohommadu Yadu Begam,
No. 40, Oruliyadda,
Polgahawela.

2nd Party Respondent-Petitioner-Appellant

Vs.

1. Athugal Pedilage Nalaka Prasanna
Hemachandra,
2. Athugal Pedilage Durayalage
Hemachandra,
Both of;
No.208/15, Jayawadana Mawatha,
Polgahawela.

1st Party Respondents-Respondents-Respondents

Officer-in-Charge,
Police Station,
Polgahawela.

Informant Complainant-Respondent-Respondent

Before: Damith Thotawatte, J.
K.M.S. Dissanayake, J.

Counsels: Sapumal Bandara with Gangulali de Silva Dayarathna instructed by Niroshan Gunathilake for the 2nd Party Respondent–Petitioner–Appellant.

Nisala Seniya Fernando with Maneesha Perera for the 1st Party Respondents–Respondents–Respondents.

Argued: 16.10.2025

Written submissions tendered on: 03.09.2025 By 2nd Party Respondent–Petitioner–Appellant.
08.09.2025 By 1st Party Respondent–Respondent – Respondent.

Judgement Delivered: 23.01.2026

Thotawatte, J.

Introduction

This appeal is directed against the order dated 23 March 2021, delivered in favour of the 1st Party Respondents–Respondents–Respondents (hereinafter sometimes referred to as the “Respondents”), by the learned High Court Judge of the Provincial High Court of the North-Western Province holden at Kurunegala, exercising revisionary powers under Article 154P(3)(b) of the Constitution, whereby the High Court affirmed the order of the learned Magistrate of Polgahawela, acting as the Primary Court Judge, delivered on 15 May 2019, under the provisions of Part VII and in particular Section 69 of the Primary Courts’ Procedure Act, No. 44 of 1979 (hereinafter referred to as the “PCP Act”).

Litigation History

The said Primary Court order arose from proceedings instituted pursuant to information filed under Section 66(1)(a) of the PCP Act by the Officer-in-Charge of the Polgahawela Police Station, reporting a dispute affecting land and an imminent or threatened breach of the peace arising from an alleged obstruction to a right of way (a right in the nature of a servitude) claimed by the Respondents.

Upon inquiry, the learned Magistrate, acting in terms of Section 69 of the PCP Act, determined that, for the purpose of preventing a breach of the peace, the Respondents were entitled to exercise a right of access across the disputed pathway traversing the land presently occupied by the 2nd Party Respondent—Petitioner—Appellant (hereinafter sometimes referred to as the “Appellant”), and made consequential directions restraining interference therewith, without prejudice to the institution of appropriate civil proceedings.

Being aggrieved by the said determination of the Primary Court, the Appellant invoked the revisionary jurisdiction of the Provincial High Court of the North-Western Province, which, by its order dated 23 March 2021, declined to interfere with the findings and directions of the Primary Court, holding, *inter alia*, that the Appellant has an alternative remedy available to seek final adjudication of their rights before a competent civil court and that no exceptional circumstances warranting revision had been established by the Appellant.

Being dissatisfied with the judgement of the Judge of the High Court, the Appellant has preferred this appeal to this Court against the said determination of the Provincial High Court under Article 154P(6) of the Constitution, read with the provisions of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, seeking the intervention of this Court to set aside the order of the Provincial High Court and to grant such further and other relief as Court may consider appropriate.

Background to the Incident and Nature of the Dispute

The parties are neighbouring landowners. The dispute between them centres on a relatively narrow access route that the Respondents claim exists over the land presently occupied by the Appellant. The 1st Party Respondents assert that they have, for a considerable period extending over several decades, used the disputed pathway as their sole means of ingress and egress to their land. It is their position that such use has been uninterrupted and that no alternative access exists.

The Appellant, on the other hand, maintains that she and her children acquired title to the land in question by deed in or about March 2018; that no roadway or right of way was disclosed in the relevant title documents or survey plan at the time of purchase, and that no recognised access route existed across the land. The Appellant further asserts that the Respondents possess an alternative means of access and that the alleged pathway has been asserted only subsequent to the construction of boundary structures upon the land.

It is common ground that tensions arose between the parties following alleged acts of obstructing access, which culminated in complaints to the Police and local authorities. It was in this context that the Officer-in-Charge of the Polgahawela Police Station submitted information to the Primary Court, alleging the likelihood of a breach of the peace arising from the competing claims to the use of the disputed access.

Section 69 of the Primary Courts' Procedure Act

Proceedings under Section 69 of the PCP Act are strictly temporary and preventive, confining the Primary Court to a *prima facie* determination of entitlement to a right in land other than possession, solely to avert a breach of the peace, without adjudicating servitude, prescription, or proprietary rights, which remain for final determination by the competent civil courts.

Where an order of a Primary Court Judge made under Part VII of the PCP Act is challenged by way of revision, the Provincial High Court is confined to examining the legality, propriety, and regularity of such order and is precluded from correcting alleged errors of fact or re-appreciating evidence; and, upon a further appeal, the Court of Appeal is likewise restricted to reviewing whether the High Court has properly exercised its revisionary jurisdiction, and must not, under the guise of appellate review, rehear the matter or reassess the factual findings, which lie exclusively within the domain of the Primary Court¹.

The reasons for the dismissal of the revision by the Judge of the High Court

The learned High Court Judge declined to exercise revisionary jurisdiction on the basis that no exceptional circumstances had been established to warrant interference, revision being an extraordinary remedy confined to cases of patent illegality, perversity, or miscarriage of justice. The Court held that the Primary Court had acted within the scope of Section 69 of the PCP Act, had confined itself to a *prima facie* determination for the limited purpose of preventing a breach of the peace, and had considered the material placed before it without procedural irregularity or misdirection. The findings on long user and the absence of a clear alternative access were treated as findings of fact not amenable to revision, particularly in view of the Appellant's adequate alternative remedy by way of a civil action.

¹ *Jayasekage Bandulasena et al. vs Galla Kankanamge Chaminda Kushantha et al* CA (PHC) 147/2009 CAM 27.09.2017, *Wijamunige Charlis Godalhena (Deceased) at el. v. Weerappulige Ashoka Weerasinghe* CA (PHC) NO. 138/2016 CAM 08.08.2023, *Ranawana Hewa Vitharanalage Anoma Geethanjali Samarasena v. Officer in Charge, Police Station, Kandy* CA (PHC) 01/2020 CAM 13.10.2022, *R.D. Somadasa and another v. Additional Commotional of Agrarian Service and another* CA PHC 35/2016, CAM 04.04.2022, *Muthusami Loganathan v. Walpale Gedara Malani Manjalika and another* CA (PHC) 203/2019 CAM 04.04.2023

Absence of exceptional circumstances

It is the contention of the Appellant that the learned High Court Judge erred in law in holding that no exceptional circumstances were disclosed warranting the exercise of revisionary jurisdiction, notwithstanding alleged errors in the evaluation of evidence by the Primary Court.

The Appellant contended that the learned Primary Court Judge erred in the evaluation of evidence by placing undue reliance on a letter issued by an Acting Grama Niladhari of a different Grama Niladhari Division, which was said to be based on hearsay and not on personal knowledge. It was further alleged that the Primary Court failed to give due consideration to the Appellant's title deed and Land Registry folio extracts, which were relied upon to show the absence of any demarcated roadway or servitude right on the land. The Appellant also complained that claims of long user exceeding thirty years were accepted without cogent corroboration, notwithstanding the fact that the Appellant had acquired the land only in March 2018 and that the alleged obstruction arose thereafter. In addition, it was contended that the Primary Court misapplied evidentiary principles by relying on material said to be irrelevant or insufficiently probative even for a *prima facie* determination, failed to appreciate that the Respondents had not established *prima facie* entitlement to a right of access by prescription, necessity, or otherwise, and inadequately considered evidence relating to the existence of an alternative access.

The learned High Court Judge held that the Appellant's complaints amounted to no more than a challenge to the weight and appreciation of evidence. No patent illegality, jurisdictional error, or fundamental procedural irregularity was disclosed. The Primary Court was found to have considered the totality of the material placed before it, including affidavits, police observations, and documentary evidence, and not to have relied on any single item in isolation. Issues relating to hearsay, the weight of the evidence, claims of long user, and the existence of alternative access were treated as purely factual matters, to be assessed by the Primary Court and not revisited in revision. In the absence of exceptional circumstances, and given the availability of a civil remedy, the High Court concluded that revisionary interference was not warranted.

In matters arising under Section 66 of the PCP Act, the consistent position of the Court of Appeal is that, in view of the preventive and interim character of Primary Court proceedings and the statutory bar on appeals, revisionary jurisdiction may be invoked only upon the establishment of exceptional circumstances, such as patent illegality, jurisdictional error, or a manifest miscarriage of justice. Mere dissatisfaction with factual findings, the evaluation of evidence, or the correctness of the Primary Court's

conclusions does not suffice, particularly where the parties retain an adequate alternative remedy before the civil courts for the final adjudication of rights.

For the foregoing reasons, I find no error of law, illegality, or material irregularity in the order made by the learned Primary Court Judge under Part VII of the PCP Act, nor any failure by the learned High Court Judge in the proper exercise of revisionary jurisdiction. The Appellant's complaints relate only to factual findings and the evaluation of evidence made by the Primary Court for the limited purpose of section 69 of the PCP Act, and do not disclose any exceptional circumstance warranting revisionary interference. Accordingly, the orders of the Provincial High Court dated 23 March 2021 and the learned Magistrate dated 15 May 2019 are affirmed.

The appeal is dismissed subject to cost.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal