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

In the matter of an application for Special leave to Appeal, under and in terms of Article 128 (2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC/Appeal No. 0027/2023
SC Case No. SC/SPL LA /293/2021
CA Appeal: 59/16 (PHC)
HC/Kurunegala No. HRC/52/2013
M.C. Kurunegala Case No. 6987/L/2013

Officer in Charge,
Police Station, Polgahawela.

COMPLAINANT

vs

Rankoth Dewayalage Aananda,
Hodella, Metikumbura,
Polgahawela.

01st PARTY

1. Madurupitiya Naidelage Kirthisena

2. Madurupitiya Naidelage Punchi Menike

3. Ekanayake Mudiyanselage Anura Ekanayaka.

4. Singappulli Mudiyanselage Pemawathi.

5. Perumal Bada Pedige Silawathee.

6. Ekanayake Mudiyanselage Kalasinghe Bandara.

7. Hitihamilage Sunanda Thilakarathne Bandara.

8. Ekanayake Mudiyanselage Lesli Kumara.

9. Ekanayake Mudiyanselage Podiralahami.

10. Hitihamilage Nimal Chandrasiri Dissanayake.

11. Samarasinge Arachchilage Tikiri Menike.

12. Marasinghe Arachchilage Rohini Mallika.

13. Thennakoon Mudiyanselage Nimal Premathilaka.

INTERVENIENT PETITIONERS OF THE 01st PARTY

1. Pallemulla Ralalage Malinda Nishan Pallemulla,
   Hodella. Metikumbura.
   Polgahawela.

02nd PARTY

2. P. M. R. Darmadasa, Hodella,
   Metikumnbura, Polgahawela

INTERVENIENT RESPONDENT OF THE 02nd PARTY

AND

1. Rankoth Dewayalage Aananda,
   Hodella, Metikumbura.

2. Madurupitiya Naidelage Keerthisena
   Kalawana, Metikumbura.

3. Madurupitiya Naidelage Punchi Menike
   Muruthagahamulla Watta, Hodella,
   Matikumbura.

4. Ekanayake Mudiyanselage Anura Ekanayaka,
   Kalawana, Matikumbura.

5. Singappulli Mudiyanselage Pemawathi, Hodella,
   Matikumbura.

6. Perumal Bada Pedige Silawathee
   Kalawana, Matikumbura.

7. Ekanayake Mudiyanselage Kalasinghe Bandara,
   Kalawana, Matikumbura.

8. Hitihamilage Sunanda Thilakarathne Bandara,
   Kalawana, Matikumbura.

9. Ekanayake Mudiyanselage Lesli Kumara,
   Kalawana, Matikumbura.

10. Hitihamilage Nimal Chandrasiri Dissanayake,

Udawaththa,
Matikumbura.

11. Thennakoon Mudiyanselage Nimal Premathilaka,
Ibulgoda,
Matikumbura.

12. Marasinghe Arachchilage Rohini Mallika
Muruthagahamulawaththa,Hodella,
Matikumbura.

<u>01st PARTY PETITIONERS</u>

vs

1. Pallemulla Ralalage Malinda Nishan Pallemulla,
Hodella. Metikumbura.
Polgahawela.

2. P. M. R. Darmadasa, Hodella,
Metikumnbura, Polgahawela.

<u>02nd PARTY RESPONDENTS</u>

AND BETWEEN

1. Pallemulla Ralalage Malinda Nishan Pallemulla,
Hodella. Metikumbura.
Polgahawela.

2. P. M. R. Darmadasa, Hodella,
Metikumnbura, Polgahawela.

02nd PARTY RESPONDENTS - APPELLANTS

vs

1. Rankoth Dewayalage Aananda,
   Hodella, Metikumbura.

2. Madurupitiya Naidelage Keerthisena
   Kalawana, Metikumbura.

3. Madurupitiya Naidelage Punchi Menike
   Muruthagahamulla Watta, Hodella,
   Matikumbura.

4. Ekanayake Mudiyanselage Anura Ekanayaka,
   Kalawana, Matikumbura.

5. Singappulli Mudiyanselage Pemawathi, Hodella,
   Matikumbura.

6. Perumal Bada Pedige Silawathee
   Kalawana, Matikumbura.

7. Ekanayake Mudiyanselage Kalasinghe Bandara,
   Kalawana, Matikumbura.

8. Hitihamilage Sunanda Thilakarathne Bandara,
   Kalawana, Matikumbura.

9. Ekanayake Mudiyanselage Lesli Kumara,

Kalawana, Matikumbura.

10. Hitihamilage Nimal Chandrasiri Dissanayake,
    Udawaththa,
    Matikumbura.

11. Thennakoon Mudiyanselage Nimal Premathilaka,
    Ibulgoda,
    Matikumbura.

12. Marasinghe Arachchilage Rohini Mallika
    Muruthagahamulawaththa,Hodella,
    Matikumbura.

01st PARTY PETITIONERS – RESPONDENTS

AND NOW BETWEEN

1. Pallemulla Ralalage Malinda Nishan Pallemulla,
   Hodella. Metikumbura.
   Polgahawela.

2. P. M. R. Darmadasa, Hodella,
   Metikumbura, Polgahawela.

02nd PARTY RESPONDENTS- APPELLANTS-APPELLANTS

vs

1. Rankoth Dewayalage Aananda,

Hodella, Metikumbura.

2. Madurupitiya Naidelage Keerthisena
   Kalawana, Metikumbura.

3. Madurupitiya Naidelage Punchi Menike
   Muruthagahamulla Watta, Hodella,
   Matikumbura.

4. Ekanayake Mudiyanselage Anura Ekanayaka,
   Kalawana, Matikumbura.

5. Singappulli Mudiyanselage Pemawathi, Hodella,
   Matikumbura.

6. Perumal Bada Pedige Silawathee
   Kalawana, Matikumbura.

7. Ekanayake Mudiyanselage Kalasinghe Bandara,
   Kalawana, Matikumbura.

8. Hitihamilage Sunanda Thilakarathne Bandara,
   Kalawana, Matikumbura.

9. Ekanayake Mudiyanselage Lesli Kumara,
   Kalawana, Matikumbura.

10. Hitihamilage Nimal Chandrasiri Dissanayake,
    Udawaththa,
    Matikumbura.

11. Thennakoon Mudiyanselage Nimal Premathilaka,
Ibulgoda,
Matikumbura.

12. Marasinghe Arachchilage Rohini Mallika
Muruthagahamulawaththa,Hodella,
Matikumbura.

01st PARTY PETITIONERS – RESPONDENTS-RESPONDENTS

BEFORE : S. Thurairaja, P.C, J.
Kumudini Wickremasinghe, J.&
M. Sampath K. B. Wijeratne J.

COUNSEL : Erusha Kalidasa with Ms. Wishmi Praveena Malaveera
Instructed by Anusha Wickremasinghe for the
2nd Party Respondents-Appellants- Appellants.

E. Thambiah for the 1st Party Petitioners-Respondents – Respondents.

ARGUED ON : 07.07.2025

DECIDED ON : 12.11.2025

M. Sampath K. B. Wijeratne J.

Introduction

The 2nd Party Respondent-Appellant-Petitioners-Appellants (hereinafter referred to as the '2nd Party Respondent-Appellants') filed the present application seeking to set aside the Judgment of the Court of Appeal dated November 16, 2021, and the Judgment of the

High Court of Kurunegala dated June 27, 2016, which were delivered in favour of the 1st Party Petitioner-Respondent-Respondent-Respondents (hereinafter referred to as the '1st Party Petitioner-Respondents').

The dispute in the present case concerns an alleged right of way, in the nature of a servitude, purportedly running through the land of the 2nd Party Respondent-Appellants, which the 1st Party Petitioner-Respondents claim to have an entitlement.

Having considered the submissions, this Court granted special leave to appeal on the following questions of law:

"

1. *Did the Court of Appeal err in law by holding that Court shall determine 'actual use' and not 'entitled in use' [sic] in terms of Section 69 of the Primary Court Procedure Act?*
2. *Has the 1st Party, Petitioner-Respondent-Respondent established their entitlement to use the disputed road way?"*

Factual Background

According to the 1st Party Petitioner-Respondents, there existed a right of way to their land from the Colombo-Kurunegala Main Road, which was also used by several others in the area. This roadway ran over the land belonging to the 2nd Party Respondent-Appellants and was physically blocked by them. The 1st Party Petitioner-Respondents lodged a complaint with the Police regarding this dispute. In his statement to the Police dated August 17, 2012, the 2nd Party Respondent-Appellants, while admitting that the ridge adjoining his vegetable plot had been used by the public for passage, stated that he had temporarily closed the said path and affixed a notice informing the public to find an alternative route. Thereafter, with the intervention of the Police, the obstruction was removed and the path was reopened in August 2012. However, on or around January 13, 2013, the 2nd Party Respondent-Appellants narrowed the six feet right of way that then

existed to approximately 1.5 feet, merging the remainder with the adjoining paddy field[1].

Here, it is noteworthy that the 1st Party Petitioner-Respondents have failed to clearly identify the width of the footpath they claim to have acquired, as there are several inconsistencies regarding the width of the purported right of way in the evidence submitted by the 1st Party Petitioner-Respondents, a fact also recognized by the learned High Court Judge.

The dispute continued, and the Officer-in-Charge of the Polgahawela Police Station filed information before the Magistrate's Court of Polgahawela under Section 66 of the Primary Courts' Procedure Act, No. 44 of 1979, as amended, alleging that a breach of the peace was threatened or likely to occur between the 1st Party Petitioner-Respondents and the 2nd Party Respondent-Appellants, pursuant to the aforesaid complaint and the subsequent statements made by the parties to the Police.

The learned Magistrate of Polgahawela, by his order dated April 30, 2013, held that the 1st Party Petitioner-Respondents were not entitled to a right of way through or over the land of the 2nd Party Respondent-Appellants, as they had failed to establish any entitlement to the said right of way as required by Section 69 of the Primary Courts' Procedure Act.

The 1st Party Petitioner-Respondents thereafter filed a revision application before the High Court of Kurunegala, seeking to set aside the order of the learned Magistrate and to obtain an order granting a five feet wide roadway. The learned High Court Judges allowed the said revision application, granting the reliefs prayed for by the 1st Party Petitioner-Respondents.

Being aggrieved by the order of the learned High Court Judge, the 2nd Party Respondent-Appellants appealed to the Court of Appeal, where the learned Judges of the Court of Appeal affirmed the order of the learned High Court Judge and dismissed the appeal with costs.

---

[1] *Vide* para 14 of the Counter affidavit of the 1st party Respondent on pg. 246 of the appeal brief.

Analysis

Since the dispute pertains to a right of way, as acknowledged by both parties, it falls within the purview of Section 69 of the Primary Courts' Procedure Act. When an order is made under Section 69, it must be made upon a consideration of the merits of the rival claims. The procedure applicable to an inquiry under Part VII of the Primary Courts' Procedure Act, in such circumstances, is *sui generis*.

Thus, in the Court of Appeal case of ***Nanayakkara Keppetiduwage Maya Priyanthi Konegedarawatta vs Ranjith Nanayakkara and Others***[2], Samayawardhena, J., observed:

> *"However, I must emphatically emphasize that this shall not be taken to mean that when the dispute is regarding a right other than possession, the Magistrate shall convert the inquiry into a full-scale District Court civil trial. The orders which are made both under section 68 and 69 are provisional until the matter is determined by a competent civil Court."*

Furthermore, Samayawardhena, J., quoting Soza, J., in the Supreme Court case of ***Loku Banda vs Ukku Banda***[3], which was decided under the Administration of Justice Law, No. 44 of 1973 (later repealed by the Code of Criminal Procedure Act, No. 15 of 1979, and replaced by Sections 66–76 of the Primary Courts' Procedure Act, No. 44 of 1979, with similar but not identical provisions found in Sections 62–66), explained the law in this regard in the following terms:

---

[2] CA (PHC) 34/2007, CAM dated 30.07.2019.
[3] [1982] 2 Sri LR 704 at 707-708.

"Where the dispute relates to any right to any land or part of a land other than the right to possession, the Magistrate will declare that the person named in his order is entitled to the disputed right until he is deprived of it by virtue of the judgment of a competent court and prohibit all disturbance or interference with the exercise of such right other than under the authority of such judgment. The proviso to subsection 7 of section 63 does not apply here. Hence by implication the Magistrate would have to consider the merits of the rival claims in deciding who is entitled to the disputed right. This he will do on the basis of the material before him."

Accordingly, the learned Magistrate, having considered the Police Report, observations notes, affidavits, counter-affidavits, written submissions, and other documents furnished before him, concluded that the 1st Party Petitioner-Respondents were not entitled to the right of way in dispute, as they had failed to prove the use of the road for a period exceeding ten years. In reaching this determination, the learned Magistrate placed significant reliance on the decision of the Court of Appeal in ***Kandiah Sellappah vs Sinnakkuddy Masilamany***[4]**.**

However, the learned High Court Judge, in the revision application filed before the High Court of Kurunegala challenging the order of the learned Magistrate, primarily relied on the subsequent Court of Appeal case of ***Ananda Sarath Paranagama vs Dhammadinna Sarath Paranagama and Another***[5]. The learned Judge held that the same standard of proof required for prescriptive title in a civil case is not necessary to establish a right of way under Section 69(2) of the Primary Courts' Procedure Act. It is sufficient, for the purpose of issuing such a declaration, that there is evidence of '***actual use'*** to substantiate one's entitlement. This reasoning was subsequently accepted by the Court of Appeal.

[4] CA Application 425/80, CAM dated 18.03.1981.
[5] C.A. (PHC)APN 117/2013 CAM dated 12.12.2013.

In this context, the cardinal issue before this Court is to determine whether it is the '***actual use'*** or the '***entitlement to use'*** that is envisaged in Section 69 of the Primary Courts' Procedure Act for the purpose of declaring a right '***in the nature of a servitude***' and whether the 1st Party Petitioner-Respondents have, in fact, established such entitlement.

Question of Law 1

I shall first examine the evolution of the procedural framework governing inquiries under Part VII of the Primary Courts' Procedure Act, with particular emphasis on Sections 68 and 69.

The Administration of Justice Law, No. 44 of 1973, introduced a special procedure for Magistrates' Courts to deal with disputes affecting land where a breach of the peace was threatened or likely, under Sections 62 to 65.

Section 63 of the Administration of Justice Law reads as follows:

Section 63-

> *"(1) Where at the inquiry it appears that the dispute relates to the right to the possession of any land or any part of a land and such dispute is likely to lead to a breach of the peace, it shall be the duty of the Magistrate to determine as to who was in possession of the land or the part in dispute on the date of issue of the notice under section 62. Where he makes a determination, he may, unless the provisions of subsection (3) apply, make an order under subsection (2).*
>
> (2) (…)
>
> *(3) Where at an inquiry into* ***a dispute relating to the right to the possession of any land or any part of a land the Magistrate is satisfied that any person who had been in possession of such land or part has been forcibly dispossessed within a period of two months*** *immediately*

before the date on which the notice was issued under section 62 he may make a determination to that effect and make an order under subsection (4).

(4) (…)

(5) Where ***the dispute relates to any right to any land or any part of a land other than the right to possession of such land or part, the Magistrate shall determine as to who is entitled to the right which is the subject of the dispute and make an order under subsection (6).***

(6) An order under this subsection may declare that any person named therein shall be entitled to any such right in or in respect of the land or in any part of the land as may be specified in the order until such person is deprived of such right by virtue of a judgment of a competent court, and prohibit all disturbance or interference with the exercise of such right by such party other than under the authority of a judgment as aforesaid. Such order may also contain such other directions as the Magistrate may think fit with regard to the exercise of such right or the sale of any crop or produce of the land or part of the land or to the custody or disposal of the proceeds of the sale of such crop or produce." [emphasis added]

These provisions were repealed by the Code of Criminal Procedure Act, No. 15 of 1979, and were subsequently reintroduced through Sections 66 to 76 of the Primary Courts' Procedure Act, No. 44 of 1979. Section 75 provides a broader interpretation of the term 'dispute affecting land' by including, among other matters, those 'in the nature of a servitude,' thereby clarifying the law and going a step further than the Administration of Justice Law, which did not contain such an interpretation.

When an application under Section 66 of the Primary Courts' Procedure Act is filed in relation to any right to land other than the right of possession, a Magistrate may make an order under Section 69.

Section 69 provides as follows:

Section 69- "*(1) Where the* ***dispute relates to any right to any land or any part of a land, other than the right to possession of such land or part thereof,*** *the Judge of the Primary Court shall determine as* ***to who is entitled to the right*** *which is the subject of the dispute and make an order under subsection (2)*

(2) An order under this subsection may declare that any person specified therein shall be entitled to any such right in or respecting the land or in any part of the land as may be specified in the order ***until such person is deprived of such right by virtue of an order or decree of a competent court****, and prohibit all disturbance or interference with the exercise of such right by such party other than under the authority of an order or decree as aforesaid*."

[emphasis added]

Under Section 75 of the Primary Courts' Procedure Act, defines 'dispute affecting lands' to include '*any dispute as to the right to the possession of any land or part of a land and the buildings thereon or the boundaries thereof or as to the right to cultivate any land or part of a land, or as to the right to the crops or produce of any land, or part of a land, or as to* ***any right in the nature of a servitude affecting the land'***

[emphasis added]

With regard to the right of possession, Section 68 of the Primary Courts' Procedure Act stipulates that a person dispossessed within two months prior to the filing of information is entitled to be restored to possession. However, under section 69, when it comes to any right other than the right to possession, there is no such time stipulated. It is also noteworthy that the word *'forcibly dispossessed'* found in section 68 of Primary Courts' Procedure Act cannot be seen in section 69 where legislature's sole focus has been on the term *'entitlement'*. Thus, I must emphasize that what is meant by the legislature in its wisdom when it removed the time limit and the term *'forcibly dispossessed'* from Section 69 is to place a heavier burden on person claiming such entitlement moving beyond a *'mere user'* for the time being. If it is only 'actual use' that is taken into consideration in determining 'entitlement' as argued by 1st Party Petitioner-Respondents,

then even a trespasser who have been using the road without meeting conditions required to acquire any right in the nature of servitude would be able to obtain an order in favour of him. In my view this is precisely what the legislature has intended to avoid in articulating section 69 of the Primary Courts' Procedure Act. Nevertheless, the existence or threat of a breach of the peace remains to be the threshold requirement for the assumption of jurisdiction under Section 66 of the Primary Courts' Procedure Act.

I shall now turn to the position under the Indian counterpart legislation.

Section 69 of the Primary Courts' Procedure Act corresponds to Section 147 of the Indian Code of Criminal Procedure, 1973, and reads as follows:

> Section 147- "*(1)Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged* ***right of user of any land or water*** *within his local jurisdiction, whether such right be claimed as an easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time and to put in written statements of their respective claims.*
>
> *(2) The Magistrate shall then peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 145 shall, so far as may be, apply in the case of such inquiry.*
>
> *(3) If it appears to such Magistrate that such right exists, he may make an order prohibiting any interference with the exercise of such right*

including, in a proper case, an order for the removal of any obstruction in the exercise of any such right." (...) [emphasis added]

However, it must be noted that, under Section 69 of the Primary Courts' Procedure Act, the party asserting such a right must establish that he is "*entitled*" to that right, whereas Section 147 of the Indian Code of Criminal Procedure refers to the *'right of user of any land'*.

Thus, it may be argued that, under our law, a person claiming entitlement to any right in the nature of a servitude affecting land bears a heavier burden than under the Indian counterpart, where the mere existence of such a right is sufficient.

It is noteworthy that, under Indian law, Section 145(1) of the Indian Code of Criminal Procedure, similar to our law, prescribes a period of two months in cases where a party has been forcibly dispossessed of immovable property. Furthermore, with respect to the *'right of use of any land'*," a three-month limitation is provided under the proviso to Section 147(3).

The proviso to Section 147(3) of the Indian Code of Criminal Procedure provides as follows:

"*Provided that no such order shall be made where the right is exercisable at all time of the year, unless such right has been* ***exercised within three months next before the receipt*** *under sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt"* [emphasis added]

However, under our law, as emphasized earlier, where a right other than the right of possession is claimed, there is no stipulated time limit for a person deprived of such

"*entitlement*," unlike the proviso to Section 147(3) of the Indian Code of Criminal Procedure.

In the absence of a temporal yardstick as provided in the Indian Code, it falls to the judiciary to ascertain the true meaning of the phrase *"any right in the nature of servitude"* and the proper interpretation of "*entitlement*" when making an order under Section 69 of the Primary Courts' Procedure Act.

In such an event, it may be assumed that, under the law of Sri Lanka, a party deprived of the enjoyment of *'any right in the nature of servitude'* affecting land must approach the Magistrate's Court within a reasonable time, which would depend on the facts of each case.

In ***Ramalingam vs Thangarajah***[6], Sharvananda, J., expounded the scope of Section 69 of the Primary Courts' Procedure Act in the following manner:

> "*[I]f the dispute is in regard to any right to any land other than right of possession of such land, the question for decision, according to section 69(1), is* ***who is entitled to the right which is subject of dispute****. The word "entitle" here connotes the ownership of the right.* ***The Court has to determine which of the parties has acquired that right, or is entitled for the time being to exercise that right****. In contradistinction to section 68, section 69 requires the Court to determine the question which party is entitled to the disputed right preliminary to making an order under section 69(2)."* [emphasis added]

In order to succeed under Section 69 with respect to a right other than the right of possession, a party must satisfy the Court that he has either acquired that right or is entitled, for the time being, to exercise that right.

---

[6] [1982] 2 Sri.LR. 693.

In ***Ananda Sarath Paranagama vs Dhammadinna Sarath Paranagama*** (*Supra*), commenting on ***Ramalingam vs Thangarajah*** (*Supra*), it was stated that:

> *The phrase 'for the time being' as used in the decision in Ramalingam's case connotes the exercise of right by one party, temporarily or for the moment until such time such person is deprived of his right by virtue of a judgment of a Court of competent jurisdiction.* ***If you describe a party as being entitled to enjoy a right but for the time being, it means that it will be like that for a period of time, but may change in the future****. This is exactly in keeping with legislative wisdom embodied under part VII of the Act."*

Prasantha De Silva, J., in the Court of Appeal case of ***Ranawana Hewa Vitharanalage Anoma Geethanjali Samarasena vs OIC, Police Station of Kandy and Others***[7], referring to the authority of the Court of Appeal case of ***Punchi Nona vs Padumasena and Others***[8], observed that:

> *"[T]he Primary Court exercising special jurisdiction under Section 66 of the Primary Courts' Procedure Act, is not involved in an investigation into the title, right to possession or entitlement, which are functions of a Civil Court. What the Primary Court is required to do is to take a preventive action and make a provisional order pending final adjudication of rights of the parties in a Civil Court."*

In my view, the "*entitlement*" referred to in Section 69, in relation to a right of way, may be *prima facie* in any manner recognised by law.

---

[7] CA (PHC) 01/2020, CAM dated 13.10.2022.
[8] [1994] 2 SLR 117.

I am of the view that a person who, without any legal right, merely uses another person's land for ingress and egress for a limited period, insufficient to establish a right in the nature of a servitude, cannot claim entitlement to an order in his favour under the Primary Courts' Procedure Act. It is not the duty of the Primary Court Judge to grant an order in favour of such a person. A person claiming a right of way in the nature of a servitude over another's land, if seeking an order to use such a road under the Primary Courts' Procedure Act, must *prima facie* establish that he is entitled to such a right.

However, the expression "*in the nature of*" inherently suggests that the right need not be proved as a *servitude* in the manner required in a civil action; nevertheless, the right must retain the essential characteristics of a servitude. It must also be emphasized that a case determined solely on documentary evidence and affidavits cannot be equated with findings reached after a full-scale trial in the District Court.

Samayawardhena, J., in the Court of Appeal case of ***Arappalage Ruwan Saviour Bernard vs Attorney General and Others***,[9] commenting on the required degree of proof for a Magistrate to make an order under Section 69 of the Primary Courts' Procedure Act, made the following observation:

> *"There is a common misbelief that a high degree of proof of all the necessary ingredients to establish such right is necessary even under section 69 of the Primary Courts' Procedure Act. It must be emphasised that a party seeking relief under section 69 need not establish entitlement to the right in the manner required before a District Court. For the purpose of this section, it would be sufficient for such party to satisfy the Magistrate that he "is entitled for the time being to exercise that right".*
>
> *It must be made clear that whether under section 68 or 69, the inquiry before the Magistrate's Court cannot be converted to a full-blown civil*

[9] CA/PHC/177/2015, CAM dated 13.12.2019.

trial. The jurisdiction of the Magistrate cannot exceed the objective of this special piece of legislation, which is to make a provisional order, in terms of law, to prevent a breach of the peace until the substantive rights of the parties are established, as seen from section 73 of the Act, 'in a civil suit'. If the same is expected to be established before the Magistrate's Court in section 66 proceedings, there is no necessity to go before the District Court for the second time. If that is what is expected, it is meaningless to say in section 73 that the order of the Magistrate 'shall not affect or prejudice any right or interest in any land or part of a land which any person may be able to establish in a civil suit'.

In my view, the word 'entitled' appearing in section 69 need not be given undue weight or importance."

I am in agreement with the view expressed by Samayawardhena, J., that the word "*entitled*" appearing in Section 69 need not be given undue weight. Yet, it is a well-established principle of statutory interpretation that the Legislature does not waste words or say anything in vain[10]. Accordingly, I am of the view that the term "entitlement" employed in Section 69 should not be completely overlooked or disregarded.

It is noteworthy that the term "entitled" appears in both Sections 68 and 69. Section 68 focuses on the "*entitlement to possession*" after a determination by the Primary Court regarding who was in actual physical possession of the land on the date the information was filed, or, if forcibly dispossessed, within the two months immediately preceding such dispossession.

However, the term "*entitled*," as it appears in Section 69 of the Primary Courts' Procedure Act, is quite different in context from Section 68, as it focuses on an "*entitlement to a right*," which goes beyond the entitlement to possession referred to in Section 68.

[10] *Stassen Exports Limited vs Brooke Bond (Ceylon) Limited and another*, (1990) 2 Sri. LR 63.

In this context, the Court need not concern itself unnecessarily with the term "*entitled*" in Section 68, taking cognizance of the fact that the Legislature sometimes repeats itself and does not always convey its meaning in a style of literary perfection. Accordingly, it may not always be possible to ascribe a precise meaning to every word used in an Act of Parliament, and in many instances, certain provisions may be included in statutes merely as a precaution[11].

The meaning and weight attached to statutory language in one provision cannot be imported into another provision that deals with an entirely different context. The words in each provision of a statute must be interpreted in the context in which they are used and in light of the purpose underlying the provision.

Accordingly, the identical term "entitled" appearing in Sections 68 and 69 must be interpreted differently.

Having had the opportunity to consider all the aforementioned judicial precedents, I am of the opinion that the law remains uncertain and undefined as to the true connotation of the word 'entitled' envisaged in section 69 of the Primary Courts' Procedure Act. Even our superior courts have expressed different views in interpreting the said term without a clear determination. For example, Sharvananda J. (later CJ) in ***Ramalingam vs Thangarajah*** (supra) and Murdu Fernando J. (later CJ) in ***R. Malkanthi Silva vs L.G.R.N. Perera,***[12] has taken two different approaches as former equated '*entitlement*' with '*ownership*' whereas later equated '*entitlement*' with '*actual use'*. In the instant case also Magistrates' Court and both Appellant Courts have followed two different precedents to come to two different conclusions regarding the parameters of section 69.[13] This unfortunate situation is also evident in series of contemporary Court of Appeal cases, some of which I have analysed above, that have come to conflicting conclusions.

---

[11] See Bindra's Interpretation of Statutes, 8th edition at p.200.
[12] SC/Appeal 181/2010, SCM dated 23.07.2024.
[13]See page 9 of the order of the learned Magistrate dated 30.04.2013, page 15 of the order of the High Court dated 24. 02.2016 and page 13 of the judgment of the Court of Appeal dated 16.11.2021.

In light of circumstances, I am of the view that it is the "entitlement" that must, in fact, be established, rather than the mere existence of "actual use," for the purpose of issuing an order by the Magistrate under Section 69 of the Primary Courts' Procedure Act. Such an entitlement, however, need not be proven to the high degree of proof required in a civil case.

It is my considered view that, at least now, the legislature should, perhaps by introducing a time frame similar to that in Section 68, clarify the scope of Section 69 by amending the Primary Courts' Procedure Act, as disputes under this provision consume substantial judicial time from the Primary Court up to the highest Court in analysing the nature of the dispute and applying the existing law to it.

Thus, I answer the question of Law (1) in affirmative.

Question of Law 2

There is no dispute that this path has been used by several persons, including the 1st Party Petitioner-Respondents. This fact is admitted even by the 2nd Party Respondent-Appellants. In my view, mere use is not decisive in resolving this matter. What is crucial in deciding this case is whether the 1st Party Petitioner-Respondents have, in fact, established their entitlement to use the disputed roadway for the time being.

When it is said 'entitled to possession' in section 68, what it means is not a right created by deeds, grants, etc. but a right to continue with possession, based on **actual possession** of the land two months immediately prior to the filing of the information and if dispossessed within the said two months, to be restored in possession. Similarly in section 69 also, what the legislature intended was the Magistrate to restore to **an existing entitlement** to a person who said to have deprived of such a right, but not to create a new entitlement which is yet to come into existence.

If it is *prima facie* established that the 1st Party Petitioner-Respondents' land is landlocked, then it could be said that they have established their entitlement to the pathway in question as a way of necessity.

However, in this case, since it is clearly established that an alternative route is available, the only question that remains to be answered is whether the 1st Party Petitioner-Respondents have established their entitlement to the roadway in question for the time being, based on long usage, which the Primary Court may consider sufficient to establish an "*entitlement for the time being*" until determined by a competent Court.

On the other hand, **in a civil suit,** the basis on which a party may claim a right of way by long usage is quite different from the basis on which a party may claim a right of way by necessity. When it comes to a right of way by prescription, it must be founded on undisturbed and uninterrupted possession and use, which is adverse to and independent of the rights of the owner of the servient tenement for ten years. In the case of acquiring "*rights in the nature of a servitude*" by reason of long usage, the threshold is certainly lower than that of a real servitude, but the essential characteristics of a servitude must still be retained, as emphasized earlier in this judgment.

It was contended by the 1st Party Petitioner-Respondents that they were actual users of the right of way before being deprived of its use by the 2nd Party Respondent-Appellants. To support their position, they submitted several documents, including affidavits, photographs, Police complaints, statements made to the Police by the parties, as well as reports of observations recorded by the Police during site visits. According to the affidavits, they had used the roadway for over seventy-five years. However, they failed to adduce any independent evidence to corroborate this claim, other than affidavits from interested parties.

The opposite party also submitted affidavits in their favour. It is noteworthy that when an order of the Magistrate relates to the right to possession, it is made without reference to the merits of the disputing parties' claims, but merely reference to the stipulated time frame. However, when it concerns any other right, the order must be made after consideration of the merits of the rival claims. However, in both of these instances, an order is made based on the statements of the parties and such evidence as may be admitted by the Magistrate in his discretion.

In the instant case, the learned Magistrate accepted the version of the 2nd Party Respondent-Appellants over that of the 1st Party Petitioner-Respondents, and I find no reason to interfere with this finding.

Furthermore, the 1st Party Petitioner-Respondents have not produced any evidence to substantiate adverse use. Their evidence does not demonstrate that the use of the alleged roadway has been uninterrupted and undisturbed, as there is evidence showing that when the 1st Party Petitioner-Respondents attempted to widen the roadway well before the current dispute, those efforts were thwarted by the 2nd Party Respondent-Appellants.

Furthermore, the photographic evidence submitted by the 1st Party Petitioner-Respondents, although showing the use of the pathway by people, does not prove that they have used the said road for a period sufficient for the Court to consider it adequate to establish an entitlement in the nature of a servitude. Neither does the affidavit submitted by the technical officer of Polgahawela support this fact. More importantly they have also failed to identify the width of the right of way that they seek to establish their entitlement to.

On the other hand, the inquiry notes of Muthukumarana, a Sub-Inspector of Police, reveal that certain persons had attempted to obtain a roadway over the boundaries of the adjoining paddy land and had even destroyed the nearby bus halt for that purpose. Further, the observations of the Agrarian Development Officer confirm that there was no roadway from Udawatta Kalawana to Hodalla Vihara Junction, and that only a ridge, which was used to access the paddy field, existed. It was further noted that an alternative road was available for residents beyond the paddy fields to reach the main road. The Agrarian Development Officer also confirmed that there was an attempt to acquire a road over the disputed land, which was objected to by the parties named therein. In addition, a letter dated 25th November 2025, sent to the Commissioner of Agrarian Development, states that an alternative road exists for the residents beyond the paddy field and, therefore, there is no necessity to fill the paddy fields to construct a roadway.

There is no evidence that the 2nd Party Respondent-Appellants forcibly evicted anyone or used any illegal means to prevent the use of the alleged pathway. The 2nd Party Respondent-Appellants merely affixed a notice informing people not to use the road on

justifiable grounds, as evident from the statement made to the Police by them. In these circumstances, it may be questioned whether a breach or threatened breach of the peace had actually occurred. This doubt, however, is clarified by the facts that follow.

In ***Ananda Sarath Paranagama vs Dhammadinna Sarath Paranagama and Another*** (Supra), Salam, J., quoting Bosner, J., in ***Perera vs Gunathilake***[14], expounded the rationale behind the conferment of special jurisdiction on the Judge of the Primary Court under Chapter VII of the Act in the following manner:

> *"I feel obliged here to reiterate the concern of Bonser CJ penned over a century and a decade ago (4 NLR 181) which needs to re-echo in the minds of every officer exercising judicial, quasi-judicial and administrative powers in resolving or investigating into a complaint touching upon the breach or apprehension of a breach of the peace emanating from a dispute affecting land. It reads as follows...*
>
> *'**In a Country like this, any attempt of parties to use force in the maintenance of their rights should be promptly discouraged. Slight brawls readily blossom into riots with grievous hurt and murder as the fruits**.*
>
> *It is, therefore, all the more necessary that **Courts should strict in discountenancing all attempts to use force in the assertion of such civil rights.**'*
>
> *BONSER CJ Perera Vs. Gunathilake (1900 – 4 N.L.R 181 at 183)*
>
> *In conclusion, I wish to place it on record that land disputes can cause social disruption and sometimes loss of life…"* [emphasis added]

In my view, the facts and circumstances of this case do not disclose that the 2nd Party Respondent-Appellants have taken the law into their own hands to prevent people from

[14] 4 NLR 181.

using the alleged roadway. Nonetheless, this dispute has caused, or is likely to cause, a breach of the peace, as either of the two parties has demolished the bus halt in the area, and the materials before us suggest that there have been unlawful attempts by the 1st Party Petitioner-Respondents to fill the paddy fields to acquire the purported roadway.

In the Supreme Court case of ***R. Malkanthi Silva vs L.G.R.N. Perera***[15], Murdu N. B. Fernando, P.C., J. (later Chief Justice), observed, referring to a Court of Appeal judgment by S.N. Silva, J. (as he then was), the following:

> "*In an unreported judgement CA 1082/87 C.A.M. 17-06-1988 pertaining to a road way, to which our attention was drawn, S. N. Silva, J., (as he then was) observed as follows;*
>
> *'The learned judge has not referred to any particular provision of the Act in his order. Clearly, the reference to a period of two months arises only where a dispute relates to the possession of land. Where the dispute relates to a right to any land other than the right to possession, the applicable section is 69.*
>
> *In the case of Ramalingam […] it was held that where the dispute relates to a right in any land as described, the court has to determine which of the parties has acquired that right or is entitled for the time being to the exercise of that right.*
>
> *In this case the learned judge has* ***correctly addressed himself to the question whether the respondents are entitled to the road-way****, that is in dispute. He has come to the conclusion that the Respondents have been using this road way that was in existence for a long period of time. The evidence referred to above support this finding of the learned judge.' (emphasis added)*

[15] SC/Appeal 181/2010, SCM dated 23.07.2024.

> *The above observation, in my view, gives credence to the fact, that* ***in a dispute pertaining to a road-way, a trial court could consider 'long use' by a party as being 'entitled to the exercise of such right pertaining to the road-way'. It does not mean that ownership need be established and proved. Only an entitlement for the time being to exercise such right need be established.*** *Nevertheless, prior to issuance of the preventive order, the Magistrate must be satisfied that there is a 'dispute affecting land' between the parties."* [emphasis added]

I am unable to agree with the view that a "mere user" can establish entitlement to a right of way merely by reason of the existence of such a way and by proving enjoyment of the right at the time the dispute arose. Whether "*long use*" is sufficient to establish an "*entitlement*" depends on the facts and circumstances of each case.

Thus, I am of the view that a better approach is reflected in the Court of Appeal case of ***Galison Dodwell Jayasuriya vs Vijayamuni Kaluhami and Others***[16], where Padman Surasena, J. (as he then was), held:

> "*Perusal of the judgment of the learned Magistrate dated 2012-04-20 shows that the conclusions contained in the said judgment are based on some photographs, Police observation notes including a sketch produced by Police, and some writings tendered by persons who claim to have used the impugned roadway. (...)* ***This Court has to observe that both the Courts have failed to appreciate the fact that the existence of a roadway by itself cannot be any license for others to claim an entitlement to use it. Further, even if the Respondents have used it a mere user by itself would not get an entitlement to use it.***
>
> *The Respondents in their affidavit filed at the Primary Court have sworn to the fact that they do not have an alternative road. However, it can*

[16] C A (PHC) / APN 99 / 2015, CAM dated 2017.09.11.

clearly be seen that there exists a regular road for the Respondents to access their houses. This shows that there is a clear falsehood in their affidavits. However, learned Primary Court Judge had failed to appreciate the fact that such falsehood taints the truthfulness of the facts averred in the said affidavits. What appears to this Court is that the Respondents have attempted to claim a roadway, right across the coconut land of the Petitioner to avoid taking somewhat circuitous path along their existing regular access way. This is manifest as at all times it has been the position of the Respondents that the impugned road is a road over the Petitioner's land. (...) The Respondents cannot be permitted to use such a roadway over somebody else's land without proving any lawful entitlement thereto." [emphasis added]

It is a matter of common knowledge that, in villages, the public generally pass over the ridges of paddy fields mostly for convenience rather than out of necessity to reach their destination. However, the mere fact that a person takes a shortcut through another's property, without clear evidence of entitlement, will not give rise to any presumption that, as a matter of right, such a user is entitled, for the time being, to exercise that right. Similarly, an owner of land using the ridges between adjoining fields of his neighbours' to reach the road cannot be presumed to have done so as of right or entitlement.

Moreover, it would not be in the public interest for the Court to recognize the acquisition of a right of way over the boundaries of agricultural fields, as in the case before us, because such recognition could lead to complications in agricultural areas, having a prejudicial effect on the rights of landowners over their own property.

No right in the nature of a servitude can, therefore, be acquired by the use of a ridge as a passage unless there is clear evidence that such use is as a matter of right. In the case before us, although the circumstances suggest that the 1st Party Petitioner-Respondents have been using the alleged road for some time, they have failed to establish that such use entitles them to acquire a right in the nature of a servitude over the purported roadway, either by reason of adverse use or out of necessity. The statements given to the Police by those who claimed to have used the road only indicate that they have been

using it as a shortcut. On the other hand, the notice posted by the 2nd Party Respondent indicates that the users of the alleged roadway are permissive users.

For the foregoing reasons, I am of the opinion that, in the instant case, the 1st Party Petitioner-Respondents have failed to establish that they are entitled to the use of the impugned path as a right in the nature of a servitude, as opposed to mere use.

Thus, I answer Question of Law (2) in the negative.

Nonetheless, this judgment in no way prejudices either party in seeking permanent relief in Case No. 7933/L pending before the Kurunegala District Court.

Conclusion

For the reasons stated above, I set aside the judgments of the Court of Appeal and the High Court.

The order of the learned Magistrate is affirmed.

The appeal is allowed.

JUDGE OF THE SUPREME COURT

S. Thurairaja, P.C., J.

I Agree.

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe, J.

I Agree.

JUDGE OF THE SUPREME COURT