IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REP6UBLIC OF SRI LANKA

In the matter of an Application for Leave to Appeal to the Supreme Court, in terms of Section 5C(1) of the High Court of the Provinces (Special Provisions) (as amended) Act No. 54 of 2006 against the Judgment of the High Court of the Southern Province Holden in Galle (Exercising Civil Appellate Jurisdiction).

Nanayakkarawasam
Halloluwage Sisil Dias,
No. 360/1, Poddalawatta,
Wakwella Road, Galle.

PLAINTIFF

SC Appeal 72/18

Civil Appellate Court Case
No: SP/HCCA/RA/20/2013

DC Galle Case No: 12849/L

Vs

1. Kirinda Liyanarachchige Premadasa,
   No. 359/1, Wakwella Road,
   Galle.

2. Wewelwala Hewage Hemathi,
   No. 362, Poddalawatta, Wakwella Road,
   Galle.

DEFENDANTS

AND

Wewelwala Hewage Hemathi,
No. 362, Poddalawatta,
Wakwella Road,
Galle.

2nd DEFENDANT-PETITIONER

Vs

Nanayakkarawasam Halloluwage Sisil Dias,
No. 360/1, Poddalawatta,
Wakwella Road,
Galle.

PLAINTIFF-RESPONDENT

Kirinda Liyanarachchige Premadasa,
No. 359/1, Wakwella Road,
Galle.

1st DEFENDANT-RESPONDENT

AND NOW BETWEEN

Nanayakkarawasam Halloluwage Sisil Dias,
No. 360/1, Poddalawatta,
Wakwella Road,
Galle.

PLAINTIFF-RESPONDENT-PETITIONER

Vs

Wewelwala Hewage Hemathi,
No. 362, Poddalawatta,
Wakwella Road,
Galle.

2nd DEFENDANT-PETITIONER-RESPONDENT

Kirinda Liyanarachchige Premadasa,
No. 359/1, Wakwella Road,
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Wewelwala Hewage Hemathi,
No. 362, Poddalawatta,
Wakwella Road,
Galle.

2nd DEFENDANT-RESPONDENT-RESPONDENT

Before: Hon. Priyantha Jayawardena PC, J
Hon. E.A.G.R. Amarasekera, J
Hon. Kumudini Wickremasinghe, J

Counsel: Priyal Wijayaweera PC with Wasundara Jayaweera for the Plaintiff-Respondent-Appellant

Sanjaya Kodithuwakku for the Defendant-Petitioner-Respondent-Respondents

Argued on: 8th November, 2023

Decided on: 29th February, 2024

Priyantha Jayawardena PC, J

The instant appeal was filed by the plaintiff-respondent-appellant (hereinafter referred to as the "appellant") seeking to set aside the judgment of the Civil Appellate High Court of the Southern Province holden in Galle dated 30th of August, 2017 which allowed the two Revision Applications filed to revise the judgment of the District Court of Galle dated 28th of December, 2007 on the grounds that there are exceptional circumstances to set aside the said judgment.

On the 29th of August, 1997, the appellant instituted action in the District Court of Galle, seeking, *inter alia,* to grant him a 10 feet roadway by widening the existing 4 feet path on the basis of necessity to enter into his land over the lands owned by the 1st defendant-respondent-respondent (hereinafter referred to as the "1st respondent") and the 2nd defendant-respondent-respondent (hereinafter referred to as the "2nd respondent").

Thereafter, the 1st and 2nd respondents filed two separate answers and pleaded, *inter alia,* for the dismissal of the action with costs.

After an *inter parte* trial, the learned District Judge delivered the judgment dated 28th of December, 2007 and allowed the prayer to the plaint to widen the existing 4 feet footpath to 10 feet, to access the land owned by the appellant from the Galle-Wakwalla road of the basis of necessity.

Being aggrieved by the said judgment of the District Court, the respondents filed two separate appeals in the Civil Appellate High Court holden in Galle (hereinafter referred to as the "High Court").

Thereafter, the High Court by its judgment/Order dated 27th of April, 2010 dismissed the 2nd respondent's appeal bearing No. SP/HCCA/0146/2007(F) on the basis that the fees for the preparation of the appeal brief was not paid by the appellant.

Further, the High Court by its judgment/Order dated 18th of September, 2013 dismissed the appeal bearing No. SP/HCCA/0145/2007(F) filed by the 1st respondent on the basis that the said appeal was not filed within the stipulated time.

It is pertinent to note that the said respondents did not appeal against the said judgments/Orders of the High Court.

Thereafter, on the 23rd of October, 2013 the 2nd respondent filed a Revision Application in the said High Court seeking to revise the said judgment delivered by the learned District Judge dated 28th of December, 2007.

Furthermore, the 1st respondent also filed a Revision Application in the High Court on the 26th of December, 2013 seeking to revise the same judgment delivered by the District Judge dated 28th of December, 2007.

Both respondents in their Revision Applications had pleaded that since the judgment of the District Court was patently illegal, it was an exceptional circumstance which warranted the exercise of the revisionary jurisdiction of the High Court.

After hearing both Revision Applications, the High Court delivered one judgment dated 30th of August, 2017 allowing the Revision Applications and setting aside the judgment of the District Judge dated 28th of December, 2007 on the basis that the 2nd respondent's land was only in extent of 5.82 perches and *widening of the roadway to give access to the appellant's land reduces the extent of the said land belonging to the 2nd respondent and thereby, would cause great prejudice to the 2nd respondent. It was further held that reducing the extent of the land belonging to the 2nd*

respondent was an exceptional circumstance which warranted the exercise of revisionary jurisdiction of the High Court.

Being aggrieved by the said judgment of the High Court dated 30th of August, 2017, the appellant sought leave to appeal from the Supreme Court and the court granted leave to appeal on the following question of law;

> "Has the Civil Appellate High Court of Galle erred in law by arriving at the conclusion that the 2nd Defendant has established exceptional grounds to invoke the jurisdiction of the Civil Appellate High Court?"

Submissions of the appellant

The learned President's Counsel for the appellant submitted that the learned judges of the High Court erred in law by holding that the respondents established 'exceptional circumstances' to invoke the revisionary jurisdiction of the High Court. Further, it was submitted that the alleged 'exceptional circumstances' pleaded by the respondents do not warrant the invocation of the revisionary jurisdiction of the High Court.

In support of his contention, the learned President's Counsel cited the cases of ***Rajkumar and another v Hatton National Bank Limited*** **(2007) 2 SLR 1** and ***Dharmaratne and another v Palm Paradise Cabanas Ltd and others*** **(2003) 1 SLR 24.**

It was further submitted that the learned judges of the High Court should not have exercised its revisionary jurisdiction to grant reliefs prayed for in the Revision Applications due to the negligence and laches of the respondents. In the circumstances, the learned President's Counsel submitted that the judgment of the High Court is contrary to the law and thus, it should be set aside.

Submissions of the respondents

The learned counsel for the respondents submitted that the term 'exceptional circumstances' that are required to invoke the discretionary power of court to entertain Revision Applications have not

been defined in any Act. However, courts have interpreted the term 'exceptional circumstances' from time to time.

In support of the above submission, the learned counsel cited ***Attorney General v Podisingho*** **51 NLR 385 at 390** where it was held;

> *"In my view such exceptional circumstances would be (a) where there has been a miscarriage of justice, (b) where a strong case for the interference of this Court has been made out by the petitioner, or (c) where the applicant was unaware of the orders made by the Court of trial."*

It was further submitted that if the Order of the lower court is patently illegal, the courts have the power to treat the said illegality as an 'exceptional circumstance' and interfere with the judgment of the lower court by way of exercising revisionary jurisdiction.

In support of the above submission, the learned counsel cited the case of ***Ranasinghe v Henry*** **1 NLR 303**, which held that an order of a District Court, which is wrong *ex facie*, may be quashed by the court in the exercise of its revisionary power.

The learned counsel for the respondents further submitted that where the judgment of the District Court is contrary to law, the Appellate courts should interfere with the said judgment by revising the said judgment even though there was a delay on the part of the respondents to invoke the revisionary jurisdiction.

In support of the above contention, the learned counsel cited the case of ***Ranasinghe and Others v L.B. Finance Ltd.*** **(2005) 2 SLR 393 at pgs. 401 to 402**, where it was held;

> *"The next matter to be decided is whether the defendants are guilty of laches. The question whether delay is fatal to an application in revision depends on the facts and circumstances of the case. If the impugned order is manifestly erroneous and is likely to cause great injustice, the Court should not reject the application on the ground of delay alone."*

Moreover, the learned counsel for the respondents contended that the learned District Judge has not considered any of the objections raised by the counsel for the respondents at the trial when delivering his judgment in favour of the appellant and granting him a right of way over the lands of the respondents.

Therefore, it was submitted that the respondents were entitled to invoke the revisionary jurisdiction of the High Court even though their appeals were dismissed by the High Court on technical grounds. Thus, it was submitted that the instant appeal should be dismissed with costs.

Has the Civil Appellate High Court of Galle erred in law by arriving at the conclusion that the 2nd Defendant has established exceptional grounds to invoke the jurisdiction of the Civil Appellate High Court?

The issue that needs to be considered in the instant appeal is whether the respondents have established 'exceptional circumstances' to invoke the revisionary jurisdiction of the High Court.

The jurisdiction to hear Revision Applications applicable to the instant appeal is set out in Article 138 of the Constitution.

Article 138(1) of the Constitution states;

> *"The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance, tribunal or other institution and sole and exclusive cognizance, by way of appeal,* ***revision*** *and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things of which such High Court, Court of First Instance, tribunal or other institution may have taken cognizance:*
>
> *Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice."*
>
> [emphasis added]

However, exercising the revisionary jurisdiction is a discretionary remedy unlike in an Appeal. Further, the courts exercise revisionary jurisdiction only if there are 'exceptional circumstances' that warrant the court to exercise its discretion.

A similar view was held in ***Dharmaratne and Another v Palm Paradise Cabanas Ltd. and Others*** **(2003) 3 SLR 24 at 30,** where it was held;

> *"The practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed. The words used by the legislature do not indicate that it ever intended to interfere with this 'rule of practice'."*

Further, in ***Wijesinghe v Tharmaratnam*** **Sri Skantha's Law Reports Vol. IV 47 at 49** it was held;

> *"Revision is a discretionary remedy and will not be available unless the application discloses circumstances which 'shocks the conscience of the court'."*

Hence, it is necessary for a petitioner to establish 'exceptional circumstances' by pleading such grounds in their Revision Application, in order to invoke the discretion of court to entertain a Revision Application.

It is pertinent to note that when a petitioner pleads 'exceptional circumstances' in a Revision Application, the learned judge is required to consider whether the 'exceptional circumstances' pleaded warrant the exercise of the revisionary jurisdiction of the court after judicially evaluating the facts, the circumstances in which revisionary jurisdiction is invoked, and the law applicable to the relevant Revision Application.

A similar view was expressed in ***Rustom v Hapangama*** **(1978-79) 2 SLR 229** where it was held;

> *"It must depend entirely on the facts and circumstances of each case and one can only notice the matters which courts have held to amount to exceptional circumstances in order to find out the essential nature of these circumstances."*

Further, the courts do not exercise its revisionary jurisdiction where there is an alternative remedy, unless there are 'exceptional circumstances' which warrants the invocation of the revisionary jurisdiction of the court.

A similar view was held in ***Gunasekera v Chitra Silva and others*** **(2006) 3 SLR 188** where it was held;

> *"Where an alternative remedy is available and if a party fails and or neglects to exercise such remedy due to the parties own conduct and or negligence court will not exercise the extraordinary powers of revision. However, when the party is able to show exceptional circumstances, Court will not hesitate to exercise such jurisdiction."*

A perusal of the appeal brief shows that the respondents had invoked the appellate jurisdiction of the High Court prior to filing their Revision Applications. However, the 2nd respondent's petition of appeal was dismissed for not depositing brief fees and the 1st respondent's petition of appeal was dismissed for not filing the same within the stipulated time.

Thereafter, both respondents filed two Revision Applications in the High Court stating that the judgment of the District Court was wrong *ex facie* and thus, it constituted 'exceptional circumstances' which warrant the invocation of the revisionary jurisdiction. Further, it was stated that if the High Court does not revise the said judgment, it would result in a miscarriage of justice.

It is pertinent to note that the respondents have not pleaded to set aside aforementioned Orders/judgment of the High Court dated 18th of September, 2013 and 27th of April, 2010. The prayer of the 2nd respondent's Revision Application stated;

> "අ. වගඋත්තරකරුවන් වෙත නිවේදන නිකුත් කරන මෙන් ද,
>
> ආ. ගාල්ල දිසා අධිකරණයේ අංක එල් 12849 දරණ නඩුවේ ගොනුව මෙම අධිකරණය හමුවට කැඳවන ලෙසද,
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> ඇ. ගාල්ල දිසා අධිකරණයේ අංක එල් 12849 දරණ නඩුවේ 2007.12. 28 වන දිනැතිව ඇතුළත් කර ඇති සියලු තීන්දු ප්‍රකාශයන් ද ප්‍රතිශෝධනය කර අවහරණය කරන ලෙසද,
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> ඈ. ගාල්ල දිසා අධිකරණයේ අංක එල් 12849 දරණ නඩුව නිෂ්ප්‍රභා කරන ලෙසද,
>
> ඉ. මෙම ප්‍රතිශෝධන අයදුම සම්බන්ධයෙන් සලකා බලා නියෝගයක් ඇතුලත් කරන තෙක් ගාල්ල දිසා අධිකරණයේ අංක එල් 12849 දරණ නඩුවේ ඉදිරි කටයුතු අත්හිටුවන මෙන් ද,

ඊ. නඩු ගාස්තු සහ ගරු උතුමාණන්ගේ අධිකරණයට මැනවයි හැඟෙන වෙනත් සහ වැඩිමනත් සහන ලබා දෙන ලෙස ද වේ."

Further, the Revision Application filed by the 1st respondent contained an identical prayer. Thus, it is evident that the **respondents had only prayed** for the judgment of the District Court dated 28th of December, 2007 to be revised and not the judgments/Orders made by the High Court dismissing the appeals filed by the respondents.

Thus, the said Revision Applications filed by the respondents are a collateral attack on the judgment/Orders of the said High Court after the appeals were dismissed by the High Court. Hence, it is not possible for the respondents to file Revision Applications to revise the said judgment of the District Court without setting the judgment/Order of the High Court which dismissed the said appeals.

It is pertinent to note that negligence by a party in failing to proceed with an alternative remedy cannot be considered an 'exceptional circumstance' that warrants the indulgence of the court to exercise its revisionary powers.

The learned counsel for the respondents cited ***Ranasinghe and Others v L.B. Finance Ltd.*** *(supra)* in support of his submissions. This case was in respect of a delay in filing a Revision Application and not establishing 'exceptional circumstances' to invoke the revisionary jurisdiction. Thus, the said case has no relevance to the instant appeals. Further, the case of ***Attorney General v Podisingho*** *(supra)* cited by the learned counsel has no application to the instant appeals as it was an appeal arising from a criminal case. Moreover, the case of ***Ranasinghe v Henry*** *(supra)* cited by the learned counsel has no application to the instant appeal as the appeals filed by the respondents were dismissed by the High Court which exercised the appellate jurisdiction.

Moreover, in the Revision Applications, the respondents have not disclosed that the appeals preferred by them to the High Court were dismissed by the said court. It is paramount to come to court with clean hands in order to invoke the discretionary powers of the court.

Therefore, I am of the opinion that the High Court has erred in law by holding that the 2nd respondent established exceptional grounds to invoke the revisionary jurisdiction of the High Court.

Conclusion

In light of the above, the following question of law is answered as follows;

Has the Civil Appellate High Court of Galle erred in law by arriving at the conclusion that the 2nd Defendant has established exceptional grounds to invoke the jurisdiction of the Civil Appellate High Court?

Yes

In the circumstances, I set aside the judgment of the High Court dated 30th of August, 2017 and affirm the judgment of the District Court dated 28th of December, 2007.

The appeal is allowed. No costs.

Judge of the Supreme Court

Hon. E.A.G.R. Amarasekera, J

I Agree

Judge of the Supreme Court

Hon. Kumudini Wickremasinghe, J

I Agree

Judge of the Supreme Court