

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

In the matter of an Application for Special Leave to  
Appeal against Judgement of the Provincial High Court  
of the Western Province dated 11/06/2013 in Case No.  
HC Negombo Case No. HCA 217/2011 M.C. Case No.  
2456/Maintenance.

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SC Spl LA No. 169/2013  
HC Negombo Case No. HCA 217/11  
M.C. Case No. 2456/Maintenance

Wewalwalahewage Hemantha AriyaKumara  
No. 63/B "Wasana" Tower Side City,  
Kandawala, Katana.

**Defendant-Respondent-Appellant-Petitioner**

Vs.

Kaluappu Kankanamalage Dona Bernadeth Yamuna  
Rani Karunaratne, of No. 31/4 , Temple Road,  
Negombo

**Plaintiff-Petitioner-Respondent-Respondent**

Before : Marsoof, PC, J  
Hettige, PC, J &  
Dep, PC J

Counsel : Dr. Sunil Cooray for the Defendant-Respondent-  
Appellant- Petitioner

W.A. Fernando instructed by P.D.R.S. Panditharatne  
for the Plaintiff-Petitioner-Respondent-Respondent

Argued on : 09.12.2013

Decided on : 26.03.2014

**Priyasath Dep, PC., J.**

This is a Special Leave to appeal Application filed by Defendant-Respondent-Appellant-Petitioner (hereinafter referred to as Petitioner) to the Supreme Court seeking special leave to appeal against the judgment of the High Court of Negombo exercising appellate jurisdiction in HC Negombo Case No. HCA 217/11.

When the Special Leave to Appeal application was taken up for support, the Counsel for the Plaintiffs-Petitioner-Respondent-Respondent(hereinafter referred to as the Respondent) raised a preliminary objection stating that Petitioner cannot maintain this appeal in view of the fact that the Article 154(P) (6) confers jurisdiction on the Court of Appeal to hear and determine appeals from the High Court. Learned Counsel for the Respondent referred to the Judgment in *Abeywardana Vs. Ajith de Silva* 1998 (1) SLR 134.

The learned Counsel for the Petitioner submitted that there is a different appellate procedure regarding judgments or orders given by the High Court when exercising appellate jurisdiction and when exercising revisionary jurisdiction. The learned Counsel submits that the decision in *Gunaratne Vs. Thambinayagam* 1993 (2) SLR 355 and several other subsequent decisions have authoritatively dealt with this matter and resolved the question based on which this preliminary objection is taken up.

The Counsel for the Respondent submits that under Article 154 (P) 6, the Appeal lies to the Court of Appeal and not to the Supreme Court. At this stage it is relevant to examine the appellate and revisionary jurisdiction of the High Court under article 154(P) (3) (b) of the Constitution. Article 154P(3) (b) reads thus:

“ notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary courts within the Province.

Thus the article 154P introduced by the Thirteenth Amendment to the Constitution for the first time conferred appellate and revisionary jurisdiction on the High Courts referred to as Provincial High Courts. The article 154(P) 6 which is given below deals with the jurisdiction of the Court of Appeal to hear appeals from the final order, judgment or sentence of the High Court in the exercise of jurisdiction under article 154 (P)3(b), (3) (c) and (4).

“ Subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court, in the exercise of its jurisdiction under paragraphs (3) (b) or (3) (c) or (4), may appeal therefrom to the Court of Appeal in accordance with Article 138.”

This section is subject to the provisions of the Constitution and any law as expressly stated in the section. Therefore before the enactment of High Court of Provinces (Special Provisions) Act No. 19 of 1990, any person aggrieved by a final order, judgment or sentence made by the High Court, in the exercise of its jurisdiction under paragraphs (3) (a), (3) (b), (3) (c) or (4), may appeal to the Court of Appeal in accordance with the Article 138.

This situation was fundamentally changed with the enactment of High Court of Provinces(Special Provisions) Act No. 19 of 1990. Under Section 9 of the High Court of Provinces(Special Provisions) Act No. 19 of 1990 the aggrieved party is given a right of appeal to the Supreme Court .Section 9 reads thus

Subject to the provisions of this Act or any other law any person aggrieved by –

- (a) a final order, judgment, decree or sentence of a High Court established by Article 154P of the Constitution in the exercise of the appellate jurisdiction vested in it by paragraph (3) (b) of Article 154P of the Constitution or section 3 of this Act or any other law, in any matter or proceeding whether civil or criminal which involves a substantial question of law, may appeal therefrom to the Supreme Court if the High Court grants leave to appeal to the Supreme Court ex mero motu or at the instance of any aggrieved party to such matter or proceedings.

According to the proviso to this section ,the Supreme Court in its discretion could grant special leave to appeal to the Supreme Court, if the High Court has refused to grant leave to appeal or where in the opinion of the Supreme Court, the case or matter is fit for review by the Supreme Court. Further under section 10 of the Act, the Supreme Court is given appellate jurisdiction in respect of orders, judgment decrees or sentences made by the High Court in exercising appellate Jurisdiction. These two sections do not give jurisdiction to the Supreme Court to hear appeals from the High Court when exercising its revisionary jurisdiction.

In this case the Defendant – Petitioner filed this appeal against the dismissal of the appeal bearing No. HC Appeal 217/11 by the High Court .The Appeal was filed under section 9 of High Court of Provinces(Special Provisions) Act No. 19 of 1990 which gives a right of appeal to the Supreme Court against order, judgment or decree of the High Court exercising its appellate jurisdiction.

Therefore it is clear that when the High Court exercises original criminal jurisdiction under article 154 P (3) (a) or revisionary jurisdiction under Article 154P (3) (b) of the Constitution , the appeal lies to the Court of Appeal. On the other hand if it exercises appellate jurisdiction, appeal lies to the Supreme Court. The case of *Gunaratne Vs. Thambinayagam* 1993 (2) SLR 355 settled the law on this issue. This decision was followed in *Abeywardana Vs. Ajith de Silva* 1998 (1) SLR 134. *Wickremasekara v Officer in Charge, Police Station, Ampara* (2004) 1 SLR 257 .

Therefore, the Defendant- Respondent- Appellant –Petitioner has a right of appeal against the order made by the High Court in the exercise of appellate jurisdiction to the Supreme Court and correctly invoked the jurisdiction of this Court. For the reasons set out above, I overrule the preliminary objection as to the maintainability of this Special Leave to Appeal Application raised by the Counsel for the Plaintiff-Petitioner-Respondent-Respondent. The Defendant-Respondent-Appellant-Petitioner is permitted to support this Application for Special Leave to Appeal.

Judge of the Supreme Court

Saleem Marsoof, PC., J.  
I agree.

Judge of the Supreme Court

Sathyaa Hettige, PC., J.  
I agree.

Judge of the Supreme Court