

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

*In the matter of an Appeal in terms of
Article 128(2) of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

S.C. Appeal No:
160/2019

Officer-in-Charge,
Police Station,
Pitigala.

SC/SPL/LA No:
135/2019

COMPLAINANT

Vs.

CA Case No:
CA (PHC) 139/08

1. Katukoliya Gamage Kalyani,
No. 23/14, Modara Road,
Makandana,
Piliyandala.

HC Case No:
750/2007 Rev

MC Elpitiya Case No:
46290

2. Halpandeniya Hewage Premawathie
Gamage,
No.7, Kanuwa Road,
Markulitiya, Mattakka.

RESPONDENTS

AND

Katukoliya Gamage Kalyani,
No. 23/14, Modara Road,
Makandana,
Piliyandala.

1st RESPONDENT-PETITIONER

Vs.

Halpandeniya Hewage Premawathie
Gamage,
No. 7, Kanuwa Road,
Markulitiya, Mattakka.

2nd RESPONDENT-RESPONDENT

AND BETWEEN

Katukoliya Gamage Kalyani
No. 23/14, Modara Road,
Makandana,
Piliyandala.

**1st RESPONDENT-PETITIONER-
APPELLANT**

Vs.

Halpandeniya Hewage Premawathie
Gamage,
7, Kanuwa Road,
Markulitiya, Mattakka.

**2nd RESPONDENT-RESPONDENT-
RESPONDENT**

AND NOW BETWEEN

Katukoliya Gamage Kalyani,
No. 23/14, Modara Road,
Makandana,
Piliyandala.

**1st RESPONDENT-PETITIONER-
APPELLANT-APPELLANT**

Vs.

Halpandeniya Hewage Premawathie
Gamage,
7, Kanuwa Road,
Markulitiya, Mattakka.

**2nd RESPONDENT-RESPONDENT-
RESPONDENT-RESPONDENT**

Before : Mahinda Samayawardhena, J.

: Dr. Sobhitha Rajakaruna, J.

: Sampath B. Abayakoon, J.

Counsel : Manohara de Silva, P.C. with Hirosha Munasinghe
instructed by Anusha Perusinghe for the 1st
Respondent-Petitioner-Appellant-Appellant.

: Anura Gunaratne instructed by Aruni Danapala
Arachchi for the 2nd Respondent-Respondent-
Respondent-Respondent.

Argued on : 08-05-2026

Written Submissions : 05-03-2020 and 27-05-2026 (By the 1st
Respondent-Petitioner-Appellant-Appellant)
: 21-08-2020 (By the 2nd Respondent-Respondent-
Respondent-Respondent)

Decided on : 28-09-2026

Sampath B. Abayakoon, J.

The 1st respondent-petitioner-appellant-appellant (hereinafter referred to as the 1st respondent) preferred this appeal seeking to challenge the appellate judgment pronounced by the Court of Appeal on 15-03-2019, where it was held that there is no basis to interfere with the judgment dated 16-12-2008 pronounced by the learned Judge of the Provincial High Court of Southern Province holden in Balapitiya.

After having considered the revision application filed, it was held by the learned Judge of the High Court that the 1st respondent has failed to establish exceptional circumstances for the High Court to interfere with the order dated 27-09-2007 pronounced by the learned Magistrate of Elpitiya, which was an order pronounced in terms of section 66 (1)(a) of the Primary Courts' Procedure Act (hereinafter referred to as the Act).

When this matter was considered on 02-10-2019 before this Court for the purpose of considering special leave to appeal from the impugned judgment of the Court of Appeal, special leave was granted on the following four questions of law.

1. Did the learned Judges of the Court of Appeal fail to properly evaluate the 1st respondent's evidence and erred in rejecting the 1st respondent's version as to the possession of the land?
2. Did the learned Judges of the Court of Appeal err in rejecting the 1st respondent's evidence relating to the identification of the land when the 1st respondent, in paragraph 2 of her 1st affidavit filed on 16-08-2007 clearly identified the boundaries of the land called 'Olagodadeniya' which is the land in dispute and stated that the land called 'Polgahadoowa' is a different land situated to the South of 'Olagodadeniya'?
3. Did the learned Judges of the Court of Appeal err in holding that the Northern boundary of 'Polgahadoowa' should be 'Olagodadeniya' and failed to give due consideration to the deeds marked 1V1 and 1V2 filed by the 1st respondent, the schedules of which clearly demonstrate that

these two lands are two distinct and different lands and that 'Polgahadoowa' is situated towards the South of 'Olagodadeniya'.?

4. Did the Court of Appeal fail to consider that there is no right of appeal available to the 1st respondent against the order made by the learned Magistrate under Part VII of the Primary Courts' Procedure Act and that exceptional circumstances are required to be established only if the 1st respondent has failed to invoke the appellate jurisdiction of Court when a right of appeal is given to a party?

At the hearing of this appeal, this Court heard the submissions of the learned President's Counsel who represented the 1st respondent and the submissions of the learned Counsel who represented the 2nd respondent-respondent (hereinafter referred to as the 2nd respondent). At the conclusion of the arguments, the parties were allowed to file post-argument written submissions in addition to pre-argument written submissions tendered by the parties.

The Facts

This is a matter where the Officer-in-Charge (OIC) of Pitigala police station has filed an information dated 06-06-2012 in terms of section 66(1)(a) of the Primary Courts' Procedure Act, informing the learned Magistrate of Elpitiya that a dispute as to the possession of a land has arisen between the 1st and 2nd respondents, and informing the Court that a breach of peace is likely.

Along with the information, the OIC has tendered to the Court a copy of the complaint lodged by the 1st respondent to the police, the statement made in that regard by the 2nd respondent, along with the investigation notes of the police officer who conducted the investigation as to the complaint, and a sketch prepared by the said officer describing the land in dispute.

After taking the initial procedural steps in relation to an application of this nature, the learned Magistrate of Elpitiya has allowed the parties to file affidavits together with any document supportive of their respective stands in relation to the dispute. Subsequently, they have also been allowed to file counter affidavits.

By his order dated 27-09-2007, the learned Magistrate, after having determined that this is a dispute where he has to make an order in terms of section 68(1) of the Act, has proceeded to identify the land upon which the dispute has arisen, as he should have, in relation to a dispute of this nature.

The learned Magistrate has decided to rely on the sketch prepared by the police in this regard and has determined that the portion of land marked X-1 in the sketch should be considered as the land in dispute. Thereafter, the learned Magistrate has proceeded to consider the materials placed before the Court in terms of section 72 of the Act. It is clear from the order that the learned Magistrate has correctly determined that since this is a dispute regarding possession of a land, the title of the parties to the disputed land would not be relevant for the purposes of his determination. After having considered the initial complaint made by the 1st respondent to the police, and the stand taken up by her in her affidavit filed before the Court and also that of the 2nd respondent, the learned Magistrate has proceeded to consider who should be granted possession of the land in dispute. After analyzing the facts before the Court, it has been determined that at the time the dispute arose, it was the 2nd respondent who was in possession of the land, and there is no material to conclude that the 1st respondent was forcibly evicted by the 2nd respondent within a period of two months before the date of the complaint. Accordingly, the learned Magistrate has granted possession of the disputed portion of the land to the 2nd respondent, stressing that the order should be valid only until a competent Court determines the dispute between the parties.

The learned Judge of the High Court, before whom the revision application was preferred by the 1st respondent challenging the findings of the learned Magistrate too has come to the same findings as to the person who should be granted possession of the disputed portion of the land. It has been determined that there is no need to interfere with the findings of the learned Magistrate while dismissing the revision application.

Being dissatisfied with the above-mentioned order and the judgement, the 1st respondent has preferred an appeal to the Court of Appeal, where the impugned judgment was pronounced by the Court of Appeal.

It is abundantly clear from the judgment of the Court of Appeal that Their Lordships have considered the four grounds of appeal urged by the 1st respondent while having in mind that since the application filed before the High Court was a revision application, the 1st respondent should establish exceptional circumstances in order to succeed in such an application.

The four grounds of appeal urged before the Court of Appeal are as follows -

1. Having rejected the supporting documents filed by the respondent, there was no material basis before the Court to establish that the respondent was in possession of the land in dispute.
2. The learned Magistrate has failed to properly evaluate the appellant's evidence and erred in rejecting the appellant's version.
3. High Court has erred in failing to consider the relevant facts and erred in holding that the appellant failed to establish exceptional circumstances.
4. This Court has inherent powers to grant reliefs to the appellant.

Having heard the submission of the parties in respect of their respective stands, the Court of Appeal has considered whether the learned Magistrate has failed to evaluate the evidence placed before the Court in its correct perspective before deciding to grant possession of the disputed land to the 2nd respondent.

In this process, the Court of Appeal has considered the two title deeds produced by the 1st respondent to determine that the land described in the said deeds does not correspond with the land in dispute. It has also been determined that the 1st respondent has taken different positions in her affidavit and the counter-affidavit, and there was no basis to conclude that the 1st respondent was in actual possession of the disputed portion during the period relevant in terms of section 66 of the Act.

Apart from the above determination, the Court of Appeal has proceeded to consider whether the 1st respondent has established sufficient exceptional circumstances before the High Court for it to exercise the extraordinary remedy of revision in relation to the application before the High Court.

Having come to a finding that there were no reasons for the High Court to disagree with the conclusions of the learned Magistrate, it has been determined that the 1st respondent has failed to establish exceptional circumstances before the High Court, and accordingly, the appeal has been dismissed with costs.

The Submissions

At the hearing of this appeal, it was the contention of the learned President's Counsel that the statement made to the police by the 1st respondent should not have been considered to conclude that the 1st respondent was not in possession of the land. It has been his position that the materials placed before the Magistrate's Court would show that there is a tea plantation on the disputed land, and since the tea bushes have been trimmed, the plucking of tea was only temporarily stopped, allowing the tea bushes to grow, which does not mean that the 1st respondent had no possession. It was his position that the learned Magistrate erred after having decided to reject the annexures to the 2nd respondent's affidavit filed before the Court, but still allowing the 2nd respondent to hold possession of the land in a situation where the 2nd respondent has failed to produce any permit from the State as claimed by her.

The learned President's Counsel argued that the Court of Appeal erred when it referred to the title deeds pleaded by the 1st respondent where it was determined that the said deeds do not refer to the land in dispute.

It was also contended that since there is no right of appeal against an order pronounced in terms of section 66 of the Act, the only remedy available for a dissatisfied party is to file an application in revision, and hence, considering the requirement of having exceptional circumstances in its strict sense is also erroneous.

The Consideration of the Questions of Law

Since the first three questions of law under which special leave to appeal was granted are questions that revolve around factual matters, I will now proceed to consider the said questions of law together for the purposes of this judgment.

This is an application filed before the Magistrate's Court of Elpitiya in terms of section 66(1)(a) of the Primary Courts' Procedure Act. The matter reported to Court being a dispute in relation to a possession of a land, the learned Magistrate has correctly decided to consider the application in terms of section 68 of the Act.

For better understanding of this judgment, I will now reproduce section 68(1) and (3), which are the relevant provisions in relation to the dispute at hand.

68. (1) Where the dispute relates to the possession of any land or part thereof it shall be the duty of the Judge of the Primary Court holding the inquiry to determine as to who was in possession of the land or the part on the date of the filing of the information under section 66 and make order as to who is entitled to possession of such land or part thereof.

(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 Judge of the Primary Court is satisfied that any person who had been in possession of the land or part has been forcibly dispossessed within a period of two months immediately before the date on which the information was filed under section 66, he may make a determination to that effect and make an order directing that the party dispossessed be restored to possession and prohibiting all disturbance of such possession otherwise than under the authority of an order or decree of a competent court.

The learned Magistrate has clearly considered who was in possession of the disputed portion of the land at the time of this dispute and whether the party who is seeking possession has been dispossessed within a period of two months immediately before the date on which the information was filed before the Court.

In this process, the learned Magistrate has proceeded to consider the materials he should consider in coming to a finding as provided for in terms of section 72 of the Act.

The said section 72 reads as follows -

72. A determination and order under this Part shall be made 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.

It is my considered view that what is necessary for a Magistrate in relation to an application in terms of section 66 of the Act over a dispute regarding the possession of a land would be to identify the portion of the land where there is a dispute regarding possession so that any order made in that regard can be executed through Court officials if necessary. For such a purpose, whether a person has title for the disputed land or the title deeds exactly match the disputed land would not be a necessary factor.

It is the duty of the Magistrate that after identifying the land in dispute, to determine the question of possession as provided for in the Act in order to prevent any breach of peace in that regard until the parties go before a competent Court and get an adjudication upon the dispute.

In the case of **Ramalingam Vs. Thangaraja (1982) 2 SLR 693 at 698**, it was observed by **Sharvananda J.** (as he was then);

“This section entitles even a squatter to the protection of the law, unless his possession was acquired within two months of the filing of the information. That person is entitled to the possession until he is evicted by the due process of law. A Judge should therefore in an inquiry under Part VII of the aforesaid Act, confine himself to the question of actual possession on the date of filing of the information except in a case where a person who had been in possession of the land had been dispossessed within a period of two months immediately before the date of the information. He is not to decide any question of title or right to possession of the parties to the land. Evidence bearing on title can be considered only when the evidence as to possession is clearly balanced and the presumption of possession which flows from title may tilt the balance in favour of the owner and help in deciding the question of possession.”

It appears to me that the Court of Appeal has considered the title deeds produced by the 1st respondent only in relation to the identity of the land in dispute together with other documents and the affidavits tendered by the 1st respondent in that regard. It is in that context the Court of Appeal has determined as to the admissibility of the version of the 1st respondent as to her title, while determining that the material placed before the Magistrate’s Court has clearly established the possession of the land at the time the information filed before the Court was with the 2nd respondent.

In the case of **Velupillai and Others Vs. Sivanathan (1993) 1 SLR 123**, it was held that the scope of inquiry under this special jurisdiction is of a purely preventive and provisional nature pending the final adjudication of the rights of the parties in a civil Court. The Magistrate is not involved in the investigation into title or right to possession, which is the function of a civil Court.

It is clear from the order of the learned Magistrate as well as the judgments of the High Court and the Court of Appeal that, all Courts have clearly

considered who had possession of the disputed portion of the land at the time of filing the information before the Court, and whether the 1st respondent who complained to the police had possession of the land at least two months prior to the said information. All the Courts have considered the material placed before the original Court in this regard.

I find that in her first complaint itself the 1st respondent has clearly stated that she is not in actual possession of the land although she has claimed title to it.

In her complaint lodged on 14-05-2007 at 11.00 a.m. to the minor complaints unit of the Pitigala police station (page 115 of the appeal brief) in relation to this dispute, she has stated the following;

“එම ඉඩමේ නිවසක් තිබුනත් එහි කවුරුවත් දැනට පදිංචි වෙලා නැහැ. අපි එම ඉඩමේ තේ පැල ඉන්දලා තියෙනවා. තේ පැල තිබුනාට අපි ඒ වත්තේ තේ දළ නෙලන්නේ නැහැ.”

In my view, what the parties state to police at the inquiry stage over a dispute of this nature are vital information that can be considered by the Court in deciding who had possession, since the filing of affidavits and documents are obviously filed with legal instructions.

In her affidavit, the 1st respondent has claimed that she and her family members visit the land during weekends and stay in the house situated within the land. It is clear that this is a position that was never taken when the initial complaint was made to the police. It is clear from the police investigation notes that both parties to the dispute have claimed title to the land, and the house situated within the disputed land was an abandoned house contrary to the 1st respondent's claim that she and her family used to occupy that house during weekends.

It is my view that the learned Magistrate was correct in the manner the disputed portion of land was identified and the determination as to who should be allowed to possess the land until the parties resolve their disputes through a competent Court.

Accordingly, I answer the above-considered three questions of law in the following manner.

1. The Court of Appeal was correct in rejecting the 1st respondent's version as to the possession of the land.
2. Although the Court of Appeal has proceeded to consider the title deeds produced by the 1st respondent as relevant for the purpose of identification of the disputed land, such consideration was unnecessary since the learned Magistrate has correctly identified the disputed portion through the material placed before the Court by the parties.
3. Same as above.

Having determined the aforesaid questions of law in the like manner, I will now proceed to consider the 4th question of law under which special leave to appeal was granted.

It was argued that since the Primary Courts' Procedure Act does not provide for a right of appeal and since the only remedy available for a party who is dissatisfied with an order is to file a revision application, the Court should not have a strict view on the requirements of the exceptional circumstances.

However, it is clear that in the Act itself a remedy has been provided for a party who is dissatisfied with an order pronounced under the provisions of the Act. Such a party can assert claimed rights by filing an action before a competent Court, since any order pronounced under section 66 of the Act would only serve as a temporary order until a competent Court decides upon it.

It is my view that the power of revision, being an extraordinary discretionary jurisdiction granted to the Court of Appeal, such a jurisdiction could be exercised only under exceptional circumstances.

I am of the view that even in a situation where a particular statute has not given appellate rights to a party dissatisfied with an order or a judgment pronounced under such statute, the revisionary jurisdiction can only be invoked under exceptional circumstances and not as a right.

In the case of **Caderamanpulle Vs. Ceylon Paper Stacks Ltd. (2001) 3 SLR 112**, it was held that - The existence of exceptional circumstances is a pre-condition for the exercise of powers of Revision.

Per Nanayakkara, J., at page 116 -

“...When the decided cases cited before us are carefully examined, it becomes evident in almost all the case cited, that powers of revision has been exercised in a limited category of situations. The existence of exceptional circumstances is a pre-condition for the exercise of powers revision and absence of exceptional circumstances in any given situation results in refusal of remedies.”

In the case of **Dharmaratne and Another Vs. Palm Paradise Cabanas Ltd. and Others (2003) 3 SLR 25**, it was observed that;

“Thus, the existence of exceptional circumstances is the process by which the Court selects the cases in respect of which this extraordinary method of rectification should be adopted.”

In the case of **Vanik Incorporation Ltd. Vs. Jayasekara (1997) 2 SLR 365**, it was held that the revisionary powers should be exercised where a miscarriage of justice has occurred due to a fundamental rule of procedure being violated, but only when a strong case is made out amounting to a positive miscarriage of justice.

As I have previously considered in this judgment, there was no violation of fundamental rules of procedure or a basis to determine that a positive miscarriage of justice has been occasioned due to the order of the learned Magistrate. The matters pleaded before the High Court do not provide a basis for the High Court to grant relief on the basis of the existence of exceptional circumstances as correctly determined by the Court of Appeal.

Accordingly, I answer the 4th question of law considered before this Court in the negative.

The appeal is dismissed for want of any merit.

Accordingly, the judgment dated 16-12-2008 pronounced by Provincial High Court of the Southern Province holden in Balapitiya, and the judgment dated 15-03-2019 pronounced by the Court of Appeal are hereby affirmed.

The parties shall bear their own costs.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court