

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

In the matter of an application for Leave
to Appeal under Section 5C of the High
Court of the Provinces (Special
Provisions) Act No. 54 of 2006

Kaluthanthrige Dona Jayaseeli

No. 352,

Rajasingha Mawatha,

Hewagama, Kaduwela.

Plaintiff

Vs.

SC Appeal No. 29/2016

SC/HC (CA) LA No. 675/2014

HCCA Colombo Case No:

WP/HCCA/COL/39/2013 (RA)

DC Homagama Case No: 3559/P

1. Kaluthanthirige Dona Dayawathi
No. 2/6, Pannawala,
Delgoda.
2. Kaluthanthirige Dona Karunawathi
No. 47, Pegiriwatta Road,
Gangodawila, Nugegoda.
3. Kaluthanthirige Don Karunadasa
No. 159, Hewagama,
Kaduwela.
- 3A. U.A. Chandrawathie
No. 159, Hewagama,
Kaduwela.
4. Kaluthanthirige Dona Gunaseeli
residence unknown

5. Liyana Arachchige Podisingho
No. 185, Hewagama,
Kaduwela.

5A. Liyana Arachchige Dona

Leelawathie

No. 185, Hewagama,
Kaduwela.

6. Kaluthanthirige Dona Rupawathi
No. 152/1, Hewagama,
Kaduwela.

7. Weligama Arachchige Somadasa
Perera
152/5, Hewagama,
Kaduwela.

Defendants

AND

Kaluthanthirige Dona Jayaseeli
No. 352,
Rajasingha Mawatha,
Hewagama, Kaduwela.

Plaintiff – Petitioner

Vs.

1. Kaluthanthirige Dona Dayawathi
No. 2/6, Pannawala,
Delgoda.

2. Kaluthanthirige Dona Karunawathi
No. 47, Pegiriwatta Road,
Gangodawila, Nugegoda.

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No. 159, Hewagama,
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152/5, Hewagama,
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Defendants – Respondents

AND BETWEEN

Kaluthanthirige Dona Jayaseeli

No. 352,
Rajasingha Mawatha,
Hewagama, Kaduwela.

Presently at;

No. 343/14,
Rajasingha Mawatha,
Hewagama, Kaduwela

Plaintiff – Petitioner – Petitioner

Vs.

1. Kaluthanthirige Dona Dayawathi
No. 2/6, Pannawala,
Delgoda.

2. Kaluthanthirige Dona Karunawathi
No. 47, Pegiriwatta Road,
Gangodawila, Nugegoda.

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No. 159, Hewagama,

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residence unknown

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152/5, Hewagama,
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Defendants – Respondents –

Respondents

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Kaluthanthrige Dona Jayaseeli
No. 352,
Rajasingha Mawatha,
Hewagama, Kaduwela.

Presently at;

No. 343/14,
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Hewagama, Kaduwela

Plaintiff – Petitioner – Petitioner –

Appellant

Vs.

1. Kaluthanthirige Dona Dayawathi
No. 2/6, Pannawala,
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Kaduwela.

Defendants – Respondents –

Respondents - Respondents

Before: Priyantha Jayawardena, PC, J

Prasanna Jayawardena, PC, J

Vijith K. Malalgoda, PC, J

Counsel: Manohara de Silva, PC for the plaintiff – petitioner – petitioner – appellant

Edward Ahangama for the 5A defendant – respondent – respondent – respondent

Argued on: 03rd of December, 2018

Decided on: 28th of February, 2019

Priyantha Jayawardena, PC, J

Facts of the case

The plaintiff – petitioner – petitioner – appellant (hereinafter referred to as the “appellant”) filed an action in the District Court of Homagama seeking to partition a land.

Being aggrieved by an interlocutory order made in the said case, the appellant had preferred a revision application to the High Court of the Western Province holden in Colombo, established under Article 154P of the Constitution which exercises civil appellate and revisionary jurisdiction within the Western Province.

When the said revision application was taken up for support, a preliminary objection had been raised on behalf of the 5A substituted – defendant – respondent in respect of the jurisdiction of the said High Court holden in Colombo exercising civil appellate and revisionary jurisdiction on the basis that the said High Court had no jurisdiction to hear and determine the aforementioned revision application, as the impugned order was delivered by the District Court of Homagama.

Further, the 5A respondent had submitted that the said revision application should have been filed in the High Court holden in Avissawella, exercising civil appellate and revisionary jurisdiction, since the application was against an interlocutory order delivered by the District Court of Homagama.

The appellant had taken up the position that in view of Section 5A (1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended, any High Court exercising civil appellate and revisionary jurisdiction situated within the province has appellate and revisionary jurisdiction in respect of judgments, decrees and orders delivered and made by any District Court within such Province.

After hearing the submissions made by the parties on the said preliminary objection the said High Court of the Western Province holden in Colombo had upheld the said preliminary objection and dismissed the said revision application. Further, the said High Court had held that the said revision application should have been filed in the High Court holden in Avissawella exercising civil appellate and revisionary jurisdiction.

Being aggrieved by the said judgment, the appellants filed an application seeking leave to appeal and accordingly, this court granted leave to appeal on the following questions of law.

- (i) Did the High Court err in holding that the High Court of the Western Province holden in Colombo had no jurisdiction to revise a judgment or order of the District Court of Homagama?
- (ii) Was the High Court misdirected, and err in law by failing to properly consider and interpret Section 5A (1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006 read with Article 154P (1) and Article 154P (3) of the Constitution?
- (iii) Was the High Court misdirected, and err in law in upholding the objection made by the respondent in respect of the jurisdiction of the High Court of Colombo established by Article 154P of the Constitution?

Did the High Court err in holding that the High Court of the Western Province holden in Colombo had no jurisdiction to revise a judgment or order of the District Court of Homagama?

According to Section 5A (1) of the said Act as amended, a High Court established in a province under Article 154P of the Constitution is conferred with jurisdiction to exercise appellate and revisionary jurisdiction in respect of judgments, decrees and orders delivered and made by any District Court within such province.

Section 5A (1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended states as follows;

*“**A High Court** established by Article 154P of the Constitution **for a Province**, shall have and exercise appellate and revisionary jurisdiction in respect of judgments, decrees and orders delivered and made by any District Court or a Family Court **within such province** and the appellate jurisdiction for the correction of all errors in fact or in law, which shall be committed by any such District Court or Family Court, as the case may be.” [Emphasis added]*

There are nine provinces in Sri Lanka. For the purpose of administration of justice, several High Courts exercising civil appellate and revisionary jurisdiction have been established in each province, taking into consideration the population of each province and the number of cases filed in those provinces. Under and in terms of the said section, the said High Courts are

conferred with jurisdiction to hear and determine appeals and revision applications arising from the judgments and orders by any District Court and Family Court situated within such province.

At present, the High Courts of the Western Province exercising appellate and revisionary jurisdiction are established in Colombo, Avissawella, Kalutara, Gampaha, Negombo, Homagama and Mount Lavinia. There are similar arrangements in the other provinces as well.

The appellant submitted that the District Court of Homagama is situated within the Western Province and the High Court holden in Colombo exercising civil appellate and revisionary jurisdiction has jurisdiction to hear the revision application under reference.

This requires the consideration of the phrase “within such province” referred to in Section 5A (1) of the said Act as amended.

According to the *Oxford English Dictionary* (Second Edition), at Page 456, the word ‘within’ is defined as follows;

“In the limits of, or in the inner part of, a space or region, especially a city or country, in the place or realm.”

Furthermore, *Collins English Dictionary* and the *Compact Oxford English Dictionary* defines the word ‘within’ as;

“Not beyond the limits of”, and

“Inside the range or bounds of” respectively.

Therefore, any High Court established in a Province under section 5A (1) of the said Act as amended, has jurisdiction to hear appeals and revision applications in respect of judgments and orders delivered by any District Court or Family Court within the boundaries of such province.

Thus, I am of the view that any such High Court situated within the Western Province has jurisdiction to hear all appeals and revision applications arising from the judgments and orders delivered by any District Court or Family Court situated within the Western Province.

In the circumstances, I hold that the High Court of Western Province holden in Colombo exercising civil appellate and revisionary jurisdiction established under and in terms of section 5A (1) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended, has jurisdiction to hear appeals and revision application in respect of judgments and decrees

delivered by the District Court of Homagama as the District Court of Homagama is situated within the Western Province.

Accordingly, the aforementioned question of law is answered as follows;

Did the High Court err in holding that the High Court of the Western Province holden in Colombo had no jurisdiction to revise a judgment or order of the District Court of Homagama? - Yes

In view of the above conclusion, it is not necessary to consider the other questions of law in this appeal.

Accordingly, I allow the appeal and direct the High Court of the Western Province holden in Colombo exercising civil appellate and revisionary jurisdiction to consider the said revision application according to law and deliver a judgment.

No costs.

Judge of the Supreme Court

Prasanna Jayawardena, PC, J

I agree

Judge of the Supreme Court

Vijith K. Malalgoda, PC, J

I agree

Judge of the Supreme Court