

**GANDHI  
v  
MUBARAK**

COURT OF APPEAL  
AMARATUNGA, J.  
BALAPATABENDI, J.  
CA(PHC) 8/2000  
H.C. RATNAPURA HCRA 134/96  
P.C. RATNAPURA 16246  
AUGUST 23, 2001  
AUGUST 20, 2002

*Primary Courts Procedure Act 44 of 1979 – S.66(1) (a) – Can a Primary Court Judge order the demolition of a wall erected across the doorway? – Constitution Article 154P (3) (b)*

**Held :**

1. The only way to restore possession of the store room to the respondent was by demolishing the wall which was forcibly erected which prevented his effective possession of the store room.

2. The Primary Court Judge was correct and justified in making an order to demolish the wall.

**APPLICATION** for Revision of the Order of the High Court Ratnapura.

**Case referred to :**

1. *James v Kannangara* - 1989 2 Sri LR 350 (Not followed)
2. *Tudor v Anulawathie* - 1999 3 SLR 235 (Followed)

*Manohara de Silva* with *W.D. Weeraratne* for petitioner.

*Ms. Chamantha Weerakoon* - *Unamboowa* for respondent.

*cur.adv.vult*

September 30, 2002

**GAMINI AMARATUNGA, J.**

This is an application to revise the order of the learned High Court Judge of Ratnapura made in the exercise of the revisionary jurisdiction vested in the High Court under Article 154 P(3)(b) of the Constitution. The subject matter of the revision application filed by the present petitioner's mother (who is now dead) was an order made by the learned Primary Court Judge of Ratnapura in a proceeding commenced in terms of section 66(1)(a) of the Primary Courts Procedure Act No 44 of 1979 regarding a land dispute that existed between the petitioner, (and his mother) on one side and the 3rd party respondent-respondent on the other side.

The dispute that was referred to the Primary Court was that the present petitioner and his mother had dispossessed the 3rd party respondent-respondent of the store room used by him by forcibly erecting a wall at the place which he had used to enter the store room from his shop premises. On being noticed the parties appeared in the Primary Court, filed their affidavits and led oral evidence in support of their respective claims. Thereafter the learned Primary Court Judge inspected the premises in question. After considering the material placed before him and his own observations recorded at the time he inspected the premises the learned Primary Court Judge held that the 1st and 2nd party respondents have dis-

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possessed the 3rd party respondent-respondent by erecting a wall across the doorway between his shop premises and the store room.

Therefore he made order placing the 3rd party respondent-respondent in possession of the store room and ordered to demolish the newly built wall closing the door way.

The present respondent's mother who was the 1st party respondent before the Primary Court made a revision application to the High Court of Ratnapura against the decision of the learned Primary Court Judge. The learned High Court Judge having considered the revision application dismissed it. The present petitioner who was the 2nd party respondent before the Primary Court was not a party to the revision application filed in the High Court. His mother who had made the revision application died one week before the High Court dismissed the revision application. No appeal was filed against the order of the learned High Court Judge perhaps for the reason that the present petitioner was not a party to the proceedings before the High Court. The present revision application had been filed five months after the date of the order of the High Court. 30  
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The order of the Primary Court was executed on 10.2.2000 and the wall across the doorway was demolished and the store room was handed over to the respondent. This application had been filed on 11.2.2000, the day after the execution of the order of the Primary Court.

The petitioner in his petition has stated that there are exceptional circumstances warranting the exercise of the revisionary jurisdiction of this Court but has not set out what those exceptional circumstances are. The petitioner has stated that the learned High Court Judge has failed to identify the mistakes and errors of the order of the Primary Court but has not explained what those mistakes and errors are. The petitioner has prayed that the order of the High Court be set aside. But as pointed out in the written submissions of the respondent the petitioner has not prayed that the order of the Primary Court be set aside. Instead the petitioner has prayed that the order of the Primary Court be suspended. As pointed out by the respondent's written submissions such an order cannot be 50

granted by way of substantive relief. The wall in question has already been demolished. Now there is case No 14201/L pending in the District Court of Ratnapura in respect of the same dispute. It appears that the only point taken against the order of the learned Primary Court Judge is that he did not have jurisdiction to order the demolition of the wall erected across the doorway. The petitioner has relied on the authority of the case of *James v Kannangara* <sup>(1)</sup>, a decision of this Court. But as Gunawardana J has observed in *Tudor v Anulawathie* <sup>(2)</sup> there is no point in making an order unless the court has the power to enforce it.

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The only way to restore possession of the store room to the respondent was by demolishing the wall which prevented his effective possession of the storeroom and in these circumstances the learned Primary Court Judge was quite correct and justified in making an order to demolish the wall. The petitioner has not made out a case for the intervention of this Court by way of revision and accordingly the revision application is dismissed with costs fixed at Rs. 5000/-.

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**BALAPATABENDI J.** - I agree

*Application dismissed*