

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

In the matter of an application for Restitution,
in the nature of *Restitutio-In-Integrum and/or
Revision* under and in terms of Article 138 of
the Constitution of the Democratic Socialist
Republic of Sri Lanka.

Court of Appeal

Case No: RII/0085/2024

WP/HCCA/AV/;1898/2019F

DC Avisawella

Case No: 24663/L

Kankanamage Dona Nethmi

Nishani Gunarathne

No. 441/1, Elston Road

Pragathipura, Puwakpitiya

Plaintiff

Vs

Kotabadu Vithanage Sudath Premalal

No. 237

Pragathipura, Puwakpitiya

Defendant

And Between

Kotabadu Vithanage Sudath Premalal

No. 237

Pragathipura, Puwakpitiya

Defendant-Appellant

Vs

Kankanamage Dona Nethmi

Nishani Gunarathne

No. 441/1, Elston Road

Pragathipura, Puwakpitiya

Plaintiff-Respondent

And Now Between

Kotabadu Vithanage Sudath Premalal

No. 237

Pragathipura, Puwakpitiya

Defendant-Appellant-Petitioner

Vs

Kankanamage Dona Nethmi
Nishani Gunarathne
No. 441/1, Elston Road
Pragathipura, Puwakpitiya

Plaintiff-Respondent-Respondent

Before : R. Gurusinghe, J.
&
Dr. S. Premachandra, J.

Counsel : Pradeep Perera
for the Petitioner

Supported on :04-07-2025

Decided on :05-08-2025

ORDER

R. Gurusinghe, J.

The defendant-petitioner (hereinafter referred to as the defendant) filed this *Restitutio-in-Integrum* application seeking *inter alia*, to set aside the judgment of the Learned District Judge of Avissawella, in the case bearing no. 24663/L and the judgment of the Civil Appellate High Court of Avissawella, in the appeal bearing no. WP/HCCA/AV/1898/2019 (F).

The plaintiff-respondent (hereinafter referred to as the plaintiff) filed an action against the defendant-petitioner, seeking for a declaration of title to the land (hereinafter referred to as the Land) described in the schedule to the plaint and ejectment of the defendant-petitioner from that land. The plaintiff's position was that the land initially belonged to the Land Reform Commission (hereinafter referred to as the LRC). The plaintiff and her predecessors started to possess the land in 1992. The plaintiff lived in a small house on the land with her grandmother. After the demise of her grandmother, the plaintiff moved to a different location and granted the defendant leave and licence to occupy the house, which was situated on the land. The LRC decided to grant deeds to the unauthorised occupiers of the

portions of land they were occupying. Accordingly, M.D.C. Jayalath Kumara, Licensed Surveyor, surveyed the land belonging to the LRC and prepared a plan in order to grant deed to the unauthorised occupiers. The Surveyor, Jayalath Kumara, gave evidence in Court and stated that he had prepared Plan No. 924 dated June 20, 2001, according to the instructions of the LRC. The LRC land was surveyed on 24 October 2000 and on 6th and 7th March 2001. Accordingly, there were fifty-one blocks of land in that plan, and Lot 48, the land in question in this section, was occupied by the plaintiff. The Lot 48 was later sold to the plaintiff by the LRC by deed no. 132 dated 05-04-2007, attested by Indrani Leelaratne, Notary Public. That deed was marked P1 in the trial. The copy of the letter by which the Leave and License given to the defendant was cancelled and marked as P5. Certified extract for Lot 48 was marked P2. The plan and report prepared for the case by the Government Surveyor were marked at P4 and P4(a).

The defendant's position was that he was occupying marshy land which belonged to the State. He claimed that he was not a Licensee of the plaintiff. He further argued that the LRC could not have granted a deed to the plaintiff for marshy land that belonged to the State.

The defendant has not given any evidence and has not called any witnesses on his behalf. Therefore, there is no evidence at all to support the position of the defendant. The defendant in this application argued that the plaintiff had failed to establish the identity of the land and had also failed to prove the title to the land as required in a vindicatory action. He further submitted that the judgment of the Civil Appellate High Court is contrary to law and against the weight of the evidence produced at the trial.

The remedy of *Restitutio-in-Integrum* is an extraordinary remedy and will be granted under exceptional circumstances. A party seeking Restitution must act with the utmost promptitude. The Court will not relieve parties of the consequences of their own folly, negligence or laches (Vide the judgment of the Court of Appeal in *Sri Lanka Insurance Corporation Limited vs. Shanmugam and another* [1995] 1 Sri LR 55).

In the above case, the Court of Appeal further held as follows:

Relief by way of Restitutio-in-Integrum in respect of judgments of original course may be sought;

- a) *where judgments have been obtained by fraud by the production of false evidence, non-disclosure of material facts or by force or,*

b) where fresh evidence has cropped up since judgments, which was unknown earlier to the parties relying on it or on which no diligence could have helped to disclose earlier, or,

c) where judgments have been pronounced by mistake and decrees entered thereon, provided, of course, it is an error which connotes a reasonable and excusable error.

Restitution is granted only if no other remedy is available to the party aggrieved.

The petitioner could have challenged the judgment of the Civil Appellate High Court in an appeal to the Supreme Court. However, the petitioner has not appealed to the Supreme Court.

The petitioner has not given any evidence to support his position. Civil actions are decided on the evidence, and the proof required is a balance of probabilities.

The plaintiff's witness, Jayalath Kumara, a Licensed Surveyor, by his evidence proved that the plaintiff was in possession of Lot 48, as per his plan no. 924 at the time of the survey of the land in the years 2000 and 2001. The plaintiff and her father presented evidence and marked documents, which were sufficient to prove the plaintiff's case. On the other hand, the defendant produced no evidence.

In the above circumstances, we see no exceptional grounds to interfere with the judgment of the Learned District Judge dated 24-07-2019, or in the judgment of the Civil Appellate High Court of Avissawella, dated 20-11-2023. Therefore, we refuse to issue formal notice on the respondents. The application of the petitioner is dismissed.

Judge of the Court of Appeal.

Dr. S. Premachandra, J.
I agree.

Judge of the Court of Appeal.