

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

In the matter of an application for Revision
and Restitutio-in-Integrum in terms of
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

CA /RII/43/2023

PHC/Matale Case No.(Rev) 32/2018

MC Dambulla Case No.80992

Secretary,
Divisional Divisional Secretariat,
Galewela.

PLAINTIFF

Vs.

Adhikari Gedara Sheela Adhikari,
Pahalawewa,
Galakiriyagama

RESPONDENT

And Between

Adhikara Gedara Sheela Adhikari
Pahalawewa,
Galakiriyagama.

RESPONDENT PETITIONER

Vs.

1. Secretary,
Divisional Divisional Secretariat,
Galewela.

2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

PLAINTIFF RESPONDENTS

And Now Between

Adhikara Gedara Sheela Adhikari
Pahalawewa,
Galakiriyagama.

RESPONDENT PETITIONER APPELLANT

Vs.

1. Secretary,
Divisional Divisional Secretariat,
Galewela.

2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

**PLAINTIFF-RESPONDENT-
RESPONDENTS**

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel Rohan Sahabandu, P.C., with Chathurika Elvitigala for the Respondent-Petitioner-Appellant, instructed by Pieris & Pieris.

Shemanthi Dunuwille, S.C. for the State.

Written Submissions : Of the Defendant-Petitioner-Appellant filed on
31/10/2025

Of the Plaintiff-Respondents-Respondents filed on
04/08/2025

Argued On : 03/04/2025

Judgment On: 03/12/2025.

Dr. Sumudu Premachandra J.

1] The Respondent Petitioner Appellant seeks the following reliefs and prays to:

- a. Issue Notices
- b. Issue a stay order staying the operation of the order of the High Court dated 23/02/2023
- c. Set aside the judgement of the High Court dated 23/02/2023

- d. Set aside the judgement of the Learned Magistrate dated 21/03/2018
- e. Grant costs and
- f. Such other and further reliefs as Your Lordships' Court shall seem fit and meet.

2] Brief history of this application is as follows: the case began in the Magistrate's Court under Section 66 of the Primary Courts Procedure Act, concerning a breach of peace regarding a family burial ground. The officer in charge of Galewela Police Station had filed a report under section 66 of the Primary Court Procedure Act. The 1st Party (Petitioner) claimed the land, called "*Deganthuduwa*," was a *Paraveni* Property given to her father and used as a family burial ground for over 75 years, alleging that the 2nd Party (Ethabendiwewa Upali Himi) unlawfully entered and filled the graves. The 2nd Party disputed this, claiming the land was not a family burial ground and the 1st Party lacked title. It is seen in the said action that there were two intervenient parties, namely Adhikari Gedara Thilakaratne and Adhikarigedara Punchim Menika. However, by order dated 26/01/2016, said case bearing No. 68943(66) of Dambulla District/Magistrate's Court, the learned Primary Court Judge held that possession was to be given to the 1st Party, the Petitioner.

3] The controversy escalated when the Divisional Secretary of Galewela (Appellant/Petitioner) filed an action seeking recovery of possession under the State Lands (Recovery of Possession) Act of the said land, case bearing No. 80992 of Dambulla District/Magistrate's Court, the basis of this application.

4] The Respondent (the original 1st Party), now the Petitioner in this application, objected, asserting the land was a *Paraveni* Property and provided documents,

ඉ1 to ඉ 7. After inquiry, the learned Magistrate, by order dated 21/03/2018, issued an order of ejectment, which was upheld by the Provincial High Court.

5] The Petitioner now seeks a Revision/Restitutio in Integrum, arguing the courts acted on documents with "no legal value," failed to properly address the land status as "*Paraveni* Land," and that the State Land Recovery of Possession Act cannot apply to *Paraveni* Property, thus rendering the orders void.

6] When the matter was taken up, the learned State Counsel has taken up preliminary objections, and parties have filed written submissions with effect to those objections.

7] The first objection is that the Respondents say that the Petitioner should have pursued the appropriate statutory appellate remedies, such as a Provincial High Court (PHC) appeal, or a *vindicatio* action in the District Court to claim title/ownership (*paraveni*). It is seen though; the Petitioner had filed revision application with regard to the order of 66 Application order, the Petitioner has not filed any application before High Court, regarding recovery of the State Land Recovery of Possession Act. She has clear statutory rights against the Magistrate's impugned order which was delivered under the State Land Recovery of Possession Act. Thus, it is clear that despite the alternative remedy, the Petitioner had filed this application to this court. In **Wijersiri Gunawardane & Others v. Chandrasena Muthukumarana & Others**, SC Appeal No. 111/2015 decided on 27.05.2020, his Lordship Aluwihare PC. J. considered and held that;

“One basic distinction would be that while the appellate rights are statutory, the exercise of revisionary power is discretionary.

8] Thus, the Petitioner had a clear-cut statutory remedy, and he failed to exercise it. In **Perera v. Wijewickreme**, 15 NLR 411. His Lordship Pereira J. held:

“It was not granted unless no other remedy was available to the applicant or unless restitution was the more effectual remedy”

9] In the same case, His Lordship Ennis J. held that;

“This is an application for restitutio in integrum. It appears clear that such an application is not granted in Ceylon if any other remedy is available.”

10] Thus, I am of the view that the Petitioner had not given a reasonable explanation for not resorting to her appellate rights; thus, the application should be dismissed.

11] Secondly, the Respondent has mentioned that the Petitioner waited 10 months after the High Court Order before invoking the RII jurisdiction; the delay of the Petitioner is fatal to this application, as a discretionary relief is sought.

12] In **Sri Lanka Insurance Corporation Ltd. v. Shanmugam and Others** [2005] 1 SLR 1, His Lordship Ranaraja J held;

“Restitution reinstates a party to his original legal condition which he has been deprived of by the operation of law. It is an extraordinary remedy and will be granted under exceptional circumstances. The remedy can be availed of only by one who is actually a party to the legal proceeding. He cannot claim damages but he should have suffered damages. 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***” [Emphasis is added]

13] The Petitioner says that the proceedings were flawed because no valid application supported the Affidavit that was filed, which is a mandatory prerequisite under Section 5 of the Act and established case law (**Kandiah vs. Abeykoon**, Kandiah v Abeykoon, Sriskantha L.R. Vol. IV, p.96; H/L Goonewardene J;

“Upon the construction of a statute as a whole, the forms of notice, application and affidavit had to be in strict compliance with those which the legislature has thought important enough to set out in the schedules before the jurisdiction of the magistrate to eject the person in possession or occupation could be exercised”

14] As I noted above, if the Petitioner had a good ground for argument, it is a dubious why she has not considered exercising her appellate rights. I do not think this can be taken as a valid ground for invoking our discretionary jurisdiction.

15] Though, the Petitioner said that there are flaws in the judicial process, which deprived her of a fair opportunity to present the facts and her claim that the land is *Paraveni* property, cannot be taken as a valid ground since she was afforded a fair opportunity to get these objections in the original forum and we see a fair hearing was also given in the original forum.

16] In these circumstances, we uphold the preliminary objections. Thus, the application is dismissed, no costs.

Judge of the Court of Appeal

I agree.

R. Gurusinghe

Judge of the Court of Appeal