

**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* under and in terms of Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal

Case No: RII/0027/2025

DC Mt. Lavinia

Case No: 2661/11/L

WP/HCCA/MT/57/18(F)

SC/HCCA/LA/38/2021

Madana Kondage Sidney Lakshman

Fernando

No. 30B, Terrence Mawatha,

Mount Lavinia

Defendant-Respondent-Petitioner-Petitioner

Vs

Madana Kondage Osman Apolinaris

Fernando,

No. 30/1/A, Terrence Mawatha,

Mount Lavinia.

Plaintiff-Appellant-Respondent-Respondent

And Now In Between

In the matter of an application for leave to appeal in terms of Section 5(c)(1) of the High Court of the Provinces (Special Provisions) Amendment Act No. 54 of 2006.

Madana Kondage Sidney Lakshman

Fernando,

No. 30B, Terrence Mawatha,

Mount Lavinia.

Defendant-Respondent -Petitioner

Vs.

Madana Kondage Osman Apolinaris
Fernando,
No. 30/1/A, Terrence Mawatha,
Mount Lavinia.

Plaintiff-Appellant-Respondent

In the matter of an application under Section 754(1) of the Civil Procedure Code read together with the provisions of the Provincial High Court (Special Provisions) Act No. 19 of 1990 as amended as Act No. 54 of 2006.

Madana Kondage Osman Apolinaris
Fernando,
No. 30/1/A, Terrence Mawatha,
Mount Lavinia.

Plaintiff-Appellant

Madana Kondage Sidney Lakshman
Fernando,
No. 30B, Terrence Mawatha,
Mount Lavinia.

Defendant-Respondent

AND IN BETWEEN

Madana Kondage Osman Apolinaris
Fernando,
No. 30/1/A, Terrence Mawatha,
Mount Lavinia.

Plaintiff

Vs

Madana Kondage Sidney Lakshman
Fernando,
No. 30B, Terrence Mawatha,
Mount Lavinia.

Defendant

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

Counsel : Hemantha Situge with S.D. Edirisuriya
for the Defendant-Appellant-Petitioner

J.P. Gamage with Chamara Fernando and
Theekshana Ranaweera
for the Plaintiff-Respondent-Respondent

Supported on : 27-06-2025

Decided on : 22-07-2025

ORDER

R. Gurusinghe, J.

The defendant-petitioner and the plaintiff-respondent are siblings. It is common ground that their mother, namely, Jasmine Fernando, owned the larger land, which she divided into three blocks, namely A¹, A², and A³, as shown in the survey plan no. 3368 dated 10-09-1985 made by G.L.B. Nanayakkara, Licensed Surveyor.

Block A¹ was later divided into two lots, namely A^{1A} and A^{1B}, by the same Surveyor, by plan no. 3552A dated 08-01-1986, on the instructions of the mother of the parties. Lot A² was gifted to the plaintiff by the mother.

The boundaries of A² were described as follows:

- North by Lot A and Terrence Avenue,
- East by assessment no. 32 Terrence Avenue and the land of N.M. Nugara,
- South by assessment No. 40 of Sylvester Road,
- West by Lot A¹ and A³ of the same plan.

The same boundaries are given in the deed of gift No. 1645 dated 05-03-1989, by which the mother of the plaintiff and the defendant, Jasmine Fernando, gifted lot A² to the plaintiff.

The boundaries of Lot A¹B were described as follows:

- North by Terrence Avenue,
- East by Lot 2 in land no. 3368,
- South by Lot A² and A³ in plan no. 338,
- West by Lot A¹A of the same plan.

A¹A	A¹B
5.9p	5.1p
A³	A²
6p	6.55p

This diagram is intended for convenience in depicting the land. But not according to the correct scale.

Lot A¹B was gifted to the defendant by Jasmine Fernando by deed no. 1387 dated 29-01-1986. In that deed, the instant boundary of the land is described as Lot A² of plan no. 3368. By that deed, the defendant was not given any access through Lot A². Further, there was no such necessity because Lot A¹B was adjoining Terrence Avenue.

It is very clear from the plans and the deeds that there was no roadway for the defendant on the Eastern boundary of the defendant's land. The defendant's position is that he had acquired a right-of-way by prescription over the plaintiff's land. In the Civil Appellate High Court, the defendant's claim of right-of-way, by way of prescription, was adequately dealt with, and it was decided that the defendant had not acquired any right of way over the plaintiff's land. The Supreme Court rejected the defendant's application for leave to appeal, against the decision of the Civil Appellate High Court.

The defendant-petitioner in this application has taken a completely new position, arguing that there is a fraud on the plan number 3368, prepared by G.L.B. Nanayakkara, L.S., in 1985, at the instance of the mother of the defendant and plaintiff. The defendant states that the plaintiff's land cannot be 6.55 perches with the strip of land he had been using as a road. His position is that, including that strip of land, the extent of Lot A² is more than 6.55 perches. For this proposition, there is no evidence at all. The petitioner is attempting to challenge the validity of a plan prepared at the

instruction of their mother 40 years ago. The mother gifted two blocks of land to the plaintiff and the defendant, using and relying on the said plan. The petitioner's application is absolutely frivolous and has no merit at all. We refuse to issue notice on the respondent. 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.