

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

In the matter of an application for restitutio in integrum under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka and/or to be read with the provision of the Act No.19 of 1990.

**Case No.RII/08/2023  
High Court of Civil Appeal No.  
WP/HCCA/NEG/28/19 LA  
DC Minuwangoda: 362/1**

01.Mannikkuge Mallika Silva.  
02.Kalinga Dayawansha Silva,  
Both are at 340/D,  
Yatiana,  
Minuwangoda.

**PLAINTIFFS**

**Vs.**

Wijepala Abayasinghe Mudiyanseelage  
Sudesh Ruwan,  
No. 340/2,  
Yatiana,  
Minuwangoda.

**DEFENDANT**

**AND NOW BETWEEN**

Wijepala Abayasinghe Mudiyanseelage  
Sudesh Ruwan,  
No. 340/2,  
Yatiana,  
Minuwangoda.

**DEFENDANT-PETITIONER**

**Vs.**

01.Mannikkuge Mallika Silva.  
02.Kalinga Dayawansha Silva,  
Both are at 340/D,  
Yatiyana,  
Minuwangoda.

**PLAINTIFF-RESPONDENTS**

**Before:** R. Gurusinghe J.

**&**

Dr. Sumudu Premachandra J.

**Counsel:** Vijith Singh with K. Chathurangi D. Perera instructed  
by M. Manoharie S. Perera for the Defendant-Petitioner.

Shantha Jayawardena with Wihangi Tissera for the 1<sup>st</sup>  
and 2<sup>nd</sup> Plaintiff-Respondent.

**Written Submissions:** On behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff-Respondents filed  
on 18/02/2026.

On behalf of the Petitioner filed on 13/02/2026.

**Argued On:** 02/09/2024,19/12/2024,05/06/2025, and  
03/11/2025.

**Order On:** 06/03/2026.

**Dr. Sumudu Premachandra J.**

1] The Petitioner prays that this Court be pleased to:

- a) Set aside the order dated 24/10/2019 (and its related subsequent orders and/or all the subsequent orders after the date of 24/10/2019) and direct the Learned District Judge to issue summons and/or notice of interim injunction on the Defendant-Petitioner through registered post; and/or set aside/vary the order of the High Court of the Civil Appeal of Negombo (in the case bearing No. WP/HCCA/NEG/28/19LA) dated 30/11/2022, accordingly.
- b) In the alternative to the above/in addition to the above, interpret the order of High Court of Civil Appeal of Negombo dated 30/11/2020 (in the case bearing No.WP/HCCA/NEG/28/19LA) whether the said order includes the mandatory interim injunction or not.
- c) Set aside the order of the Learned District Judge dated 09/11/2022 marked "P".
- d) Direct the Learned District Judge of Minuwangoda to restore the possession of the Defendant-Petitioner.
- e) Grant an interim order/ stay order staying further proceedings of the District Court of Minuwangoda case bearing No.L 362.
- f) Issue notice on the Plaintiff-Respondents.
- g) For costs; and such other and further reliefs as Your Lordships' Court shall seem meet.

2] The dispute originates from a District Court of Minuwangoda case (362/L) filed by the Respondents to prevent the Petitioner from blocking their right of

way, the only access road. The enjoining order was refused by the learned trial judge and against the said decision, the Plaintiff Respondents filed a leave to appeal application to the Gampaha Civil Appeal High Court bearing No.WP/HCCA/NEG/28/19LA. On 30/11/2020, the learned Judges of the Civil Appeal High Court set aside the impugned order dated 21/11/2019 and the leave to appeal was allowed and enjoining order was granted.

3] Being aggrieved to the said order, the Petitioner filed a leave to appeal application to the Supreme Court bearing No. SC/HCCA/LA/20/2021 and leave was refused.

4] The Petitioner alleges significant procedural lapses, specifically that the District Court failed to follow Section 59(2) of the Civil Procedure Code regarding the proper service of summons. Despite these objections, the District Court moved to execute the mandatory interim injunction. The Petitioner argues that the Registrar of the District Court essentially granted vacant possession of the roadway to the Plaintiff based on the trial court's previous findings, which the Petitioner contends is a misapplication of the law.

5] Ultimately, the Petitioner seeks restitutio in integrum (restoration to the original condition), arguing that the mandatory interim injunction effectively amounts to an unlawful ejection. The petition highlights that a mandatory injunction should not be granted when it provides the "final relief" sought in the main case, especially when procedural requirements for notice and summons were bypassed. The Petitioner maintains citing case laws that without the Court of Appeal's intervention, they will suffer irreparable damage and loss of their property rights.

6] The Respondents raise a primary preliminary objection based on the principle of finality and the Supreme Court judgement in SC/APPEAL/65/2025. They argue that because the Supreme Court already refused leave to appeal regarding the Negombo CAHC No.WP/HCCA/NEG/28/19LA order, the Petitioner is legally

barred from maintaining the present action. Furthermore, the Respondents contend that the Court of Appeal lacks jurisdiction to hear revisions against orders made by the Civil Appellate High Courts. Citing Section 5C of the High Court Special Provisions Act, they argue that the legislative intent was to provide a single, direct appeal to the Supreme Court, thereby excluding any intermediate appeal or revision to the Court of Appeal.

7] The Respondents emphasize that creating a "third tier" of appellate scrutiny moving from the District Court to the CAHC and then through the Court of Appeal before reaching the Supreme Court would frustrate the administration of justice.

8] The core argument is that the Court of Appeal lacks the jurisdiction to review, vary, or set aside judgments or orders made by a Provincial High Court of Civil Appeal. Citing the binding precedent in SC/APPEAL/65/2025 (dated 15/05/2025), the Respondents assert that Article 138 of the Constitution and Act No. 54 of 2006 established a clear two-tier appellate structure: an appeal from the District Court goes to the Provincial High Court, and any subsequent challenge must go directly to the Supreme Court with leave. The Respondents argue that allowing a third tier of review (via the Court of Appeal) would frustrate legislative intent, cause endless litigation, and undermine the principle of finality.

9] In view of the judgment in SC/Appeal/65/2025 **W.T.S. Nilantha Fernando v P.M.S. Nilanthi Perera**, decided on 10/10/2025, Supreme Court held this court has no jurisdiction to entertain this application. In this judgement, the Supreme Court held inter alia as follows:

*“After the introduction of the Provincial High Courts by the 13<sup>th</sup> Amendment to the Constitution, the Court of Appeal and the Provincial High Court have been vested with concurrent appellate jurisdiction. This was emphasised in all leading cases including Swasthika Textile Industries Ltd v. Thantrige Dayaratne [1993] 2 Sri LR 348, Gunaratne v. Thambinayagam [1993] 2 Sri LR 355 and Abeywardene v. Ajith De Silva [1998] 1 Sri LR 134. It was*

*further held that; A party dissatisfied with a judgment of the Provincial High Court cannot create a third tier of appellate scrutiny by describing the route as revision or restitutio in integrum. In the impugned order, the Court of Appeal, following Gunawardane v. Muthukumarana [2020] 3 Sri LR 306, held that such a party may invoke its revisionary jurisdiction on the basis that it is distinct from its appellate jurisdiction. I am unable to agree with that view”.*

10] In that it was further cited with approval of **Balaganeshan v. OIC, Police Station, Seeduwa** (SC/SPL/LA/79/2015, SC Minutes of 01/04/2016) and held;

*“When the Provincial High Court exercises appellate jurisdiction, it exercises appellate jurisdiction hitherto exclusively vested in the Court of Appeal. It exercises a parallel or concurrent jurisdiction with the Court of Appeal. The High Court when it exercises appellate jurisdiction it is not subordinate to the Court of Appeal. That is the basis for conferring jurisdiction on the Supreme Court under section 9 of the High Court of Provinces (Special Provisions) Act No. 19 of 1990 to hear appeals from the judgments of the High Court when it exercises appellate jurisdiction. I hold that the Accused Appellant–Petitioner should have filed a Special Leave to Appeal application against the judgment of the High Court exercising Appellate Jurisdiction to the Supreme Court in the first instance instead to the Court of Appeal.”*

11] After deliberation, Their Lordships of the Supreme Court held that the Court of Appeal has no jurisdiction, whether by way of final appeal, revision, or restitutio in integrum, to review the judgments or orders of the Provincial High Court, whether in the exercise of its appellate jurisdiction under Act No. 19 of 1990, as amended by Act No. 54 of 2006, or in the exercise of its original jurisdiction under Act No. 10 of 1996. Such jurisdiction is vested exclusively in the Supreme Court.

12] In **Cassim v. Government Agent, Batticaloa**, 69 NLR 403, Sansoni, C.J.

Stressed that there must be a finality in litigation and observed;

*“An application in revision must be made promptly if it is to be entertained by the Supreme Court. **There must be finality in litigation, even if incorrect orders have to go unreversed.**” [ Emphasis is added]*

13] In the above circumstances, this court decides that it has no jurisdiction to entertain and decide this application. In view of this situation, the main matter of the Petitioner cannot be considered. Therefore, this application is dismissed. The parties will bear their own costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL