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.

Dissanayake Mudiyanselage Gunawardana (Deceased),
"Sisila",
9 Mile Post,
Bibila Road,
Madagama.

C.A. Restitutio in Intergrum
Application No.RII/0086/2024 **PLAINTIFF**

D.C. Monaragala
Case No.2229/L

Dissanayake Mudiyanselage Darmasena
Bandara,
Wimalathunga Mawatha,
Kataragama Road,
Buttala.

SUBSTITUTED - PLAINTIFF

Vs.

Wanasinghe Mudiyanselage Jayasinghe
Bandara,
No.5, 9 Milepost,
Bibila Road,
Madagama.

DEFENDANT

AND

Dissanayake Mudiyanselage Darmasena
Bandara,
Wimalathunga Mawatha,
Kataragama Road,
Buttala.

SUBSTITUTED – PLAINTIFF - PETITIONER

Vs.

Wanasinghe Mudiyanselage Jayasinghe
Bandara,
No.5, 9 Milepost,
Bibila Road,
Madagama.

DEFENDANT – REPONDENT

AND NOW

Dissanayake Mudiyanselage Darmasena
Bandara,
Wimalathunga Mawatha,
Kataragama Road,
Buttala.

SUBSTITUTED-PLAINTIFF-PETITIONER-PETITIONER

Dissanayake Mudiyanselage Darmasena
Bandara,
Wimalathunga Mawatha,
Kataragama Road,
Buttala.

Vs.

Wanasinghe Mudiyanselage Jayasinghe
Bandara,
No.5, 9 Milepost,
Bibila Road,
Madagama.

DEFENDANT – REPONDENT-RESPONDENT

Before: R. Gurusinghe J.

&

Dr. Sumudu Premachandra J.

Counsel: Gamini Hettiarachchi for the Substituted- Plaintiff-Petitioner- Petitioner.
Lakshan Livera for the Defendant – Respondent – Respondent instructed by Waruni Kumarapeli.

Written Submissions: To be filed

Supported On: **26/06/2025.**

Delivered On: **29/08/2025.**

Dr. Sumudu Premachandra J.

1] This is an application for Restitutio in Integrum filed by the substituted Plaintiff-Petitioner-Petitioner to set aside the order of the District Court of Monaragala dated 21.03.2024 in Case No. 2229/L, and to set aside the settlement entered between the parties on 05.03.2018 in the same case.

2] The Petitioner, who is the substituted Plaintiff after the death of his father (the original Plaintiff), states that his father was the lawful owner of the land described in Schedule A of the amended plaint. A dispute arose in 2010 when the Respondent objected to the construction on part of this land (Schedule B), resulting in a police complaint and a subsequent Magistrate's Court 66 order

granting possession of that portion to the Respondent. The original Plaintiff thereafter filed a case in the District Court seeking a declaration of ownership and possession. However, during the trial, a settlement was proposed and accepted by the parties, based on an assumption that the Respondent owned adjoining State land, but later information obtained through a Right to Information request revealed that the Respondent owned no such land.

3] The Petitioner argues that the original Plaintiff agreed to the settlement under false pretenses and made an application to set it aside, claiming fraud, mistake, and misrepresentation. The District Judge initially agreed to inquire into the matter, but after a full hearing, dismissed the Petitioner's application in an order dated 21.03.2024.

4] The Petitioner says that although the learned trial judge acknowledged the Respondent owned no state land, the decision focused on whether the disputed land (Schedule B) was part of the Petitioner's land (Schedule A) or part of a grant allegedly belonging to the Respondent's mother. The Petitioner contends that neither the Respondent's mother nor any other family member was called as a witness and that no legal claim was made by any such third party, rendering the judgment erroneous and unsupported by evidence.

5] The Petitioner further states that the Respondent gained rights to land through a fraudulent settlement, and the District Court erred in not recognizing this error. He emphasis that the core issue is the Respondent's lack of ownership, and without such a right, the settlement should not be valid.

6] The Petitioner also says that his request for a new survey commission to resolve confusion in land boundaries was rejected by the court, prompting a separate leave to appeal application (UP/H.C.C.A/L.A.09/2024) currently pending in the Civil Appeal High Court in Badulla.

7] Basically, the learned trial judge has refused to vacate the settlement on the basis that no fraud, misrepresentation, or mistake occurred when entering the purported settlement.

8] I now consider the merits of the application. This application is for Restitutio in integrum under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka, and it says;

> *"Article "138. (1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance, tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, of all causes, suits, actions, prosecutions, matters and things [of which such High Court, Court of First Instance], tribunal or other institution may have taken cognizance:*
>
> *Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice."*

9] Thus, this court has the power to correct all errors in fact or in law, by way of appeal, revision and restitutio in integrum, subject to the said error has not prejudiced the substantial rights of the parties or occasioned a failure of justice. Restitutio in Integrum is available for judgments of original courts entered consequent to misrepresentation of facts or fraud due to which the party seeking relief has suffered damages: (Vide ***Perera vs. Wijewickrama*** 15 NLR 411, ***Kusumawathie vs. Wijesinghe*** [2001] 3 SLR 238.)

10] In ***Kumudu Samanthi Akmeemana v. Araliya Kankaanamge Somasiri de Silva & Others*** CA/RI/1/2018, Decided on 21.02.2019, His Lordship Samayawardhena, J, considered the powers in granting relief under restitutio in *integrum as follows;*

> *"It must be stressed that "the power to grant relief by way of restitutio in integrum is a matter of grace and discretion." (Usoof v. Nadarajah Chettiar1) The petitioner cannot seek restitution as of right. There are several threshold matters to be sorted out before addressing the core issue……. One such*

important hurdle to overcome is that "relief by way of restitutio in integrum should be sought for with the utmost promptitude." Vide Menchinahamy v. Muniweera, Babun Appu v. Simon Appu, Sri Lanka Insurance Corporation Limitted v. Shanmugam ……., it is crystal clear that the petitioner has not acted with the utmost promptitude when she decided to come before this Court more than two years after the District Court held against her. The delay is too long by any stretch of imagination particularly because the final order of the District Court against her was not ex parte but inter partes……. The explanation for delay over two years is unacceptable. Hence, on that ground alone, the application of the petitioner is liable to be dismissed."

11] In ***Diathu Arachchige Lily Silva vs Registrar General and others,*** C.A. No. Rll-0003-2016, DECIDED ON 23.06.2020, Dr. Ruwan Fernando, J, enunciated as;

"In Sri Lanka, the remedy of restitutio in integrum has taken deep root in the practice and procedure of our Courts (Abeysekera v. Haramanis Appu 14 NLR 353).). Cases in which application for relief by way of restitution in respect of judgments of original courts have been made can be broadly classified under two heads: (a) where a judgment has been obtained by fraud or where there has been a discovery of fresh evidence; (h) where a judgment has been entered of consent and there has been an absence of a real consent such as in cases of fraud, fear, excess of authority and mistake (Dember v. Hakel 49 NLR 62, p. 66)."

12] The Petitioner said the Respondent did not have ownership of the adjacent land claimed, and it was revealed as State Land; thus, there was a fraud. However, it is seen that the terms of settlement were entered to demarcate the boundaries of the land with the full consent and knowledge of the parties.

13] In ***Lameer v. Senarathna*** [1995] 2 SLR 13, in the case of restitution on Laesio Enormis, it was held that the Court cannot grant relief by way of restitution to a party who has agreed in Court to sell property at a lesser price

with the full knowledge of its true value. In the case in hand, the Petitioner has agreed to resolve the issue on a commission, to be done by the Surveyor General.

14] The terms entered on 05.03.2018 are as follows;

> 01. මෙම නඩුවට අදාළ පැමිණිලිකරුගේ ඉඩම පුද්ගලික ඉඩමක් වන අතර, විත්තිකරු අයිතිවාසිකම් කියන ඉඩම රජය මගින් ප්‍රදානය කරන ලද ඉඩමක් බවට දෙපාර්ශවය පිළිගනි.
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> 02. ඒ අනුව පැමිණිලිකරුගේ ඉඩම F.T.P 162. කැබලි අංක 11 නිරූපිත වන ඉඩමේ කොටසක් වන අතර, විත්තිකරුගේ ඉඩම F.T.P 162. හි කැබලි අංක 42 නිරූපිත වන ඉඩමක් වන බවද දෙපාර්ශවය පිළිගනී.
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> 03. ඒ අනුව පැමිණිලිකරුගේ ඉඩමේ උතුරු මායිමත් විත්තිකරුගේ ඉඩමේ දකුණු මායිමත් හරියාකාරව නිශ්චය කිරීමෙන් මෙම ආරවුල විසඳා ගැනීමට හැකි බවට දෙපාර්ශවය පිළිගනී
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> 04. 6663 ට හා 2014.03.08 දිනැති විත්තියේ මානක සැලැස්ම පාදක කර ගනිමින් මෙම ආරවුලට අදාල මායිම රජයේ මිනුම්පති වෙත නිකුත් කරනු ලබන අධිකාරී පත්‍රයක් මගින් නිශ්චය කර ගැනීම සඳහා දෙපාර්ශවය එකඟ වේ.
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> 05. ඒ සඳහා යන වියදම දෙපාර්ශවයම එක හා සමාන ලෙස දැරීමට එකඟ වේ.
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> 06. ඉන් අනතුරුව එසේ නිශ්චය කරගනු ලබන මායිමේ දකුණු දිශාවට දිවෙන ඉඩම් කොටස පැමිණිලිකරුට අයත් බවටත් උතුරු දිශාවට දිවෙන ඉඩම් කොටස විත්තිකරුට අයත් බවටත් දෙපාර්ශවය පිළිගනී.

15] In the above settlement, it is clear that the Petitioner admitted the Defendant-Respondent's land is a state land. (clause 01). And they further admitted that the Plaintiff's (the Petitioner's) land is Lot 11 and the Defendant's land was 42 of plan F.T.P 162. They agreed to demarcate the northern boundary of the Plaintiff and the southern boundary of the Defendant and settle the dispute. They agreed that the survey should be based on 6663 and 08.03.2014 dated Defendant's plan. They agreed on the survey that the southern portion of the land belongs to the Plaintiff, the northern portion of the land belongs to the Defendant, and the cost of the survey should be borne by both parties equally. Thus, it is seen that the ownership of the Defendant has been admitted by the Petitioner and with full knowledge and consent, the plan was prepared.

16] Under section 408 of the Civil Procedure Code, the dispute can be settled by parties outside courts. It says;

> *"408. If an action be adjusted wholly or part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the action, such agreement, compromise, or satisfaction shall be notified to the court by motion made in presence of, or on notice to, all the parties concerned, and the court shall pass a decree in accordance therewith, so far as it relates to the action, and such decree shall be final, so far as relates to so much of the subject-matter of the action as is dealt with by the agreement, compromise, or satisfaction."*

17] Thus, it is lawful to enter a settlement at the request of the parties, and the parties cannot go back thereafter. It was held in ***City Properties (Pvt) Ltd vs Edirisinghe [2011] 2 SLR 273.*** *Once the parties enter the consent decree, they cannot go back, and the terms of settlement should be honoured*.

18] In ***Dassanaike v. Dassanaike*** 30 N.L.R. 385 at 387, Fisher, C. J. observed:

> *"It is fundamentally necessary before section 408 can be applied that it should be clearly established that what is put forward as an agreement or compromise of an action by the parties was intended by them to be such."*

19] In the case of The ***People's Bank v. Gilbert Weerasinghe*** (1986) 2 CALR 260, it was held that an agreement must be expressed in clear and unambiguous terms to have a binding effect on the parties to give it the effect of amounting to an implied waiver of the right of appeal.

20] Soertsz, J. in ***Punchibanda v. Punchibanda*** 42 NLR 382 noted how terms of settlement to be set out as below:

> *"This court has often pointed out that when settlements, adjustments, admissions, are reached or made, their nature should be explained clearly to the parties and their signatures or thumb impressions should be obtained. The consequence of this obvious precaution not being taken is that*

this court has its work too unduly increased by wasteful appeals and by applications being made to it for revision or restitutio in integrum"

21] In the case in hand, there was no dispute between the parties when it was entered. After the survey, the Petitioner is disputing the terms on fraud, which cannot be done. The effect of a settlement is discussed in ***Gunawardena v. Ran Menike and Others*** [2002] 3 S. L.R. 243 and the Court held;

"Where there has been a settlement or compromise ***it must be in strict compliance*** *with the provisions of section 91 and section 408 of the Civil Procedure Code"* [Emphasis is added]

22] Thus, it is settled law, once the parties agree upon a settlement; they cannot go back and must be in strict compliance. It was held where a consent decree has been entered; the court has no jurisdiction to vary such a decree on the application of one party except with the consent of the other. (Vide ***MAMNOOR v. MOHAMED*** 23NLR 493, ***PUNCHI BANDA v. NOORDEEN*** 30 NLR481, ***PERERA vs PERERA*** 50NLR 81)

23] Moreover, in ***Nandawathie vs Jayatilake and Others*** [2005] 3 Sri L R. 230, Somawansa, J. (P/CA) held as;

"Once the terms of settlement as agreed upon are presented to court and notified thereto and recorded by court a party cannot resile from the settlement even though the decree has not yet been entered. (followed ***SINNA VELOO vs MESSRS LIPTON LTD*** *66 NLR 214"*

24] The Petitioner tried to rescind the settlement, stating that there is no such state land owned by the Respondent adjacent to his land; thus, the Respondent had entered into the settlement on the misrepresentation of the facts. The jurisdiction of this court should be invoked to rescind the purported settlement.

25] This statement to rescind the settlement was based on the facts provided dated 03.08.2019 by the Information Officer of the Divisional Secretariat of Monaragala under the provisions of the Right to Information Act. However, at the inquiry on 24.02.2021, the Land Officer of Monaragala Divisional

Secretariat, D.A. Sepala, on the cross-examination, has produced the ledger of the Respondent's land and admitted that the Respondent's mother, Rajakaruna Nawaratna Mudiyanselage Leelawathie, was given a 1-Acre 1-Rood 28-perches land under LDO permit bearing No. 20865 on 27.07.1996 under "*Jaya Bhumi*" scheme. (Vide pages 169 to 173 of the certified copy of Monaragala District Court Case No. L/2229) This ledger was marked as "X" at the inquiry. This witness confirmed there was no dispossession of this land other than that. This particular was produced on oath and was subjected to cross-examination. On the other hand, the letter of the Information Officer is merely a piece of paper under the eyes of law. Thus, it is clear that, on the available facts, there was no misrepresentation as mentioned by the Petitioner.

26] On careful perusal, there are two plaints, dated 08.12.2010 and 30.07.2014, that can be found. The latter must be the amended plaint. On that plaint, it is clearly seen that the original Plaintiff has filed an action of *rei vindicatio*. In an action for rei vindicatio, the Plaintiff must prove the title to the impugned land and identification of the land must also be proved on the balance of probabilities. (Vide ***Bank of Ceylon vs A.C. Rajasingham and others***, SC/APPEAL/40/2014, Decided on: 04.07.2023, by His Lordship Samayawardhena, J.) On the other hand, the Defendant has no burden to prove his title. Herat J. in ***Wanigaratne v. Juwanis Appuhamy*** 65 NLR 167 held that;

> *"The defendant in a rei vindicatio action need not prove anything, still less, his own title. The plaintiff cannot ask for a declaration of title in his favour merely on the strength that the defendant's title is poor or not established. The plaintiff must prove and establish his title."*

27] In the case in hand, the Defendant has produced the LDO permit and thus, there is no misrepresentation as such, as mentioned in the petition. As I earlier noted, once facts are agreed and admissions are made, the Plaintiff (the Petitioner) cannot go back. In ***Mariammai V Pethrupillai*** 21 NLR 200, the court held that;

"if a party in a case makes an admission for whatever reason, he must stand by it; it is impossible for him to argue a point on appeal which he formally gave up in the court below"

28] Further in ***Uvais V Punyawathie*** [1993] 2 SLR 46, the apex court held as follows;

"It is sometimes permissible to withdraw admission on question of law but admission of facts cannot be withdrawn

29] Since the admission was not a fact in law, the Petitioner cannot ask this court to rescind it. Further, I noted the order of the District Court made on 21.03.2024 and instead of filing a leave to appeal application to the Civil Appellate High Court of Badulla, (it is seen that the Petitioner has filed leave to appeal application bearing No. UP/HCCA/LA/09/2024 against the District Court Order dated 20.06.2024) thus, the Petitioner had alternative remedies and this application therefore cannot be successful. (Vide: ***Menchinahamy v. Muniweera*** 52 NLR 409, his Lordship Dias J. held*: "Restitutio in integrum is not available if the petitioner has another remedy open to her.*"). It should be noted that this case was filed on 18.10.2024, after 7 months, thus the Petitioner is guilty of laches[1].

30] For the foregoing reasons, we see no merit in this application. Thus, *restitutio in integrum was* dismissed, and formal notice was refused. No costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL

[1] In the case of ***Menchinahamy v Muniweera***, 52 NLR 409, it was held as follows*: "The remedy by way of restitutio-in-integrum is an extraordinary remedy and is given only under very exceptional circumstances. It is only a party to a contract or to legal proceedings who can ask for this relief. The remedy must be sought for with the utmost promptitude. It is not available if the applicant has any other remedy open to him."*