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

In the matter of an Application for Restitutio in Integrum and/or revision in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Thalpe Ahangamage Darshani Dammika,
No. 4B/535,
Colombo Road, Ginthota,
Galle.

Plaintiff

Court of Appeal Application No: **CA/RII/17/2020**
District Court of Galle Case No:**14171/P**

Vs.

1. Suwinitha Samarawickrama,
   Colombo Road, Ginthota,
   Galle.

2. Palana Widana Arachchige
   Lilasena, (deceased)
   Colombo Road, Ginthota.

2A Wedamulla Madinage Somawathi,
   No. 553/2,
   Colombo Road,
   Ginthota, Galle.

3. Thotagamuwa Widanage
   Gunasena Perera,
   No. 45, Gingaga Mawatha,
   Ginthota, Galle.

4. Palana Widana Arachchige Saman,
No. 553/2,
Colombo Road,
Ginthota, Galle.

5. Katukurunda Hewa Manage
Champika Maliyadewa,
No. 553/1,
Colombo Road,
Ginthota, Galle.

6. Katukurunda Hewa Manage Litine,
No.17, Piyarathana Mawatha,
Ginthota.

Defendants

AND

1. Suwinitha Samarawickrama
(deceased),
Colombo Road, Ginthota,
Galle.

1A. Katukurunda Hewa Managae
Sajith Prasanna,
No. 553/1,
Colombo Road,
Ginthota,
Galle

5. Katukurunda Hewa Manage
Champika Maliyadewa,
No. 553/1,
Colombo Road,

Ginthota, Galle.

1st & 5th Defendant-Appellants

Vs.

Thalpe Ahangamage Darshani Dammika,
No. 4B/535,
Colombo Road, Ginthota,
Galle.

Plaintiff-Respondent

2A. Wedamulla Madinage Somawathi,
No. 553/2,
Colombo Road,
Ginthota, Galle.

3. Thotagamuwa Widanage
Gunasena Perera,
No. 45, Gingaga Mawatha,
Ginthota, Galle.

4. Palana Widana Arachchige Saman,
No. 553/2,
Colombo Road,
Ginthota, Galle.

6. Katukurunda Hewa Manage Litine,
No.17, Piyarathana Mawatha,
Ginthota.

Defendant-Respondents

AND NOW BETWEEN

1A. Katukurunda Hewa Managae
Sajith Prasanna,

No. 553/1,
Colombo Road,
Ginthota, Galle.

1A Substituted Defendant- Appellant - Petitioner

Vs.

Thalpe Ahangamage Darshani Dammika,
No. 4B/535,
Colombo Road, Ginthota,
Galle.

Plaintiff-Respondent- Respondent

2A. Wedamulla Madinage Somawathi,
No. 553/2,
Colombo Road,
Ginthota.

3. Thotagamuwa Widanage Gunasena Perera,
No. 45, Gingaga Mawatha,
Ginthota, Galle.

4. Palana Widana Arachchige Saman,
No. 553/2,
Colombo Road,
Ginthota, Galle.

5. Katukurunda Hewa Manage Champika Maliyadewa,
No. 553/1,
Colombo Road,
Ginthota, Galle.

6. Katukurunda Hewa Manage Litine,
No.17, Piyarathana Mawatha,
Ginthota.

Defendant- Respondent- Respondents

BEFORE	:	D. N. Samarakoon J Neil Iddawala J
COUNSEL	:	Mahinda Nanayakkara with S. K. Gamage for the 1A Substituted-Defendant-Petitioner. Pradeep Perera with P. D. P. Pathirage and Isuru Abeygunawardana for 1st Plaintiff-Respondent. Ranjan Senadeera for 2nd and 4th Defendant-Respondents,
Supported on	:	26.10.2023
Written Submissions filed on	:	24.11.2023
Order on	:	15.12.2023

Iddawala – J

This is a revisionary/*restitutio in integrum* (RII) application by the 1A Substituted-Defendant-Petitioner (hereinafter referred to as the 'petitioner') which seeks to issue formal notice and grant interim relief staying all further proceedings in the case bearing No. 14171/P pending in the District Court of Galle until the final determination of the instant application.

The facts of the case are briefly as follows. The Plaintiff-Respondent-Respondent (hereinafter referred to as the 'plaintiff') has filed the aforementioned action in the District Court of Galle seeking to partition the land described in the plaint dated 07.12.1999. The 2A, 4th, 3rd and 6th Defendants have filed their claims and the Court Commissioner has submitted the plan bearing No. 228 dated 02.01.2001. The trial of this case commenced on 14.09.2005 and the judgement was delivered by the learned Trial Judge on 11.01.2008 giving shares only to the Plaintiff and 4th Defendant. Dissatisfied with the judgement the 3rd, 1st and 5th defendants have preferred two appeals to the Civil Appellate High Court in the case bearing No. SP/HCCA/0002/2008 (F) and SP/HCCA/0003/2008 (F). Subsequently, by judgment dated 19.03.2014 delivered by the Civil Appellate High Court, the case has been settled.

The petitioner claims that the procedure adopted in the course of the entire trial is erroneous, the judgments of the learned District Judge and the Civil Appellate High Court are per se erroneous and the allocation of the shares in the latter is per se erroneous therefore, the interlocutory decree cannot stand as well.

Hence, the Petitioner has invoked the *restitution in integrum* and/or revisionary jurisdiction of this Court vested by Art. 138 of the Constitution claiming ten grounds of exceptional circumstances including non-adherence to the proper

Partition Law. The instant application by the Petitioner is to issue formal notice and seek interim relief staying the proceedings in the District Court.

At this juncture it is noteworthy to mention the case law precedent pertaining to the power of revision vested with this Court and the granting of interim relief therein.

In ***Mariam Beebee Vs. Seyed Mohamed*** 68 NLR 36 where Sansoni C J held that "*the power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by the Court itself, in order to avoid miscarriages of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice the fact that, unless the power is exercised, injustice will result. The Partition Act has not, I conceive, made any changes in this respect, and the power can still be exercised in respect of any order or decree of a lower Court."*

In terms of granting stay orders, Samarakoon CJ held in ***Billimoria v. Minister of Lands***, [1978- 79] 1 S. L. R. 10 that, "*a stay order is an interim order and not one which finally decides the case. This must be borne in mind when applying the principles of the per incuriam rule. It would not be correct to judge such orders in the same strict manner as a final order. The interests of justice required that a stay order be made as an interim measure.*"

Therefore, at this stage granting interim relief to stay proceedings does not require a higher threshold of observation and analysis by the Court. Hence, the decision to stay proceedings will be determined based on the interest of justice and the need to prevent irretrievable consequences.

In the present case, the petitioner's counsel has demonstrated the existence of a *prima facie* case, highlighting errors or improprieties in the judgments issued by both the District Court and the Civil Appellate Courts. Hence, this Court decides to issue formal notice.

Consequently, at this stage of the proceedings, this Court believes that granting interim relief to stay proceedings does not necessitate an elevated level of scrutiny. The Court is of the opinion that deciding to stay the proceedings is, indeed, in the interest of justice, as opposed to not allowing the stay, which could result in irretrievable consequences.

Therefore, this Court orders to issue formal notice to the parties and grants interim relief staying the proceedings of the case bearing No. 14171/P pending in the District Court of Galle until the final determination of the instant matter.

Registrar of this Court is directed to communicate this Order to the District Court of Galle.

Notice Issued. Interim relief granted.

JUDGE OF THE COURT OF APPEAL

D. N. Samarakoon J.

I agree.

JUDGE OF THE COURT OF APPEAL