

**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 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.

Court of Appeal

Case No: RII/0036/2023

1. Senarath Mudalige Don Alosiyus
Pahala Hanwella
Hanwella

2. Senarath Mudalige Don Patricia
Pahala Hanwella
Hanwella

Plaintiffs

Vs.

1. Senarath Mudalige Don Agnas Gunarathna
Hamine
Pahala Hanwella
Hanwella

2. Terans Amarasekara
Pahala Hanwella
Hanwella

3. Senarath Mudalige Don Albert
Pahala Hanwella
Hanwella

4. Kalei Vithanage John Bosco
Pahala Hanwella
Hanwella

5. Thanippuli Arachchige Pavisthina
Pahala Hanwella
Hanwella

(Deceased)

- 5A. Kurugala Gamage Sriyani Mangalika
Pahala Hanwella
Hanwella
6. Kurugala Gamage Sriyani Mangalika
Pahala Hanwella
Hanwella
7. S.M.D. Johnson Oliver
Pahala Hanwella
Hanwella
8. Suraweera Arachchige Don Alosiyus
Suraweera
Pahala Hanwella
Hanwella
9. Suraweera Arachchige Don Seetha Vinifrid
Pahala Hanwella
Hanwella
10. Terens Amarasekara
148/3, Pahala Hanwella
Hanwella
11. Antony Tudar Amerasekara
No. 24, Convent Road, Bolawalana
Negombo

Defendants

AND BETWEEN

5. Thanippuli Arachchige Pavisthina
Pahala Hanwella
Hanwella
(Deceased)
- 5A. Kurugala Gamage Sriyani Mangalika
Pahala Hanwella
Hanwella
6. Kurugala Gamage Sriyani Mangalika
Pahala Hanwella
Hanwella

Defendant-Appellants

Vs

1. Senarath Mudalige Don Alosiyus
Pahala Hanwella
Hanwella
2. Senarath Mudalige Don Patricia
Pahala Hanwella
Hanwella

Plaintiff-Respondents

1. Senerath Mudalige Don Agnas Gunarathna
Hamine
Pahala Hanwella
Hanwella
2. Terans Amarasekara
Pahala Hanwella
Hanwella
3. Senarath Mudalige Don Albert
Pahala Hanwella
Hanwella
4. Kalei Vithanage John Bosco
Pahala Hanwella
Hanwella
7. S.M.D. Johnson Oliver
Pahala Hanwella
Hanwella
8. Suraweera Arachchige Don Alosiyus
Suraweera
Pahala Hanwella
Hanwella
9. Suraweera Arachchige Don Seetha Vinifrid
Pahala Hanwella
Hanwella

10. Terens Amarasekara
148/3, Pahala Hanwella,
Hanwella

11. Antony Tudar Amerasekara
No. 24, Convent Road, Bolawalana
Negombo

Defendants-Respondents

And Now Between

5A. Kurugala Gamage Sriyani Mangalika
Pahala Hanwella
Hanwella

6. Kurugala Gamage Sriyani Mangalika
Pahala Hanwella
Hanwella

Defendant-Appellant-Petitioner

Vs

1. Senarath Mudalige Don Alosiyus
Pahala Hanwella
Hanwella

2. Senarath Mudalige Don Patricia
Pahala Hanwella
Hanwella

Plaintiff-Respondent-Respondents

1. Senarath Mudalige Don Agnas Gunarathna
Hamine
Pahala Hanwella
Hanwella

2. Terans Amarasekara
Pahala Hanwella
Hanwella

3. Senarath Mudalige Don Albert
Pahala Hanwella
Hanwella
4. Kalei Vithanage John Bosco
Pahala Hanwella
Hanwella
7. S.M.D. Johnson Oliver
Pahala Hanwella
Hanwella
8. Suraweera Arachchige Don Alosiyus
Suraweera
Pahala Hanwella
Hanwella
9. Suraweera Arachchige Don Seetha Vinifrid
Pahala Hanwella
Hanwella
10. Terens Amarasekara
148/3, Pahala Hanwella
Hanwella
11. Antony Tudar Amerasekara
No. 24, Convent Road, Bolawalana
Negombo

Defendant-Respondent-Respondents

Before : R. Gurusinghe, J.
&
A. Premashanker, J.

Counsel : Pradeep Perera with P.D.P. Pathirage
for the Defendant-Appellant-Petitioner

Thishya Weragoda with Chamodi Wijeweera
Instructed by Thamila Dinushi Perera
for the 1st Plaintiff-Respondent-Respondent

Argued on: 02-07-2026

Decided on: 31-08-2026

JUDGMENT

R. Gurusinghe, J.

The 5th and 6th defendant-appellant petitioners have instituted the present application for *Restitutio in Integrum*, seeking, *inter alia*, the following reliefs.

- II. Set aside and/or vacate the judgment dated 15/3/2023 pronounced by the learned High Court judges of the Civil Appellate High Court
- III. Set aside and/or vacate the judgment dated 3/5/2019 of the learned District Judge in the case bearing number 19646/P
- IV. Grant the relief prayed for by the 6th Defendant-Appellant-Petitioner in the prayer to the Petition of Appeal filed before the Civil Appellate High Court of Avissawella in the Appeal bearing number WP/HCC/AV/1884/2019(F)

The Plaintiff-Respondent-Respondent (hereinafter referred to as 'Plaintiff') instituted a partition action bearing No. 19646/P in the District Court of Avissawella, seeking the partition of the land called "Nugagahayatawela Watte", more fully described in the amended plaint. The plaintiff further averred that the parties to the action were entitled to the respective shares in accordance with the schedule of shares contained in the amended plaint. The plaintiff also pleaded that the 5th and 6th defendants have no right, title or interest in the corpus of the action. It was alleged that the said defendants had entered the land approximately one year prior to the institution of the action and thereafter constructed a hut. The plaintiff further stated that, as the 5th and 6th defendants dispute the title of the other parties to the action they have been made parties to the proceedings.

The petitioners have filed their respective statements of claim and have been represented by an Attorney-at-Law throughout the proceedings in the District Court.

The petitioners were confronted with issues nos. 23-29. Upon conclusion of the trial, the Learned District Judge decided that all the issues were against the petitioners. Being aggrieved by the judgment of the District Court, the petitioners appealed to the Provincial High Court (Civil Appellate jurisdiction) of the Western Province, holden at Avissawella. Upon hearing the submissions of the parties, the Learned Judges of the High Court dismissed the petitioners' appeal and affirmed the judgment of the District Court.

The respondents filed objections to the petitioners' present application and raised the following preliminary objections.

- a) This Court does not process the necessary jurisdiction under and terms of Article 138 of the Constitution to taken cognizance of the impugned judgment delivered by appeal by the Provincial High Court of the Western Province (exercising its Civil Appellate decision) under and in terms of the provisions of High Court of the provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.
- b) The application of the petition is frivolous and vexatious in that the petitioners have not explained as to why they have not exercised their statutory right to prefer a leave to appeal application to the Supreme Court under and in terms of the provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.
- c) No grounds have been urged as to why jurisdiction of this Court could be urged to maintain an application in *Restitutio in Integrum*.
- d) No exceptional circumstances have been urged.
- e) Thus, and otherwise, the petitioners are now attempting to collaterally urge this Court to usurp the jurisdiction of the Supreme Court.

The respondents have raised further preliminary objections as well as the objections on the merits of the present application.

The petitioners, being aggrieved by the judgment of the District Court, preferred an appeal to the Provincial High Court of the Western Province (exercising its Civil Appellate jurisdiction) in terms of the provisions of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006 (hereinafter referred to as 'Act').

Section 5A of the Act conferred jurisdiction upon the High Court to hear and determine appeals and revision applications arising from the judgments and orders of the District Court. Section 5A of the Act is as follows:

5A (1) A High Court established by Article 154P of the Constitution for a Province, shall have and exercise appellate and revisionary jurisdiction in respect of judgments, decrees and orders delivered and made by any District Court or a Family Court within such Province and the appellate jurisdiction for the correction of all errors in fact or in law, which shall be committed by any such District Court or Family Court, as the case may be.

(2) The provisions of sections 23 to 27 of the Judicature Act, No. 2 of 1978 and sections 753 to 760 and sections 765 to 777 of the Civil Procedure Code (Chapter 101) and of any written law applicable to the exercise of the jurisdiction referred to in subsection (1) by the Court of Appeal, shall be read and construed as including a reference to a High Court established by Article 154P of the Constitution for a Province and any person aggrieved by any judgment, decree or order of a District Court or a Family Court, as the case may be, within a Province, may invoke the jurisdiction referred to in that subsection, in the High Court established for that Province.

Provided that no judgment or decree of a District Court or of a Family Court, as the case may be, shall be reversed or varied by the High Court on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

In the event that the petitioners are aggrieved by the judgment pronounced by the Provincial High Court established under Article 154P of the Constitution, there is a specific provision that enables them to appeal to the Supreme Court. The relevant provisions are contained in Section 5C of the Act. Section 5C is as follows:

5C (1) An appeal shall lie directly to the Supreme Court from any judgment, decree or order pronounced or entered by a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction granted by section 5A of this Act, with leave of the Supreme Court first had and obtained. The leave requested for shall be granted by the Supreme Court,

where in its opinion the matter involves a substantial question of law or is a matter fit for review by such Court.

- (2) The Supreme Court may exercise all or any of the powers granted to it by paragraph (2) of Article 127 of the Constitution in regard to any appeal made to the Supreme Court under subsection (1) of this section.

The petitioners have a specific statutory remedy available to them in the event that they are dissatisfied with the judgment of the Civil Appellate High Court. However, without availing themselves of the statutory Right of Appeal to appeal to the Supreme Court, the petitioners have invoked the *Restitutio in Integrum* jurisdiction of this Court.

When exercising Appellate Jurisdiction in respect of judgments of the District Court in accordance with the provisions of the Act, the jurisdiction of the Civil Appellate High Court and that exercised by the Court of Appeal are considered as parallel in nature.

In the case of *Nilantha Fernando vs Nilanthi Perera SC Appeal 65/2025* decided on 10-10-2025, the Supreme Court decided *inter alia* that the Supreme Court held as follows:

“In this context, it would be legally impermissible and institutionally unsound for the Court of Appeal, in parimateria, to sit in appeal over judgments and orders pronounced by a Provincial High Court in the exercise of its appellate or revisionary jurisdiction. A party cannot pursue successive appeals before two courts of coordinate jurisdiction in respect of the same matter. This strikes at the very root of the issue. Such a practice is inimical to legislative intent, imposes unnecessary burdens on the judicial system and undermines the principle of finality in litigation. These considerations make clear that concurrent jurisdiction was intended to provide an alternative forum for appellate review, not to create an additional tier in the appellate hierarchy.”

The Supreme Court further held that,

“the Court of Appeal had no jurisdiction to entertain appeals from judgments and orders pronounced by Provincial High Courts, in the exercise of their appellate jurisdiction, as such jurisdiction vests exclusively in the Supreme Court.” Further, the Supreme Court decided in the same judgment that *“Hence I hold that the Court of Appeal has no jurisdiction, whether by way of final appeal or 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.”

The Supreme Court decided that the Court of Appeal has no jurisdiction to entertain applications of revision or *Restitutio in Integrum*, to review the judgments or orders of the Provincial High Court, in seeking to impugn or review a judgment or order of the Provincial High Court exercising its Appellate jurisdiction under the Act.

In the above circumstances, this Court is of the view that the present application of the petitioners is not maintainable and cannot succeed. Accordingly, the application is dismissed.

Judge of the Court of Appeal.

A. Premashanker J.
I agree.

Judge of the Court of Appeal.