

**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/0037/2024

DC Kaduwela

No. 151/Partition

Deban Kankanamlage

Premawathie Perera

No. 719/C, Korathota,

Kaduwela

Plaintiff

Vs.

1. Deban Kankanamlage Sirisena
No. 699/B, Korathota,
Kaduwela.
2. Mahaegodage Nandawathie Perera
No. 714/B, Korathota,
Kaduwela
3. Mahaegodage Sunil Perera
No. 714/B, Korathota,
Kaduwela.
4. Mahaegodage Nimal Perera
N. 714/C Korathota,
Kaduwela
5. Mahaegodage Manel Chandrika Perera
Sampath Watta, Korathota,
Kaduwela
6. Mahaegodage Sriyani Mangalika Perera
No. 715/A, Korathota,
Kaduwela.

7. Mahaegodage Renuka Shamali Perera
No. 715/B Korathota,
Kaduwela
8. Mahaegodage Sarath Kumara Perera
No. 715/C, Korathota,
Kaduwela
9. Akarawitage Babun Nona
No. 715/C, Korathota,
Kaduwela
10. Mahaegodage Missy Nona
No. 719, Korathota,
Kaduwela
11. Deban Kankanamlage Dayawathie
No. 719, Korathota,
Kaduwela
12. Deban Kankanamlage Karunawathie
No. 719, Korathota,
Kaduwela.
13. Deban Kankanamlage Yasawathie
No. 719, Korathota,
Kaduwela
14. Deban Kankanamlage Hemawathie
No. 203, Vihara Mawatha,
Kaduwela.
15. Deban Kankanamlage Piyawathie
No. 232, Thalawathugoda
16. Hewamudalige Sujeewa Deshapriya
No. 256/B, Ruhunu Pura, Hokandara,
Thalawathugoda.
17. Ranawaka Arachchige Gunawathie
Maha Vidyala Road,
Rukmale.

18. Ranawaka Arachchige Chandrawathie
Maha Vidyala Road,
Rukmale

19. Ranawaka Arachchige Seelawathie,
Maha Vidyala Road,
Rukmale

20. Jayasinghe Arachchige Darling Nona
No. 699, Koratota,
Kaduwela.

21. Prime Lands Private Limited
No. 75 D.S. Senanayake Road,
Colombo 08.

Defendants

AND NOW BETWEEN

Prime Lands Private Limited
No. 75 D.S. Senanayake Road,
Colombo 08.

21st Defendant-Petitioner

Vs

Deban Kankanamlage Premawathie Perera
No. 719/C, Korathota,
Kaduwela

Plaintiff-Respondent

1. Deban Kankanamlage Sirisena
No. 699/B, Korathota,
Kaduwela.

2. Mahaegodage Nandawathie Perera
No. 714/B, Korathota,
Kaduwela

3. Mahaegodage Sunil Perera
No. 714/B, Korathota,
Kaduwela.

4. Mahaegodage Nimal Perera
N. 714/C Korathota,
Kaduwela
5. Mahaegodage Manel Chandrika Perera
Sampath Watta, Korathota,
Kaduwela
6. Mahaegodage Sriyani Mangalika Perera
No. 715/A, Korathota,
Kaduwela.
7. Mahaegodage Renuka Shamali Perera
No. 715/B Korathota,
Kaduwela
8. Mahaegodage Sarath Kumara Perera
No. 715/C, Korathota,
Kaduwela
9. Akarawitage Babun Nona
(Now Deceased)
No. 715/C, Korathota,
Kaduwela.
- 9(a) Mahaegodage Manel Chanridka Perera
Sampath Watta, Korathota,
Kaduwela
- 9(b) Mahaegodage Sriyani Mangalika Perera
No. 715/A, Korathota,
Kaduwela
- 9(c) Mahaegodage Renuka Shamali Perera
No. 715/B, Korathota,
Kaduwela.
- 9(d) Mahaegodage Sarath Kumara Perera
No. 715/C, Korathota,
Kaduwela.

10. Mahaegodage Missy Nona
(**now deceased**)
No. 719, Korathota
Kaduwela.
- 10(a) Deban Kankanamlage Hemawathie
No. 203, Vihara Mawatha,
Kaduwela.
11. Deban Kankanamlage Dayawathie
No. 719, Korathota,
Kaduwela
12. Deban Kankanamlage Karunawathie
No. 719, Korathota,
Kaduwela.
13. Deban Kankanamlage Yasawathie
No. 719, Korathota,
Kaduwela
14. Deban Kankanamlage Hemawathie
No. 203, Vihara Mawatha,
Kaduwela.
15. Deban Kankanamlage Piyawathie
No. 232, Thalawathugoda
16. Hewamudalige Sujeewa Deshapriya
No. 256/B, Ruhunu Pura, Hokandara,
Thalawathugoda.
17. Ranawaka Arachchige Gunawathie
Maha Vidyala Road,
Rukmale.
18. Ranawaka Arachchige Chandrawathie
Maha Vidyala Road,
Rukmale
19. Ranawaka Arachchige Seelawathie,
Maha Vidyala Road,
Rukmale

20. Jayasinghe Arachchige Darling Nona
(now deceased)
No. 699, Koratota,
Kaduwela.

20(a). Deban Kankanamlage Sirisena
No. 699/B, Korathota,
Kaduwela.

Defendants-Respondents

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

Counsel : Faiszer Musthapha, PC with Pulasthi Rupasinghe
Instructed by Sanjeewa Kaluarachchi
for the Petitioner

Anuruddha Dharmaratne
Instructed by Ranjith D. Perera
**for the 1st, 11th – 17th and 19th
Defendant-Respondents**

Argued on: 19-06-2026

Decided on: 25-08-2026

JUDGMENT

R. Gurusinghe, J.

The petitioner is the 21st Defendant in Partition Action No. 151 instituted before the District Court of Kaduwela. The petitioner has invoked the *Restitutio-in-Integrum* jurisdiction of this court, seeking several reliefs. The reliefs sought by the petitioner are as follows:

- a) Issue notice on the Plaintiff-Respondent and the Defendants-Respondents;
- b) Make Order discharging the allotment of land depicted as Lot 1 in the Plan bearing No. 3921 dated 28th April 2012 marked 'A2", from the District Court of Kaduwela case bearing No. 151/Partition;
- c) Make an Order discharging the allotments of land depicted as Lots T, U, V, W, X, Y, Z and AA in the survey plan bearing Nos. CO/උසාවි/2013/1071 dated 27th March 2013 marked "B", from the District Court of Kaduwela case bearing No. 151/Petition;
- d) Discharge the 21st defendant-Petition from the proceedings of the District Court of Kaduwela case bearing No. 151/Petition after determining that the land called "Katuwilakele" is not a part of the corpus of the land sought to be partitioned in the said Partition Action;
- e) Grant an Interim Order until the final hearing and determination of this Application, restraining the Plaintiff-Respondent and/or the Defendants-Respondents and/or their servants, agents and/or anyone acting under the Plaintiff-Respondent and/or the Defendants-Respondents from in any manner whatsoever obstructing and/or interfering with the possession of the land depicted as Lot 1 in the Plan bearing No. 3921 dated 28th April 2012 marked "A2" and as Lots T, U, V, W, X, Y, Z and AA in the survey plan bearing Nos. CO/ උසාවි /2013/1071 dated 27th March 2013 marked "B";
- f) Grant an Interim Order until the final hearing and determination of this Application, staying further proceedings of the District Court of Kaduwela case bearing No. 151/Partition.

The petitioner's position is that the 1st defendant in the present Partition Action had previously instituted a Partition Action, in the capacity of plaintiff, before the District Court of Moratuwa, bearing Case No. 126/P, in respect of the same corpus which is the subject matter of the present action. Consequently, after the change of territorial jurisdiction, that said action was transferred to the District Court of Kaduwela and renumbered as P/15. In the said proceedings before the District Court of Kaduwela, the parties entered into a settlement whereby Lots NP, AK, AL and AM were agreed to be excluded from the corpus identified as Godelwatta, and Lots J, R, K and V to

be excluded from the corpus as forming part of Kotuvilla Kalewatte, according to the plan prepared by the Surveyor General, dated 24-09-2009. Subsequently, the plaintiff in that action withdrew the said Partition Action.

The present Partition Action was instituted by the 1st defendant in the previous action, while the plaintiff in the previous action is now cited as the 1st defendant in the present Partition Action.

The trial in the present action commenced on 24-04-2019, with the recording of admissions and the framing of issues. The petitioner, who is the 21st defendant, raised issues numbered 4 to 24, contending, *inter alia*, that certain lots depicted in the preliminary plan ought to be excluded from the corpus of the present Partition Action. The Surveyor who prepared the preliminary plan has also given evidence in the trial.

The petitioner's grievance in the present application is that, on 25-05-2023, the petitioner made an application to Court seeking, *inter alia*, to exclude Lot No. 1 depicted in the preliminary plan No. 3921, to exclude Lots T, U, V, W, X, Y, Z, and AA depicted in the Surveyor General's Plan No. CO/උසාවි/2013/1017, and to discharge the 21st defendant from the proceedings of the Partition Action.

The petitioner further complains that the Learned District Judge of Kaduwela failed to consider the said application, and that the matter was fixed for further trial.

The respondents have pointed out that, although the petitioner has filed a petition and affidavit before the District Court, the petitioner has not sought to support the application. There is no Order made by the Learned District Judge refusing the petitioner's application. On perusal of the relevant Journal Entries, it appears that the petitioner has not sought to support the aforesaid application. It seems that the application has never been brought to the attention of the Learned District Judge for consideration. The respondents further point out that if the application had been supported, the Learned District Judge would have afforded the respondents an opportunity to file their objections to the application. It therefore demonstrates that the application was never properly brought before Court for determination.

It is well settled that the contents of the record of the proceedings cannot be contradicted by an affidavit of a party. Accordingly, the petitioner cannot, by way of affidavit, contradict or depart from what is recorded in the proceedings before the District Court.

In the case of Jayaweera Vs Assistant Commissioner Agrarian Services, Ratnapura and another [1996] 2 Sri LR 70, Justice F.N.D. Jayasuriya, citing the case of The King vs Jayawardena 48 NLR 497, held as follows:

There is a presumption that official and legal acts are regularly and correctly performed. It is not open to the Petitioner to file a convenient and self-serving affidavit for the first time before the Court of Appeal and thereby seek to contradict either a quasi-judicial act or judicial record. Justice Dias having considered a cursus curiae, which he has collated for the benefit of the legal profession, has set down the principle that if a litigant wishes to contradict the record, he must file the necessary papers before the Court of first instance initiate an inquiry before the Court of first instance and thereafter raise the matter before the appellate court so that the appellate court would be in a position on the material to make an adjudication on the issues with the benefit of the order of the Court of first instance. The Petitioner has filed a convenient and self serving affidavit and is now seeking to contradict the record that notice or summons issued on him. The law does not permit him to do so.

In the case of Vannakar and 6 Others v. Urhumalebbe[1996] 2 Sri LR 73, Justice F.N.D. Jayasuriya held as follows:

Justice Dias in King v. Jayawardena has considered the earlier line of decisions laying down the cursus curiae with regard to the legality of filing convenient and self-serving affidavits in appeal to vary and contradict the record or with a view to purge a default which had taken place before the Court of first instance. After a review of these decisions, he held that no party ought to be permitted to file a belated self-serving and convenient affidavit to contradict the record, to vary the record or to purge a default where they have not taken proper steps to file such affidavits before the Judge or President of the Court of first instance or tribunal respectively. Vide also the judgment of Justice Canekeratne in Gunewardena v Kelaart. If a party had taken such steps to file papers before the presiding officer of Court of first instance, then an inquiry would be held by him and the self-serving statements and averments could be evaluated after cross-examination of the affirmant when he gives evidence at the inquiry. If such a procedure was adopted, the Court of Appeal would have the benefit of the recorded evidence which has been subjected to cross-examination and the benefit of the findings of the judge of the Court of first instance. When such procedure is not adopted, Justice Dias ruled that the Court

of Appeal could not take into consideration self-serving and convenient averments in the affidavits to contradict and vary the record or to purge a default committed before the Court of first instance. In the courts of first instance, I have respectfully followed such prudent observations made by judges with considerable experience in the actual working of the Magistrate and of the District Courts. In the circumstances, this Court refuses to take into consideration the self-serving and convenient oral assertions on the facts made by the learned counsel for the Appellant for the first time at the hearing of this appeal. These matters ought to have been placed before the inquiring Officer to enable him to conduct a proper investigation or inquiry into the matters which are now sought to be adduced for the first time in appeal.

In the case of Shell Gas Lanka Limited vs All Ceylon Commercial and Industrial Workers Union and others [2000] 3 Sri LR 170, Court held that “it is not open to the petitioner to file a self-serving affidavit for the 1st time before the Court of Appeal and thereby seek for attempt to contradict the Judicial or quasi-Judicial record.

If he intends to contradict the records, he should have filed the necessary papers before the tribunal and initiated an inquiry and obtained an order from such authority in the first instance.”

The 21st Defendant petitioner was represented by an attorney-at-law before the District Court throughout the relevant proceedings. As per Journal Entry No.73 dated 24-02-2016, records that the commission report was received by the Court. Thereafter, Journal Entry No.74, dated 17-06-2016, shows that 12-07-2016 was fixed for consideration of the Plan and Report. The petitioner was represented by an Attorney-at-Law on the aforesaid dates and made no complaints about the Plan and Report. It is further observed that the 21st defendant-petitioner filed the petition and affidavit only on 26-05-2023.

Although the said petition and affidavit were filed, the application was never supported, and there was no order made by the Learned District Judge. The respondents pointed out that the Partition Action bearing No. 151/P, remains pending before the District Court.

The prayer of the petition does not refer to any specific decision made by the Learned District Judge that is sought to be impugned in the present application.

In the Case of Sri Lanka Insurance Corporation vs Shanmugam and another [1995] 1 Sri LR 55, the Court held *inter alia*;

“Relief by way of *Restitutio-in-Integrum* in respect of judgments of original courts may be sought:

- (a) where judgments have been obtained by fraud by the production of false evidence, non-disclosure of material facts or by force; or
- (b) where fresh evidence has cropped up since judgments, which was unknown earlier to the parties relying on it or which no diligence could have helped to disclose earlier, or
- (c) where judgments have been pronounced by mistake and decrees entered thereon, provided, of course, it is an error which connotes a reasonable and excusable error.”

The present application does not arise from any such circumstances. Relief by way of *Restitutio in Integrum* is an extraordinary remedy granted as a matter of grace and judicial discretion. Accordingly, the petitioner bears the burden of demonstrating the existence of exceptional circumstances warranting the intervention of this Court.

In the Sri Lanka Insurance Corporation case (Supra), the Court further held that “it is a remedy which is granted under exceptional circumstances and the power of the Court should be most cautiously and sparingly exercised. A party seeking restitution must act with utmost promptitude, before a change has taken place in the position of the parties... where there has been negligence on the part of the applicant seeking relief of his Attorney-at-Law’s Restitution, will not be granted..... It is not the function of Court in the exercise of its jurisdiction in restitution to relieve the parties of the consequences of their own folly, negligence or laches.”

Therefore, I am of the view that there are no exceptional circumstances which warrant the intervention of this Court. The petitioner has failed to act with the requisite diligence and cannot be regarded as having been vigilant in pursuing his rights before the District Court. There are no specific

decisions which the petitioner seeks to set aside and restore his earlier position.

For the foregoing reasons, the application of the 21st defendant-petitioner is dismissed.

Judge of the Court of Appeal.

A. Premashanker J.
I agree.

Judge of the Court of Appeal.