

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

In the matter of an application for Restitution in Integrum to set aside the settlement entered between parties on 2025.01.24 in the District Court of Colombo.

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**CA/RII/70/2025  
DC Colombo Case  
DLM 155/18**

**Value Rs.10,000,000/-**

**IN THE DISTRICT COURT OF COLOMBO**

Thangavel Rajaram, of No.69, College Street, Kotahena.

**PLAINTIFF**

Vs.

Dankotuwage Rohitha Pushpakumara, of No.31, Pickering Road, Colombo 13.

Presently of: No. 38 Carluke Crecent, No.115 North York, ON. M2L 2J4, Canada.

**DEFENDANT**

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**AND NOW BETWEEN IN THE COURT OF APPEAL**

Dankotuwage Rohitha Pushpakumara, of No.31, Pickering Road, Colombo 13.

Presently of No. 115-38 Carluke Crecent Toronto, M2L2J4, Canada.

*Appearing by his Power of Attorney Holder*  
George Prasath Jayasinghe, of No.198/B, Dalathura, Ja-ela.

**DEFENDANT-PETITIONER**

**Vs.**

Thangavel Rajaram, of No.69, College  
Street, Kotahena.

**PLAINTIFF-RESPONDENT**

**Before:** **R. Gurusinghe J.**

**&**

**Dr. Sumudu Premachandra J.**

**Counsel:** Dr. Sunil F. A. Cooray with Neminda G. Kariyawasam  
instructed by M.D.J. Bandara for the Defendant-  
Petitioner.

Samhan Munzir with Uthpala Karunasinghe instructed  
by Upul Dissanayake for the Plaintiff-Respondent.

**Written Submissions:** By the Defendant-Petitioner filed on 31/03/2026.  
By the Plaintiff-Respondent filed on 20/04/2026.

**Argued On:** 19/02/2026.

**Order On:** 07/05/2026.

**Dr. Sumudu Premachandra J.**

1] The Defendant-Petitioner seeks to set aside a settlement Decree entered in the District Court of Colombo (Case No. DLM 155/2018). The entire record of these proceedings is marked as 'P1'. The dispute originated from a plaint filed on 15/10/2017, by the Plaintiff-Respondent, Thangavel Rajaram, who alleged

that the Defendant had encroached upon his property by constructing a wall on 15/05/2017.

2] The background of the litigation involves several prior legal actions and conflicting claims of ownership. The Plaintiff initially sought a declaration of title, ejectment of the Defendant, and a mandatory injunction regarding the wall. Conversely, the Defendant asserted long-term possession since 1965 and supported his claim with Deed No. 1903, attested by R.D. Dharmarathne, Notary Public, on 17/08/1996. Additionally, the Defendant noted a previous Section 66 matter (No. 84964/03/2017) in the Magistrate's Court of Colombo, where an Order dated 30/07/2018, had initially placed him in possession of the disputed premises.

3] A significant procedural turning point occurred during the pre-trial stage in early 2025. While the case was fixed for trial on 23/01/2024, the Plaintiff filed a motion on 22/01/2025, claiming the matter had been settled. Settlement Terms were tendered at the court on 24/01/2025, which included the Defendant's agreement to demolish the disputed construction, withdraw the Magistrate's Court action, and accept the Plaintiff as the lawful owner in exchange for an ex-gratia payment of Rs. 750,000. These terms were purportedly agreed upon by the Defendant's Power of Attorney holder, Kandaudage Inoka Krishanthi.

4] The Defendant-Petitioner now challenges this settlement, alleging it was entered into fraudulently and without his knowledge or consent. He contends that his Power of Attorney, Kandaudage Inoka Krishanthi, acted detrimentally to his rights while he was abroad in Canada. Evidence of this alleged misconduct includes police complaints filed at Kotahena (25/01/2025) and Keselwatte (19/09/2025), marked as 'X2a', 'X2b', and 'X2c'. The Defendant claims he only discovered the unauthorized settlement when his brother-in-law, George Prasath Jayasinghe, observed new construction on the land on 25/01/2025.

5] In the prayer for relief, the Defendant-Petitioner seeks to set aside the settlement Decree dated 24/01/2025, and the subsequent Order on 27/05/2025, which refused to vacate the settlement. He has now revoked the

previous Power of Attorney and appointed George Prasath Jayasinghe as his new Power of Attorney holder. The petition emphasizes that the disputed property is valued at approximately Rs. 25 Million and argues that the fraudulent settlement has caused grave prejudice to his legal rights.

6] Thus, the Defendant Petitioner prays that this Court be pleased to;

- a) Issue Notice of this application of Restitutio In Integrum on the Plaintiff-Respondent;
- b) Give a judgement by Your Lordships' Court to set aside the Order in this action dated, 27/05/2025, Terms of Settlement dated 24/01/2024 and the settlement Decree dated 24/01/2025 entered in this action;
- c) Give a Judgement by Your Lordships' Court to allow the Defendant-Petitioner to contest this action and to fix this matter for trial once again;
- d) Give an Order/permission of Your Lordships' Court to submit any additional documents in future if necessary;
- e) Give costs;
- f) Give such other further relief as Your Lordships seem meet.

7] In this application, the Defendant-Petitioner seeks to set aside a settlement Decree dated 24/01/2025, and a subsequent Order dated 27/05/2025, which refused to vacate the said settlement. The core of the Petitioner's argument is that his former Power of Attorney holder, acted fraudulently and without legal authority by entering into a settlement that was profoundly detrimental to his property rights while he was residing abroad in Canada.

8] The litigation originated in the District Court where the Plaintiff-Respondent, Thangavel Rajaram, sought a declaration of title, ejectment, and a mandatory injunction regarding a disputed boundary wall. The Petitioner contends that he and his parents had maintained possession of the subject matter since approximately 1965, supported by Deed No. 1903 attested by R.D. Dharmarathne, N.P., on 16/08/1996. Despite this long-standing possession and a prior Magistrate's Court Order (No. 84964/03/2017) dated 30/07/2018, which had restored him to possession, a settlement was purportedly reached in his absence.

9] A critical legal challenge is raised regarding the validity of the Power of Attorney used to sign the settlement. Under Section 6 of Act No. 3 of 2024, an unregistered Power of Attorney executed prior to 25/10/2022, is deemed valid for only two years from that date. Consequently, the Petitioner argues that by the time the settlement was signed on 24/01/2025, the attorney-in-fact lacked any legal authority to bind him. This alleged lack of authority, coupled with the attorney's failure to inform the Petitioner of the settlement or remit the agreed-upon sum of Rs. 750,000, forms the basis of the claim of fraud and grave prejudice.

10] The Plaintiff-Respondent, via a motion dated 28/04/2026, vehemently opposes the issuance of notice on this application. The Respondent contends that the Petitioner's application should be dismissed in limine due to procedural impropriety and the binding nature of the recorded settlement.

11] I now consider whether this is a fit and proper case to issue formal notices. The main dispute is the validity of the settlement entered into by the Petitioner's Power of Attorney (POA) holder. The Petitioner argues that the settlement was entered without his consent and that his POA did not authorize such a compromise. Conversely, the Respondent asserts that the settlement was a product of lawful negotiation, for which an ex-gratia payment of Rs. 750,000/- was paid to the Petitioner's POA holder. The Respondent further highlights that the Petitioner's current position that the POA lacked authority is "totally false,"

as the POA document explicitly empowered the holder to "enter into settlements" and sign necessary documents.

12] The Respondent contended that the Petitioner is the prior pursuitor of this application, following the District Court's refusal to set aside the settlement on 27/05/2025, filed a Notice of Appeal to the Civil Appellate High Court of Colombo on 30/05/2025. Hence, the Respondent argues that having resorted to the statutory right of appeal, the Petitioner is precluded from seeking the extraordinary remedy of Restitutio in Integrum. They say that under Sri Lankan law, this remedy is reserved for exceptional circumstances and cannot be utilized as a secondary bite at the cherry when a party has already invoked the appellate process.

13] The Respondent relies on the finality of settlements which was recently held in **Kotte Hewa Swarnamali Thilunika Deshabandu vs. Ranatunga Arachchilage Sunil Harshadewa** (SC Appeal 130/25), decided on 18/12/2025. In that our Supreme Court held that a settlement recorded in open court in the presence of parties and their attorneys constitutes a binding contract. A party cannot resile from such an agreement simply because they later deem the terms unfavorable; rescission is only permitted on limited grounds such as fraud, mistake, or undue influence, which the Respondent argues are absent here. His Lordship Samayawardhena, J, notes;

*“Where a settlement is recorded in open court by the District Judge, in the presence of the parties and their Attorneys-at-Law, and the parties sign the record signifying their consent to its terms, such settlement is final and binding. It constitutes a contract entered into among the parties, and once so entered, a party cannot thereafter resile from it merely because he later forms the view that the settlement is unfavourable to him. The only recognised grounds upon which such a settlement may be set aside are those applicable to the rescission of a contract, namely illegality, fraud, mistake, misrepresentation, coercion, undue influence, or other similar vitiating factors. Such instances are rare. A settlement so recorded cannot be set aside on the sole ground that it was not notified to court by motion in*

*the manner contemplated by section 408 of the Civil Procedure Code. Nor can it be vitiated as a matter of course on the basis that a party was not physically present when the settlement was recorded or that he did not sign the case record, provided his Attorney-at-Law acted on his instructions or had the general authority to act in the best interests of his client. Nevertheless, where a settlement is entered in open court, it is prudent to record the terms in the presence of the parties and to obtain their signatures on the record signifying their consent”*

14] Further in **Lameer vs. Senaratne** (1995) 2 SLR 13. RANARAJA, J., held that;

*“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.”*

15] Long listed authorities establish that when a client or their authorized Attorney-at-Law signs a record accepting Terms of Settlement, they cannot subsequently seek to set it aside. It is to be noted that in the instant case, not only the POA holder but also the Registered Attorney and counsel for the Petitioner appeared before the District Court to enter the settlement signed, satisfying the requirements of Section 25 (b) of the Civil Procedure Code.

16] The Petitioner did not refute the Power of Attorney (POA). He says that the Petitioner’s purported POA holder, acting in collusion, had signed the settlement contrary to his wish.

17] Further, the Respondent moves for the dismissal of the petition on the basis that the remedy of Restitutio in Integrum is unavailable given the facts. Referencing **Nilanthi Fernando vs. Nilanthi Perera** (SC/Appeal/65/2025), the Respondent says that this court lacks jurisdiction. However, this application has been filed directly with this court under Article 138, and we note that no Civil Appellate Judgement has been passed against the impugned District Court Order. These cases are therefore parallel and yet to be decided. In these

circumstances, we hold that this court is not barred from hearing this application and that the court has jurisdiction.

18] It is settled law that when parties enter a settlement through their proctors and notify the court under the Civil Procedure Code, they cannot later withdraw from that agreement. Furthermore, if an Attorney-at-Law is granted general authority to settle a case, the client is bound by that decision, especially if they have signed the record themselves and there is no evidence of coercion. In the case at hand, the scenario is different. The settlement was entered by the Petitioner through his Power of Attorney. In this circumstance, the Power of Attorney holder acts as an agent of the principal, that is, the Petitioner. The question is, can he go back against the settlement which he represented by an Attorney-at-Law.

19] The Petitioner contends that since fraud was involved in reaching the settlement, the above authorities cannot stand the way of rescinding the settlement. Our courts have decided in many authorities in support of setting aside a consent decree obtained through fraud or mistake. In **Perera v. Ekanaike**, 3 NLR 21, it is established that a Judgement obtained by fraud may be set aside by regular action or summary procedure. In that, WITHERS, J noted;

*“A judgment obtained by fraud or passed under a mistake may be set aside either by a regular action or, possibly, by application by way of summary procedure as regulated by the Civil Procedure Code. It cannot be done by mere motion supported by affidavits with notice to the decree-holder.”*

20] Further, **Buyzer v. Eckert** 13 NLR 371, case established that a Judgement obtained by fraud (specifically the production of false evidence) can be set aside through a separate action in the original court, or by Restitutio in Integrum.

21] Similarly, in **Sabapathy v. Dunlop**, 37 NLR 113, the elements of "fear and surprise" in compromising under the Civil Procedure Code were considered. In that, Akbar S.P.J., held;

*“Where an action has been adjusted by agreement or compromise under section 408 of the Civil Procedure Code, the Supreme Court has power to set aside, by way of restitution or revision, a judgment entered in terms of the section, on the ground of fear or mistake. A threat from a Judge to dismiss a plaintiff’s case unless he agreed to the terms of settlement would amount to fear.”*

22] In **John Cyril Fernando and others vs Samuel Vivendra Eliyatambi and other**, SC/Appeal No. 120/2014, Decided on: 20/05/2021, His Lordship E. A. G. R. Amarasekara J, considered the effect of power to sell an immovable property by the Attorney holder and held;

*“Thus, if the relevant Power of Attorney was valid and the power to sell immovable property was given to the power of attorney holder at the time of executing the deed, the said deed no. 60 cannot be challenged on the basis of said purported defects related to Power of Attorney. Since, this challenge to the Power of Attorney appears to be the main contention in this appeal I will advert to it first in this judgment.”*

23] In **Vijith Abraham De Silva V S P Claris De Silva**, S C Appeal No. 44/2012, DECIDED ON: 14/12/2015, Eva Wanasundera, PC.J., has considered the validity of the Deed of Gift which was executed without the intention of the principal as;

*“I am firmly of the view that the general words couched into clauses in this particular general power of attorney cannot in anyway be construed to disturb the specific clauses relevant to “property” contained therein. The intention of the principal has to be gathered from the clauses in any Power of Attorney whether it is a special Power of Attorney or whether it is a general Power of Attorney. **The intention of the husband could never***

**have been to grant authority for the wife to donate or gift his properties to anyone else leave alone his mother-in-law.** Having gifted the property to the mother of the Power of Attorney holder, when the husband came to know the same and questioned her as to why she gifted, what was the next step taken by the Power of Attorney holder? She and her mother got together and sold the land to the Defendant soon afterwards.”  
[Emphasis is added]

24] Therefore, if the purported settlement is entered without the consent and authority of the principal, it cannot be sustained. Thus, the Petitioner should prove the existence of an element of fraud. The nexus between the Petitioner and Kanda Udage Inoka Krishanthi, the Power of Attorney holder, is not revealed. It is the Petitioner's duty to prove that fraud was involved in the Terms of the Settlement dated 24/01/2025 and the consent Decree entered into it. It is to be noted that if fraud is involved, it is a fit and proper case to exercise the jurisdiction of Restitution in Integrum under Article 138 of the Constitution. Thus, we are of the view that formal notices should be issued.

25] The principle is that “**Fraud Vitiates Everything (Crimen omnia ex se nata vitiat)**”; therefore, if the impugned settlement entered in the court involves a fraud, it taints the entire settlement, rendering it void or voidable. In view of the above circumstances, we issue formal notices.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL