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/0017/2022

DC Homagama
Case No: 0096/P

Martarage Don Hemapala
Pitipana North, Homagama

Plaintiff

Vs

1. Matarage Dona Dushyanthi Chandani
2. Matarage Dona Harindra Darshani
   Both - C/O, Matarage Siyadoris Appuhamy
   314 Galapottewatte,
   Pitipana North, Homagama

And 64 others

Defendants

And Now Between

11(a) Pusselimulla Gamage Sumanawathie
Alutgederawatte
Pitipana North, Homagama

Defendant-Petitioner

Vs.

Matarage Don Hemapala (died)
Pitipana North, Homagama

Matarage Dona Malkanthi
Pitipana North, Homagama
(Substitute)

Plaintiff-Respondent

Vs

1. Matarage Dona Dushyanthi Chandani
2. Matarage Dona Harindra Darshani
   Both - C/O, Matarage Siyadoris Appuhamy
   314 Galapottewatte,
   Pitipana North, Homagama

And 64 others

Defendants-Respondents

Before : R. Gurusinghe J
&
M.C.B.S. Morais J

Counsel : P.B. Herath with Roshan Pathirana
for the 11 (a) Defendant-Petitioner

Sanjeewa Dassanayake
Instructed by N.W. Dinalankara
for the plaintiff-Respondent

Argued on : 04-12-2024

Decided on: 13-02-2025

ORDER

R. Gurusinghe

11A defendant-petitioner (hereinafter referred to as the petitioner) filed this *Restitutio-in-Integrum* application on 18-07-2022 seeking to set aside the judgment of the Learned District Judge of Homagama dated 08-09-2004, in Partition Action No. 96/P, a judgment entered nearly 18 years ago.

There was an appeal against the said judgment in the Civil Appellate High Court of Avissawella and Learned Judges of the High Court affirmed the said judgment of the District Court in 2013. Later, the Supreme Court affirmed both the District Court judgment and the judgment of the Civil Appellate High Court.

The petitioner states that after the delivery of the Supreme Court judgment, she found that the original plaintiff in 96/P had submitted a fraudulent deed to the District Court. The petitioner states that deed No. 16383 dated 09-06-1975, attested by Palitha Dharmasiri Ratnasekera Notary Public, which was marked P13 in evidence by the plaintiff, was not signed by the Vendor of that deed, Gnanawathie Weerasinghe of Meegoda. The 11th defendant had been present in the District Court case since 07-07-1988. The 11th defendant was a contesting party and was represented by Counsel throughout the case. Even though the action was pending before the District Court for 16 years, the 11th defendant had never taken up the position that deed no. 16383 was a fraudulent deed, or that Gnanawathie Weerasinghe should have been made a party to the action.

The petitioner attached a photocopy of an affidavit dated 20-10-2020, which was allegedly signed by the said Gnanawathie Weerasinghe, marked X2. When inquired by the Court, Counsel for the petitioner revealed that Gnanawathie died one month after making that affidavit. By the time the petitioner filed this application before this Court in 2022, the said Gnanawathie had already passed away. There was no any complaint to the police by the said Gnananwathie. As per the available evidence, Gnanawathie has not given evidence before any court. The deed marked P13 was attested almost 50 years ago. The veracity of the content in X2 cannot be tested since the maker of that affidavit is deceased. Furthermore, neither the 11th defendant nor the present petitioner is an heir of the said Gnanawathie. Therefore, the rights of the petitioner were not affected even if it was assumed that the said Gnanawathie did not sign P13.

Section 90 of the Evidence Ordinance is as follows:

90. Where any document purporting or proved to be thirty years old is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

The original plaintiff produced P 13, and he was the vendee of that deed.

Further, section 68 of the Partition Law provides as follows;

68. *It shall not be necessary in any proceedings under this Law to adduce formal proof of the execution of any deed which, on the face of it, purports to have been duly executed, unless the genuineness of that deed is impeached by a party claiming adversely to the party producing that deed, or unless the court requires such proof.*

The deed marked P 13 was not objected to at all. Therefore, P 13 was proved as required by law. P 13 was executed nearly 50 years ago.

For the reasons set out above, we refused to proceed with this application. The petitioner has taken more than two years to support it. This is clearly a frivolous application. The petitioner's application is dismissed with a cost of Rs 50,000/—payable by the petitioner to the substituted plaintiff-respondent.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.