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

In the matter of an application for *Restitutio-In-Integrum* and Revision under and in terms of Article 138 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal
Case No: RII/0002/2024

DC Nugegoda
Case No: RE/185/19

Soma Kasturiaracchi *alias,*
Somawathie Kasturiarachchi,
No. 158, Dehiwala Road,
Maharagama

Plaintiff

Vs

01. Sembukuttige Sarath Fernando

02. Sembukuttige Theresa Sriyani Fernando

Both of
No. 162/3, Dehiwela Road,
Maharagama

Defendants

AND NOW

01. Sembukuttige Sarath Fernando (Deceased)

01 (a). Sumithra Lyanage

02. Sembukuttige Theresa Sriyani Fernando

Both of
No. 162/3, Dehiwela Road,
Maharagama

Defendants-Petitioners

Vs

Soma Kasturiarachchi *alias*
Somawathie Kasturiarachchi,
No. 158, Dehiwela Road
Maharagama.

Plaintiff-Respondent

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

Counsel : Varuna Nanayakkara
For the Defendant-Petitioner

Pubudu Alwis and Supun Jayathilaka
Instructed by Priyanthi Ganegoda
For the Plaintiff-Respondent

Supported on : 21-02-2025

Decided on : 08-05-2025

R. Gurusinghe

The Plaintiff-respondent filed an action before the District Court of Nugegoda against the defendant-petitioners, seeking a declaration of title to the property described in the schedule to the plaint and ejectment of the defendants thereof and to recover arrears of rent. The basis of the respondent's action is that the petitioners are tenants and they refuse to pay the rent. The defendant-petitioners have taken up the position that they have not entered the premises as tenants, but they have been in possession of the property for a long time and have acquired prescriptive title to the property.

When the matter was taken up for trial, the parties recorded three admissions, and the plaintiff-respondent raised 1st to 9th issues. The defendant-petitioners raised issue nos. 10 to 19. Plaintiff-respondent objected to issue nos. 16, 17, and 19. The Learned District Judge allowed parties to file written submissions in that regard and made an Order on 22-10-2021.

By that Order, the Learned District Judge accepted all the issues raised by the parties, other than issue no. 17. The defendant-petitioners filed this *Restitutio-in-Integrum* application seeking to set aside the Order of the Learned District Judge dated 22-10-2021 and to accept all the issues raised by the defendant-petitioner.

In the case of *Menchinahamy v Muniweera, [1950] 52 NLR 409,* it was held as follows:

> *The remedy by way of restitutio-in-integrum is an extraordinary remedy and is given only under very exceptional circumstances. It is only a party to a contract or to legal proceedings who can ask for this relief. The remedy must be sought for with the utmost promptitude. It is not available if the applicant has any other remedy open to him.*

The remedy of *Restitutio-in-Integrum* is an extraordinary remedy and will be granted only under exceptional circumstances. In the case of *Sri Lanka Insurance Corporation Ltd vs Shanmugam and Others [1995] 1 Sri LR 55* stated as follows:

> *Superior courts of this country have held that relief by way of Restitutio in Integrum in respect of judgments of original courts may be sought where (a) the judgments have been obtained by fraud, (Abeysekera-supra), by the production of false evidence. (Buyzer v. Eckert) (12) or non-disclosure of material facts, (Perera v. Ekanaike) (13), (or where judgment has been obtained by force or fraud, (Gunaratne v. Dingiri Banda (14), Jayasuriya v Kotelawela) (15), (b) Where fresh evidence has cropped up since judgment which was unknown earlier to the parties relying on it, (Sinnethamby-supra), and fresh evidence which no reasonable diligence could have helped to disclose earlier, (Mapalathan-supra). (c) Where judgments have been pronounced by mistake and decrees entered thereon, (Sinnethamby-supra), provided of course that it is an error which connotes a reasonable or excusable error, (Perera v. Don Simon) (16). The remedy could therefore be availed of where an Attorney-at-Law has by mistake consented to judgment contrary to express instructions of his client, for in such cases it could be said that there was in reality no consent, (Phipps-supra), Narayan Chetty v. Azeez) (17), but nowhere the Attorney-at-Law has been given a general authority to settle or compromise a case, (Silva v. Fonseka (18)).*

In this case, there is no allegation of fraud, false evidence, and non-disclosure of material facts, deception, fresh evidence or mistake.

The Learned District Judge has refused only issue No. 17. All other issues have been accepted. The positions taken up by the defendant-petitioners are all covered by the accepted issues. The remedy of *Restitutio-in-Integrum* is

allowed to a petitioner who is without any other remedy. In this case, the petitioners could have made a leave to appeal application against the impugned order. The petitioners can file a final appeal after the judgment.

For the foregoing reasons, this application is refused and dismissed.

Judge of the Court of Appeal

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

Judge of the Court of Appeal