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/0009/2024

UVA/HCCA/BDL/RA 03/2022

DC Moneragala
Case No: L/2501

D.M. Jayawardhana
of Liyangolla,
Dombagahawela

Plaintiff

VS

1. R.M. Sumanawathie

2. R.M. Karunawathie
   (deceased)

3. S. Vinitha Jayasundara
   All of Liyangolla,
   Dombagahawela

Defendants

AND BETWEEN

1. R.M. Sumanawathie

2. R.M. Karunawathie
   (deceased)

3. S. Vinitha Jayasundara
   All of Liyangolla,
   Dombagahawela

Defendant-Petitioner

Vs.

D.M. Jayawardhana
Liyanagolla, Dombagahawela.

Plaintiff-Respondent

R.M. Sumanawathi,
Liyanagolla, Dombagahawela.

1st Defendant-Respondent

AND BETWEEN

2. R.M. Karunawathie
(Deceased)

2A. W. Karunadasa Wijesinghe

2B. W. Ganesha Thusani
Karunadasa Wijesinghe

2C. Kavishka Dilshan Wijesinghe

3. S. Vinitha Jayasundara
All of Liyangolla,
Dombagahawela.

2nd & 3rd Defendant-Petitioners-Petitioners

Vs.

D.M. Jayawardhana
Liyanagolla, Dombagahawela

Plaintiff-Respondent-Respondent

R.M. Sumanawathi,
Liyanagolla, Dombagahawela.

1st Defendant-Respondent-Respondent

AND NOW BETWEEN

2C. Kavishka Dilshan Wijesinghe

3. S. Vinitha Jayasundara
All of Liyangolla,
Dombagahawela

2C and 3rd Defendant-Petitioner-Petitioner-Petitioners

Vs

D.M. Jayawardhana
Liyanagolla, Dombagahawela

Plaintiff-Respondent-Respondent-Respondent

R.M. Sumanawathi,
Liyanagolla, Dombagahawela.

1st Defendant-Respondent-Respondent-Respondent

2A. W. Karunadasa Wijesinghe

2B. W. Ganesha Thusani
Karunadasa Wijesinghe

All of Liyangolla,
Dombagahawela

2A and 2B Defendant-Petitioner-Petitioner-Respondents

Before : R. Gurusinghe, J.
&
Dr S. Premachandra, J.

Counsel : Chamara Nanayakkarawasam with Apoorwa Nanayakkara
for the 2C Defendant-Petitioner-Petitioner-Petitioner

P.D.P. Pathirage with J. Hissella, instructed by
Nishantha Dias Registered Attorney
for the Plaintiff-Respondent-Respondent

Argued on: 12-09-2025
Decided on: 09-10-2025

JUDGMENT

R. Gurusinghe, J.

The 2C substituted defendant-petitioner and 3rd defendant-petitioner-petitioners (the petitioners) filed this *Restitutio-in-Integrum* application seeking *inter alia* the following reliefs.

(c) Act in *Restitutio-in-Integrum* and/or Revision and set aside the settlement dated 12.12.2018, discharging the 2nd and 3rd Defendants from the case;

(d) Act in *Restitutio-in-Integrum* and /or Revision and set aside the settlement and/or compromised decree dated 12.12.2018;

(f) Act in *Restitutio-in-Integrum* and/or Revision and set aside the Judgment dated 15.11.2023 in the Civil Appellate High Court Application bearing No. UVA/HCCA/BDL/RA/03/2022.

The plaintiff-respondent (hereinafter referred to as the plaintiff) filed an action bearing no. L 2501 against 1st, 2nd and 3rd defendants in the District Court of Monaragala, seeking to demarcate boundaries between lands described in the 1st schedule and the 2nd schedule to the plaint and permanent injunction against the 1st defendant, prohibiting the 1st defendant from changing the Eastern boundary of the plaintiff's land and to refrain from doing any acts within the plaintiff's land. In the prayer to the plaint, the plaintiff has not sought any relief against the 2nd and the 3rd defendants.

The plaintiff claimed rights to Lot No. 100 of the Surveyor General's plan, S 48106 dated 09-07-1973, which is described in the first schedule to the plaint. The plaintiff also stated in his plaint that the defendants are entitled to Lot 97 of the same plan. According to the deeds filed by the petitioners, it is apparent that the petitioners' rights are confined to Lot No. 97, and they have no claim to Lot No. 100.

Summons was served on all three defendants, and all three defendants have filed their proxies by the same Attorney-at-law. A commission was taken out to the Surveyor General, and a plan and report were filed accordingly. When the case was called on 12-12-2018, both parties were represented by their Attorneys-at-law. The plaintiff and the 1st defendant were present in court. The plaintiff and the 1st defendant informed the court that a settlement had been reached between them. There was an application to discharge the 2nd and 3rd defendants from the proceedings. Accordingly, the Learned District Judge discharged the 2nd and 3rd defendants from the action. Although there was no indication as to who made the application to discharge the 2nd and 3rd defendants, since the same Attorney-at-law represented all the defendants, it is apparent that there was no objection to the discharge of the 2nd and 3rd defendants from the proceedings.

A settlement was reached between the plaintiff and the 1st defendant. The Surveyor General's department has surveyed the land and superimposed Lots No. 97, 98 and 100 of the FVP 600 of the Surveyor General's plan. The settlement was based on the said plan. Thereafter, another commission was issued to the Surveyor General to demarcate and show the boundaries according to the settlement. The settlement was to the effect of demarcating the boundaries between Lot 100 and Lot 97.

The 2nd and 3rd defendants filed an application under Section 839 of the Civil Procedure Code, seeking to re-enter the case in the District Court, which was rejected by the Order dated 01-12-2021 of the Learned District Judge. The 2nd and 3rd defendants filed a Revision application in the Civil Appellate High Court of UVA Province, seeking to revise or set aside the order dated 01-12-2021 of the District Court Case No. L/2501. By judgment dated 15-11-2023, the Civil Appellate High Court dismissed the petitioners' application. Thereafter, the petitioners filed this application before this court.

The main contention of the petitioners in this application is that the plaintiff and the 1st defendant could not have reached a settlement because the 2nd and 3rd defendants were also co-owners of the land described in the 2nd schedule to the plaint. While it is true that a co-owner does not have the

right to alienate or enter into a settlement for the entire co-owned property, such circumstances do not arise in the present case. Here, no portion of the co-owned land was conveyed to the plaintiff by way of settlement. The settlement was only to demarcate the boundaries as depicted in the Surveyor General's plan. Therefore, the settlement did not alter or affect the co-ownership rights in the property. As such, the petitioners' contention is not applicable to this case.

The other grounds urged by the petitioners are that the 2nd and 3rd defendants were discharged without their consent, the settlement dated 12-12-2018 was not in compliance with the provisions of Section 408, read with Section 91 of the Civil Procedure Code and the registered Attorney-at-law did not have authority to compromise this case without specific instructions and in the absence of the 2nd and 3rd defendants. Although this contention appears to be sound, since the settlement did not affect the petitioners' rights, it is not a sufficient ground to set aside the settlement.

The remedy of *Restitutio-in-Integrum* is an extraordinary remedy and will be granted under exceptional circumstances. Restitution is not allowed unless the applicant can demonstrate that they have suffered actual damage. (vide *Sri Lanka Insurance Corporation Limited vs Shanmugam and another [1995] 1 Sri LR 55*).

The petitioners are not parties to the settlement entered in the District Court. They claim that their rights were prejudiced because the settlement was entered without their consent. The plaintiff has not sought any relief against the 2nd and 3rd defendants. It appears that the 2nd and 3rd defendants were made parties because they were co-owners with the 1st defendant. The 2nd and the 3rd defendants did not possess any portion of land adjoining the Plaintiff's land. The settlement demarcated the boundary between Lot 97 and Lot 100 of the above-referred plan. No portion of land was taken from Lot 97 as a result of the settlement. The rights claimed by the petitioners are confined to Lot 97. Therefore, the substantial rights of the petitioners were not prejudiced. It is noteworthy that the plan was prepared by the Surveyor General, and the boundaries were duly demarcated in accordance with the Surveyor General's plan. There has been no allegation that either the plan or the demarcation of boundaries was inaccurate.

Restitution is not allowed unless the applicant can show that he has suffered actual damage. (*Pipps vs Bracegyrdle* 35NLR 302, *Mudiyanse and others vs Bandulahamy[1989]2SriLR 383).* The petitioners have not suffered damages,

nor have they pleaded that they suffered damages, and therefore, they are not entitled to any relief in an application for *Restitutio-in-Integrum*.
The proviso to Article 138 of the Constitution is as follows;

"Provided that no judgment, decree or order of any court shall be reversed or varied 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 *Hiniduma Dahanayakage Siripala vs The Hon. Attorney General SC Appeal No.115/2014* decided on 22.01.2020, Aluwihare PC. J., held as follows;

> *21. With the promulgation of the 1978 Constitution, if relief is to be obtained in an appeal, a party must satisfy the threshold requirement laid down in the proviso to Article 138(1), which is placed under the heading "The Court of Appeal". The proviso to the said Article of the Constitution lays down that;*
> *"Provided that no judgment, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice". (Emphasis is mine.)*
>
> *22. The proviso aforesaid is couched in mandatory terms and the burden is on the party seeking relief to satisfy the court that the impugned error, defect or irregularity has either prejudiced the substantial rights of the parties or has occasioned a failure of justice. It must be observed that no such Constitutional provision is to be found either in the '1948 Soulbury Constitution' or the 'First Republican Constitution of 1972'.*

In *Sunil Jayarathna V. Attorney General* [2011]2 SriLR 91 the Supreme Court held as follows;

> *When considering the Proviso to Article 138(1) of the Constitution, it is evident that the judgment of the Learned High Court Judge need not be reversed or interfered on the account of any defect, error or irregularity which has not prejudiced the substantial rights of the parties or occasioned a failure of justice as stated in the judgment of the Court of Appeal.*

As stated above, the substantial rights of the petitioners are not prejudiced. There was no failure of justice. No damage was caused to the petitioners.

There was no fraud or non-disclosure of material facts, nor was there any mistake of fact.

For the reasons set out in this judgment, the application of the petitioners is dismissed with costs.

Judge of the Court of Appeal.

Dr. S. Premachandra J.
I agree.

Judge of the Court of Appeal.