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

In the matter of an application for a *Restitutio* in *Integrum* under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA Case No: RII/22/2024**
**District Court – Chilaw**
**Case No. L/1797/05**
**High Court – North Western Province**
**(Kurunegala) Appeal No. 120/2019 F**

Godfrey Jacob,
No. 777, Algonquin Avenue,
T.M.R. Quebec,
H4P 1C5,
Canada.

Appearing by his Power of Attorney
Holder Vineetha Marcina Shereene
No. 51/53, Swarna Road,
Colombo 05.

Currently residing at:
No.64, Vias Zone 02, Millenium City,
Kotugoda, Ekala, Ja-Ela.

**Plaintiff**

**Vs.**

Kariyawasam Gamage Don John Vijay
Appuhamy,
Kurukupane,
Bangadeniya.

**Defendant**

**AND BETWEEN**

Kariyawasam Gamage Don John Vijay
Appuhamy,
Kurukupane,
Bangadeniya.

**Defendant- Appellant**

**Vs.**

Godfrey Jacob,
No. 777, Algonquin Avenue,
T.M.R. Quebec,
H4P 1C5,
Canada.

Appearing by his Power of Attorney Holder
Vineetha Marcina Shereene
No. 51/53, Swarna Road,
Colombo 05.

Currently residing at:
No.64, Vilas Zone 02, Millenium City,
Kotugoda, Ekala, Ja-Ela.

**Plaintiff-Respondent**

**AND NOW BETWEEN**

Kariyawasam Gamage Don John Vijay
Appuhamy,
Kurukupane,
Bangadeniya.

**Defendant-Appellant-Petitioner**

**Vs.**
Godfrey Jacob,
No. 777, Algonquin Avenue,
T.M.R. Quebec,
H4P 1C5,
Canada.

Appearing by his Power of Attorney
Holder Vineetha Marcina Shereene
No. 51/53, Swarna Road,
Colombo 05.

Currently residing at:
No.64, Vilas Zone 02, Millenium City,
Kotugoda, Ekala, Ja-Ela.

**Plaintiff-Respondent- Respondent**

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

**&**

**M.C.B.S. Morais J.**

**Counsel:** Sapumal Bandara with Lakshitha Edirisinghe for the Petitioner instructed by Amanda de Moore.

Neomal Senatilleke with Vinura Jayawardena instructed by G. Rubasinghe for the Plaintiff - Respondent- Respondent.

**Written Submissions:** By the Defendant-Appellant-Petitioner – on 19.03.2025

By the Plaintiff-Respondent- Respondent on 27.02.2025

**Inquired on**: 11.02.2025

**Decided On:** **27.03.2025**

**ORDER**

**M.C.B.S. Morais J.**

This is an application for restituio in integrum under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Defendant-Appellant-Petitioner (hereinafter sometimes will be referred to as the Petitioner ) is challenging the Judgement of the District Court of Chilaw dated 15th of May 2019 an the Judgement of the High Court of Civil appeal of the North Western Province holden in Kalutara dated 21st of September 2023. Accordingly, the Petitioner has sought for the following,

I. "Issue notice on the Respondent;
II. Grant the constitutional remedy of restitutio in integrum and Revise and set aside the judgment of the learned Civil Appellate High Court judges dated 21. 09. 2023 marked as "P-13".
III. Grant the constitutional remedy of restitutio in integrum and Revise and set aside the judgement of the learned District Court judge of dated 15. 05. 2019 marked as "P-5";
IV. Grant costs;
V. Grant such other and further reliefs that Your Lordships' Court shall seem meet."

The Plaintiff-Respondent- Respondent (hereinafter sometimes will be referred to as the Respondent) has instituted an action bearing No. L/1797/05 in the District Court of Chilaw, by way of a plaint dated 16th of February 2006 to eject the Petitioner from the land and to obtain peaceful possession of the land more fully described in the schedule to the plaint. An answer dated 30th of January 2006 was filed by the Petitioner denying the purported claim of the Plaintiff and seeking the plaint to be dismissed. Accordingly, 18 issues were raised by both the parties and the matter was fixed for trial and the parties have filed the written submissions at the conclusion of the trial. The learned District Court Judge has delivered the judgement dated 15th of May 2019 in favor of the Plaintiff.

Being aggrieved by the said judgment the Petitioner has made a final appeal bearing number NWP/HCCA/KUR 120/2019/F before the Civil Appellate High Court of Kurunegala by way of a Petition of appeal dated 12th of August 2019. While the Final appeal was pending before the Civil Appellate High Court of Kurunegala, the Plaintiff to the Original action made an application for the execution of a writ pending appeal under Section 763 of the Civil Procedure Code. However, the Petitioner has filed an objection to dismiss the writ pending appeal. After the inquiry held, the learned District Court Judge of Chilaw delivered the order dated 29th of April 2022, that the Plaintiff is entitled to obtain the reliefs prayed for in the Petition. Being aggrieved by the said order, the Petitioner has made a revision application bearing HCCA 10/2020(REV) in

the Civil Appellate High Court of Kurunegala. Subsequently, the revision application was withdrawn by the Petitioner on the grounds that the judgement of the Civil Appellate High Court in the final appeal bearing NWP/HCCA/KUR 120/2019/F was delivered. Accordingly, the learned High Court Judge of Kurunegala has dismissed the appeal and affirmed the Judgement of the learned District Court Judge of Chilaw by the judgement dated 21st of September 2023.

It is the contention of the Petitioner that the entire case has proceeded on a defective power of Attorney and should have therefore been dismissed *in limine.* The original action in the District Court of Chilaw bearing No. L/1979/05 was initiated by the Plaintiff, Godfrey Jacob, appearing by his power of Attorney Vineetha Marciana Shereen. The Petitioner holds the view that the power of Attorney holder, Vineetha Marciana Shereen, has no authority to initiate, appear before the court. It is the contention of the Petitioner that the Power of Attorney bearing No.2234 dated 7th of December 2003 attested by Notary Public Kahatapitiya Pathirannehelage Jayawardena appoints the said Vineetha Marciana Shereen as the Attorney holder. Further, the principal of the said power of attorney is not Godfrey Jacob but Rajendram Jacob who is the brother of the Plaintiff and not a party to the Petition. Therefore, it is the contention of the Petitioner that the learned District Court Judge of Chilaw has erred in law by not considering this procedural error while arriving at her decision.

However, it is the view of the learned High Court Judge that section 2 of the Power of Attorney Ordinance states that in absence of a document even by way of a mere verbal statement, a power of attorney can be appointed. Therefore, the issue in terms of the validity of the said power of attorney is considered not maintainable.

The plaint submitted on 16th of February 2005, in the District Court of Chilaw contains the power of attorney No. 2234 as Vineetha Marciana Shereen, which was issued by the plaintiff's brother Rajendram Jacob. However, there is another power of attorney No.2235 marked as P15 which was signed on 7th of December 2003 by the Plaintiff himself. Therefore, it is in fact a mistake by the plaintiff, as the valid power of attorney was mentioned to be No.2234 but it should have been No.2235.

Further, during the cause of the trial the plaintiff Godfrey Jacob himself has given evidence and endorsed the power of attorney holders' institution of action.

Therefore, the power of attorney holder would have the authority of the original holder Jacob Rajendram to file this case No. L/1797/05 at the District Court of Chilaw. Further the proxy for the said case No. L/1797/05 has been signed by the due power of Attorney holder given to Mr. Namasena K. Gamage on 16th of May 2005. Therefore, the contention of the Petitioner cannot be accepted as there is a valid or authorized institution of the action.

Hence, I do not find any reason to interfere with the judgment dated 15th of May 2019 by the learned District Court of Chilaw and the Judgement dated 21st of September 2023 of the learned High Court Judge of the Kurunegala by exercising the extraordinary jurisdiction of *resitutio in integrum.*

Therefore, this application is dismissed, subject to a cost of Rs.50,000.

**Judge of the Court of Appeal**

**R. Gurusinghe J.**

**I agree**

**Judge of the Court of Appeal**