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

In the matter of an Application for Leave to Appeal under Section 5C of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 as amended by Act No. 54 of 2006

**Court of Appeal**
Case No: RII/0074/2024

DC Kuliyapitiya
Case No: 16286/P

Mapa Mudiyanselage
Kalyanawathie,
Ihala Pallewela,
Kithalawa Postal

**Plaintiff**

**Vs**

1. Hetti Arachchilage Subasinghe
   Appuhami alias
   Hettiarachchige Subasinghe
   Appuhami,
   Pahala Kalugamuwa,
   Kuliyapitiya Postal.

2. Mapa Mudiyanselage
   Gunarathbanda,
   "Sudeepa Home" Ihala
   Pallewela,
   Kithalawa Postal.

3. Hetti Arachchilage Sayaneris
   Appuhami
   Pahala Kalugamuwa,
   Kuliyapitiya Postal.
   (Now deceased)

3A. UdawattageRanmenika,
   Pahala Kalugamuwa,
   Kuliyapitiya Postal.

4. Weerasinghe Mudiyanselage
   Somawathie,
   Pahala Kalugamuwa,
   Kuliyapitiya Postal.

5. Hetti Arachchilage Ajitha
   Weerasinghe,
   Pahala Kalugamuwa,

Kuliyapitiya Postal.

6. Hetti Arachchilage Amitha
Weerasinghe,

3A to 6th Defendents are at
Pahala Kalugamuwa,
Kuliyapitiya Postal.

7. Jayamaha Hitihamillage
Dharmasena,
No. 455/5,
High Level Road,
Makumbura,
Kottawa,
Pannipitiya Postal

8. Jayamaha Hitihamillage
Gunathilake,
No. 108/4,
Mirihana Road,
Nugegoda Postal.

9. Jayakodi Arachchilage
Susantha Jayakodi,

10. Dissanayake Mudiyanselage
Podimenike,

11. Pinnawala Appuhamilage
Kusumawati,

12. Pinnawala Appuhamilage
Dhanapala,

13. Pinnawala Appuhamilage
Chandrapala,

14. Pinnawala Appuhamilage
Nandawathie,

15. Pinnawala Appuhamilage
Chandrasiri,

The 9th to 15th Defendants are at
Pahala Kalugamuwa,
Kuliyapitiya Postal.

**Defendants**

**And Now Between**

1. Kumaragamage Somasiri
   Kumaragama,
   No. 229, Gurugoda, Kobeigane

2. Kumaragamage Sumanawathi
   Karandanayagama,
   Weerapokuna

**Petitioners**

**Vs.**

Mapa Mudiyanselage
Kalyanawathie,
Ihala Pallewela,
Kithalawa Postal

**Plaintiff-Respondent**

1. Hetti Arachchilage Subasinghe
   Appuhami Alias
   Hettiarachchige Subasinghe
   Appuhami,
   Pahala Kalugamuwa,
   Kuliyapitiya Postal

2. Mapa Mudiyanselage
   Gunarathbanda,
   "Sudeepa Home" Ihala
   Pallewela,
   Kithalawa Postal.

3. Hetti Arachchilage Sayaneris
   Appuhami,
   Pahala Kalugamuwa,
   Kuliyapitiya Postal.
   (Now deceased)

3A. UdawattageRanmenika,

4. Weerasinghe Mudiyanselage
   Somawathie,

5. Hetti Arachchilage Ajitha
   Weerasinghe,

6. Hetti Arachchilage Amitha
   Weerasinghe,

   3A to 6th Defendents-Respondents are at
   Pahala Kalugamuwa,
   Kuliyapitiya Postal.

7. Jayamaha Hitihamillage
   Dharmasena,
   No. 455/5,
   High Level Road,
   Makumbura,
   Kottawa,
   Pannipitiya Postal

8. Jayamaha Hitihamillage
   Gunathilake,
   No. 108/4,
   Mirihana Road,
   Nugegoda Postal.

9. Jayakodi Arachchilage
   Susantha Jayakodi,

10. Dissanayake Mudiyanselage
    Podimenike,

11. Pinnawala Appuhamilage
    Kusumawati,

12. Pinnawala Appuhamilage
    Dhanapala,

13. Pinnawala Appuhamilage
    Chandrapala,

14. Pinnawala Appuhamilage
    Nandawathie,

15. Pinnawala Appuhamilage
    Chandrasiri,

The 9th to 15th Defendants are at
Pahala Kalugamuwa,
Kuliyapitiya Postal.

**Defendants-Respondents**

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

Counsel : Thanuka Nandasiri with Susil Wanigapura
**for the Petitioners**

Akila Aluthwatta with Dilini Rajapaksha
**for the Plaintiff-Respondent**

Arguedon : 13-02-2025

Decided on: 27-03-2025

ORDER

R. Gurusinghe

The two petitioners filed this *Restitutio in Integrum* application seeking to set aside the judgment of the Learned District Judge of Kuliyapitiya dated 10-12-2012, in the case bearing No. 16286/P and to set aside the final decree. *(*Although this is an application for *Restitutio in Integrum,* the caption of the petition states as follows*; In the matter of an Application for Leave to Appeal under Section 5C of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990 as amended by Act No. 54 of 2006).*

The petitioners state that the above-mentioned partition action in the District Court of Kuliyapitiya has been decided without the petitioners being made parties. Petitioners' state that, Nonchihami, one of the original owners referred to in the plaint died, leaving three children. However, in the plaint, the plaintiff has stated that Nonchihami died, leaving two children. The petitioners' position is that Nonchihami had another child named Kirineris Appuhamy. That Kirineris Appuhamy also inherited rights from the said Nonchihami. Kirineris Appuhamy had six children, namely Kumaragamage Subasinghe, father of the first petitioner, Premawathie, Somawathie, Piyasena, Amarasinghe and the second petitioner to this application Sumanawathie. The petitioners stated that they were unaware of the partition action until the third party made them aware. However, the petitioners have not stated when they became aware of the action. The action was instituted in the year 2007.

The plaintiff-respondent took up the following preliminary objections.

1. The petitioners are not parties to the case in the District Court, and since they are not parties to the original action, they cannot seek remedy under Restitution.

2. The petitioners have alternative remedies.

The remedy of *Restitutio in Integrum* is available only to the parties to the action. The petitioners were not parties to the action and cannot seek remedy in this application.

In the Case of *Perera vs Wijewickram 15 NLR 411, Pereira J held that "the remedy of restitutio in integrum can only be availed of by one who is actually a party to the contract or legal proceeding in respect of which restitution is desired."*

In *Menchinahamy v. Mumtaeera, 52 NLR 409* held, *"It is only a party to a contract or to legal proceedings who can ask for relief by way of restitutio in integrum"*

In the case of *Sri Lanka Insurance Corporation vs. Shanmugam and another [1995] 1 Sri LR 55* J. Ranaraja stated the following:

> *"Restitutio in Integrum being an extraordinary remedy, it is not given for mere asking or where some other remedy available. It is a remedy which granted under exceptional circumstances and the power of court should be most cautiously and sparingly exercised. A party seeking Restitution must act with utmost promptitude, and before a change had taken place in the positions of the parties".*

In this case, the final decree in the action was entered on September 19, 2023. Judgment of that action was delivered in 2012. The petitioners are seeking to set aside the judgment that was entered more than ten years ago. Since the final decree was entered, the parties to the action have been given a completely new title.

Since the petitioners are not parties to the action, they cannot seek this extraordinary remedy of *Restitutio in Integrum*. Further, changes have taken place in the positions of the parties.

The petitioners can ask for damages under section 49 of the Partition Law No. 21 of 1977. A portion of the land has been left unallotted, and if

petitioners can prove title, they still have a chance to acquire some rights in it.

For the reasons stated above, we refuse to issue notice on the respondents. The application of the petitioner is dismissed. No Costs.

Judge of the Court of Appeal.

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

Judge of the Court of Appeal.