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/0024/2025

Herath Mudiyanselage Wickramapala Herath
Daya Sevana,
Maligathanna, Bandarawela.

Plaintiff

Uva Province Civil Appellate
HC Case No.
UVA/HCCA/BDL/59/2021 (F)
UVA/HCCA/BDL/RA 06/2023

Vs.

Aththnayaka Mudiyanselage Punyasena
Liyaddagoda,
Maligathanna, Pattiyagedara

Defendant

And Between

Aththnayaka Mudiyanselage Punyasena
Liyaddagoda,
Maligathanna, Pattiyagedara

Defendant-Appellant

Vs.

Herath Mudiyanselage Wickramapala Herath
Daya Sevana,
Maligathanna, Bandarawella.

Plaintiff-Respondent

And Now Between

Aththnayaka Mudiyanselage Punyasena
Liyaddagoda,
Maligathanna, Pattiyagedara.

Defendant-Appellant-Petitioner

Vs.

Herath Mudiyanselage Wickramapala Herath
Daya Sevana,
Maligathanna, Bandarawela

Plaintiff-Respondent-Respondent

And Now Between

Aththnayaka Mudiyanselage Punyasena
Liyaddagoda,
Maligathanna, Pattiyagedara.

Defendant-Appellant-Petitioner-Petitioner

Vs.

Herath Mudiyanselage Wickramapala Herath
Daya Sevana,
Maligathanna, Bandarawela

Plaintiff-Respondent-Respondent-Respondent

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

Counsel : D.P.L.A. Kashyapa Perera
for the Defendant-Appellant-Petitioner

Argued on : 15-05-2025

Decided on : 25-06-2025

R. Gurusinghe, J.

The defendant–petitioner filed this *Restitutio–in-Integrum* application seeking *inter alia* to set aside the Order of the Learned High Court Judge of the Civil Appellate High Court Uva Province, dated 27-09-2023, by which the defendant-petitioner's revision application was dismissed and refused to issue notice on the plaintiff-respondent, and also declare that the order was made *per incuriam*. The petitioner also seeks a declaration that the judgments of the Learned High Court Judge dated 24-03-2023 and the Learned District Judge of Bandarawela dated 01-10-2021 were obtained fraudulently, and there is a grave miscarriage of justice.

The plaintiff-respondent instituted an action before the District Court of Bandarawela, seeking a declaration of title to the land described in the second schedule to the plaint and eviction of the defendant from the portion that he had encroached on the said land.

After trial, the Learned District Judge of Bandarawela entered the judgment in favour of the plaintiff on 01-10-2021. Being aggrieved by the said judgment, the defendant appealed to the Civil Appellate High Court of the Uva Province in Badulla. By the judgment dated 24-05-2023, the appeal of the defendant-petitioner was dismissed.

In this application, the petitioner states that the plaintiff-respondent tendered only a Deed of Declaration to prove his title, and the Deed was marked P1 but was not proved in accordance with Section 68 of the Evidence Ordinance. The petitioner further states that the plan marked P8, prepared by Sellahewa, a Licensed Surveyor, had no reference to a Final Village Plan. However, the petitioner states that the same surveyor has resurveyed the same land and prepared plan no. 3993 on 20-06-2023 and identified the land in question as part of Lot 231, of the Survey General's Final Village Plan No. 30. Accordingly, the land is State Land. The petitioner has produced copies of Plan C1, a photocopy of Lot 213 of the Final Village Plan, and a photocopy of the Tenement List.

Petitioner states, it has later transpired that the said land depicted in Schedule 2 to the plaint of the plaintiff, is State land and the plaintiff has no dominion over the said land, and the letter issued by the Land Title Settlement department dated 18-10-2023 is marked P5. However, P5 letter refers to Lot 65 of the Final Village Plan prepared on 31-12-1930 and states that Lot 65, land named Kirindagoda, in extent of 781 acres and 12 perches, belongs to the State. P5 has no reference to Lot 213. According to the tenement list marked P2A, Lot 213 is described as follows:

Name : Maligatennewatta, Wewakumburewatta
Description : Tea over 20 years
Extent : 1 Acre, 2 roods, 4.9 perches
Remarks : Part of Lot 187 to be leased. Tea cultivation by H.M. Kiribanda

Even if what the petitioner says is accepted, Lot 213 was possessed by one Kiribanda as early as 1964. The tenement list was prepared in 1967, based on the information supplied in November 1964. Even if it is assumed that the land in question is State Land, according to the above facts, one cannot argue that the plaintiff-respondent had obtained the judgment fraudulently. Fraud means "any craft, deceit or contrivance employed with a view to circumvent, deceive or ensnare another person." The facts did not disclose fraud in this *(Vide Sri Lanka Insurance Corporation Limited vs Shanmugam and another [1995] 1 Sri LR 55.)*

The plaintiff's action is a declaration of Title Action. Only the parties to that action are bound by the judgment of that action. Since the State was not a party, the State is not bound by the judgment of the District Court of Bandarawela. At the trial, the defendant-petitioner did not take up the position that the land belonged to the State.

The *Restitutio-in-Integrum* is an extraordinary remedy that will be granted under exceptional circumstances. A party seeking restitution must act with utmost promptitude. The party invoking the extraordinary powers of this Court must display honesty and frankness. Thus where a party by its own conduct has acquiesced in or approbated the defective proceedings, Court will not exercise its discretion to set aside the impugned proceedings. For it is not the function of Court, in the exercise of its jurisdiction in restitution to relieve the parties of the consequences of their own folly, negligence or laches. (vide *Sri Lanka Insurance Corporation Limited vs Shanmugam [1995] 1 Sri LR 55*).

The petitioner filed this application before this court on 10-04-2025, seeking to set aside the judgment of the Learned District Judge of Bandarawela dated 01-10-2021.

In the above circumstances we refuse to issue notice on the respondents.

Judge of the Court of Appeal.

Dr. S. Premachandra, J.
I agree.

Judge of the Court of Appeal.