

**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 0062/2024

DC Nugegoda

Case No. L/954/2023

Sammu Arachchige Nilani Keerthika  
Edirisinghe  
No. 25 A/42, Thappawatta Road,  
Godigamuwa, Maharagama

**Now Currently Living at**

241, Penrose Road, Mtwelgton,  
Auckland, New Zealand

**Plaintiff**

**Vs.**

1. Nugadeniya Arachchige Bhathiya  
Anuruddha Kumarasinghe  
No. 417, Shiromani Mawatha,  
Piliyandala Road, Maharagama.

2. IKO Credit Company (Pvt) Ltd  
No. 901 B, 4<sup>th</sup> Floor,  
165 A – ¼ B,  
Sausiriya Shopping Complex,  
High-Level Road, Nugegoda.

**Defendants**

**AND NOW BETWEEN**

Sammu Arachchige Nilani Keerthika  
Edirisinghe  
No. 25 A/42 Thappawatta Road,  
Godigamuwa, Maharagama

**Now Currently Living at**

241, Penrose Road, Mtwelgton,  
Auckland, New Zealand

**Plaintiff-Petitioner**

**Vs.**

1. Nugadeniya Arachchige Bhathiya  
Anuruddha Kumarasinghe  
No. 417, Shiromani Mawatha,  
Piliyandala Road, Maharagama.

2. IKO Credit Company (Pvt) Ltd  
No. 901 B, 4<sup>th</sup> Floor,  
165 A – ¼ B,  
Sausiriya Shopping Complex,  
High Level Road, Nugegoda.

**Defendant-Respondents**

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

Counsel : Varuna Nanayakkara  
**For the Plaintiff-Petitioner**

Asha Rathnayake, instructed by  
Saddiya Thasi  
**for the 1<sup>st</sup> Defendant-Respondent**

Argued on : 03-12-2024

Decided on: 06-02-2025

R. Gurusinghe

The petitioner is the plaintiff in the Nugegoda District Court Case No. L/954/2023 (hereinafter referred to as the plaintiff-petitioner), and the 1<sup>st</sup> and 2<sup>nd</sup> respondents are the defendants in that case (hereinafter referred to as the defendant-respondents). Petitioner filed this application before this court seeking *inter alia* to set aside the order dated 26-04-2024 marked P7 and also seeking an order against the 1<sup>st</sup> defendant-respondent preventing

the alienation of the property more fully described in the schedule to the plaint marked P1 (hereinafter referred to as the property).

#### Facts of the case as stated by the petitioner

The plaintiff-petitioner's position is that she paid Rs. 3.5 Million on the 01<sup>st</sup> of February 2010 to the 1<sup>st</sup> defendant-respondent to buy the property described in the schedule to the plaint. On the same day, the 1<sup>st</sup> defendant-respondent stated to the plaintiff-petitioner that the property had been mortgaged at the moment and that he would get it released within a week, and the deed would be written thereafter. The 1<sup>st</sup> defendant-respondent further agreed to give a power of attorney to the plaintiff-petitioner to deal with the property until the deed of transfer was written. The petitioner was given possession of the property, and she has been in uninterrupted possession of it since then. The petitioner later came to know that the 1<sup>st</sup> defendant-respondent had transferred the property to a third party. Then, as the 1<sup>st</sup> defendant-respondent did not have the paper title to the property, the plaintiff-petitioner filed an action seeking to recover the money paid to the 1<sup>st</sup> defendant-respondent as the consideration to buy the property. After some time, the buyer of the property retransferred the property in the name of the 1<sup>st</sup> defendant-respondent, citing a lesser value as the consideration. After that, the plaintiff-petitioner filed the present action in the District Court of Nugegoda, seeking a declaration of title on the basis of the prescriptive title. At the moment, the plaintiff-petitioner possesses the property through the tenants. The 1<sup>st</sup> defendant-respondent is trying to eject the tenants of the plaintiff-petitioner. As such, the plaintiff-petitioner sought an interim injunction against the 1<sup>st</sup> defendant-respondent.

#### Position of the 1<sup>st</sup> Defendant-Respondent

The 1<sup>st</sup> defendant-respondent stated to the plaintiff-petitioner that he would sell the property for Rs. 3.5 Million. At that time, since the plaintiff-petitioner had only Rs.3.0 million, the transaction was not proceeded by the parties. The 1<sup>st</sup> defendant-respondent denies the genuineness of the two documents marked P1 and P2. As per the 1<sup>st</sup> defendant-respondent, the plaintiff-petitioner came into possession of the property in or around the year 2016.

The 1<sup>st</sup> defendant-respondent does not describe as to how the plaintiff-petitioner came into the possession of the property. He vaguely states that the plaintiff-petitioner came into the possession of the property in or around 2016. If the plaintiff-petitioner came into the possession of the property in 2016 without paying the consideration to the 1<sup>st</sup> defendant-respondent, the question arises as to why the 1<sup>st</sup> defendant-respondent did not take any steps regarding losing the possession of the property.

There had been some cases between two parties in the Magistrate's Court of Nugegoda. In one such case, the 1<sup>st</sup> defendant-respondent stated that Rs. 2.6 million was due to be paid to the plaintiff-petitioner. At that moment, the 1<sup>st</sup> defendant-respondent had admitted that he had received Rs. 2.6 million from the plaintiff-petitioner. This shows that the 1<sup>st</sup> defendant-respondent accepted the fact that the plaintiff-petitioner had already paid the consideration. At that time, the defendant-respondent's version was that he received only Rs.2.6 million, while the plaintiff-petitioner's version was that she paid Rs.3.5 million to the 1<sup>st</sup> defendant-respondent.

The 1<sup>st</sup> defendant-respondent tried to eject the plaintiff-petitioner's tenants from the possession of the property. As a result, there was a case in the Magistrates Court under the provisions of section 66 of the Primary Court Procedure Act No. 44 of 1979.

The Learned Additional Magistrate delivered the order on 07/10/2022, deciding that the 1<sup>st</sup> defendant-respondent had disturbed the possession of the first party, who were in possession of the premises, and ordered the first party to be in possession of the property. The first parties in that case (MC Nugegoda Case No:5039/22) were Sammu Arachchige Krishanthi and Sammu Arachchige Pradeepa Mahindrani.

It is clear from the available evidence that the plaintiff-petitioner is in possession of the property. It is probable that after payment of the consideration for the transfer of the property in the plaintiff-petitioner's name, the 1<sup>st</sup> defendant-respondent had given the possession to the plaintiff-petitioner. The position of the 1<sup>st</sup> defendant-respondent is that the plaintiff-petitioner came into possession using fraudulent documents in or around 2016, cannot be believed. As the first defendant states, if that happened, the 1<sup>st</sup> defendant would not have kept quiet without taking immediate legal action. There was no complaint made to the police on that basis.

The Learned Additional District Judge of Nugegoda, in his order dated 26-04-2024, states that the plaintiff had failed to make out a *prima facie* case against the defendants. Further, the Learned Additional District Judge of Nugegoda decided that there was no evidence that the 1<sup>st</sup> defendant was trying to dispossess the plaintiff from possession.

A *prima facie* case does not mean that the plaintiff will certainly win the case. If the court is satisfied that there is a serious question to be tried at the hearing there is a *prima-facie* case.

In Jinandasa vs Weerasinghe 31 NLR 33, Court held that,

*In such a matter the Court must be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that plaintiff is entitled to relief (Preston v. Luck '). 31 Ch. D. at page, 369*

In this case, there are serious questions to be decided at the hearing, such as whether the plaintiff's possession is adverse to the first defendant-respondent because, as for the plaintiff-petitioner, she came into possession as the buyer of the property after payment of consideration to the defendant. If the position taken up by the plaintiff is proven, she cannot be considered a licensee.

In Ceylon Cold Stores vs Whitall Boustead Ltd[1980]2 SRILR 120, Soza J. held that,

*To sum up, a party seeking an interim injunction under section 54(1) (b) of the Judicature Act No. 2 of 1978 must satisfy the Court that there is a serious question to be tried, at the hearing.*

In Felix Dias Bandaranayake vs the State Film Corporation and another[1981] 2 Sri LR 287.

*The requirement that there should be a serious question to be tried in relation to the legal rights which the plaintiff claims with the probability of his winning has always been understood to mean that the plaintiff must show the existence of a prima facie case.*

When considering the balance of convenience, it lies on the plaintiff-petitioner, as the plaintiff-petitioner has been in possession for a long time. According to the plaintiff-petitioner, she has been in possession since February 2010. According to the 1<sup>st</sup> defendant-respondent, the plaintiff-petitioner has been in possession since 2016. The fact remains that the plaintiff-petitioner is in possession of the property. Furthermore, the possession of the plaintiff-petitioner was confirmed by order of the Magistrate Court under the provisions of Primary Court Procedure Act No.44 of 1979. As such, the plaintiff-petitioner cannot be evicted from the possession without a judgment from a competent court. The balance of convenience lies in favour of the plaintiff-petitioner.

For the reasons set out above, we set aside the order of the Learned Additional District Judge of Nugegoda dated 26-04-2024. As for the material set out above, we are convinced that an interim relief, as prayed by the plaintiff-petitioner in the Court below, should have been granted and directed to the learned District Judge of Nugegoda to act accordingly.

Judge of the Court of Appeal.

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

Judge of the Court of Appeal.