

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

In the matter of an application for
Restitutio-in-Integrum under and in terms
of Article 138 of the Constitution of the
democratic socialist Republic of Sri Lanka.

CA/RII/011/2024

WP/HCCA/COL/270/2022/LA

DC Colombo:21638/L

James Peter Obeyesekera (Junior)

No. 19, Rajakeeya MW

Colombo 07.

Plaintiff

V.

1. Sivagamie Verina Obeyesekere

(Deceased)

No. 19, Rajakeeya MW,

Colombo 07.

Chantal Hirantha Obeyesekere De
Saram

No. 17,

Rajakeeya MW

Colombo 07.

Substituted 1st Respondent

2. Chantal Hirantha Obeyesekere De
Saram

No. 17,

Rajakeeya MW,

Colombo 07.

3. Dijen Lea De Saram

No. 17,

Rajakeeya MW

Colombo 07.

Defendants

AND

**An application made under Section
763 of the Civil Procedure Code**

James Peter Obeyesekera (Junior)

No. 19, Rajakeeya MW,

Colombo 07.

And presently of:

No. 5, St. Cadoc Rd,

Health, Cardiff, CF 14 4 ND

United Kingdom

Appearing by his Attorney

Balapuwaduge Kalani Indika Mendis

No. 187/3, Negombo Road,

Nittabuwa

Plaintiff- Judgment Creditor- Petitioner

Vs.

1. Sivagamie Verina Obeyesekere

(Deceased)

No. 19, Rajakeeya MW

Colombo 07.

Chantal Hirantha Obeyesekere De

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Rajakeeya MW

Colombo 07.

Defendants-Judgment

Debtor-

Respondents

AND

1. Sivagamie Verina Obeyesekere

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Defendants-Judgment

Debtor-

Respondents-Petitioners

Vs.

James Peter Obeyesekera (Junior)

No. 19, Rajakeeya MW

Colombo 07.

And presently of:

No. 5. St. Cadoc Rd

Health, Cardiff, CF 14 4 ND

United Kingdom

Appearing by his Attorney

Balapuwaduge Kalani Indika Mendis

No. 187/3, Negombo Road

Nittabuwa

**Plaintiff- Judgment Creditor- Petitioner-
Respondent**

And Now Between

1. Sivagamie Verina Obeyesekere

(Deceased)

No. 19, Rajakeeya MW

Colombo 07.

Chantal Hirantha Obeyesekere De
Saram

No. 17

Rajakeeya MW

Colombo 07.

Substituted 1st Respondent

2. Chantal Hirantha Obeyesekere De

Saram

No. 17

Rajakeeya MW

Colombo 07.

3. Dijen Lea De Saram

No. 17

Rajakeeya MW

Colombo 07.

**Defendants-Judgment Debtor-
Respondents-Petitioners-Petitioners**

Vs.

James Peter Obeyesekera (Junior)

No. 19, Rajakeeya MW

Colombo 07.

And presently of:

No. 5. St. Cadoc Rd

Health, Cardiff, CF 14 4 ND

United Kingdom

Appearing by his Attorney

Balapuwaduge Kalani Indika Mendis

No. 187/3, Negombo Road

Nittabuwa

**Plaintiff- Judgment Creditor- Petitioner-
Respondent-Respondent**

Before : R. Gurusinghe, J.
B. Sasi Mahendran, J.

Counsel: Dr. Romesh de Silva PC for the Petitioners
Kuvera de Zoysa, PC with Samuditha Kumarasinghe for the
Respondent

Inquired On : 11.03.2025

Written

Submissions 10.04.2025 (by the 2nd and 3rd Defendants Judgment Debtor-
On: Respondent-Petitioner-Petitioner)
01.04.2025 (by the Plaintiff-Judgment- Creditor Petitioner-
Respondent-Respondent)

Judgment On: 30.04.2025

JUDGMENT

B. Sasi Mahendran, J.

The Defendants- Judgement Debtor- Respondents- Petitioners- Petitioners (hereinafter referred to as the Petitioners) instituted this action by petition dated 07.02.2024 invoking the restitutionary jurisdiction of this Court seeking *inter alia* to set aside the order of the High Court of the Western Province exercising its Civil Appellate Jurisdiction holden in Colombo directing the appeal bearing case No. WP/HCCA/Col/270/22/LA relating to the appeal from the order granting the execution of the writ pending appeal to be resumed as contained in the order marked P8 dated 01.02.2024.

As agreed by the parties, this judgment binds on C.A.RII-0012-24, C.A.RII-0013-24, C.A.RII-0014-24, C.A.RII-0015-24 and C.A.RII-0016-24.

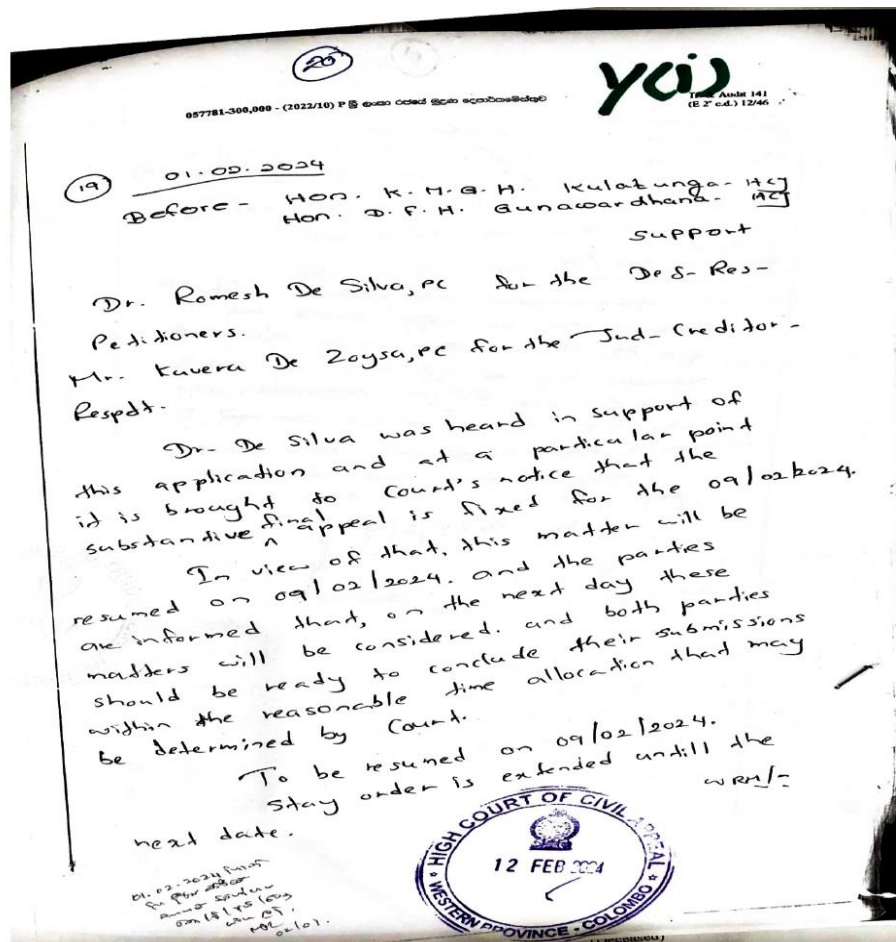
The Petitioners state that the Plaintiff- Judgment Creditor- Petitioner- Respondent- Respondent (hereinafter referred to as the Respondent) instituted an action against the Petitioners seeking *inter alia* a declaration of title and ejectment of the Petitioners from the premises described in the plaint. The Petitioners further state that by judgment dated 21.10.2019, the Learned District Judge granted the reliefs as prayed for in the said Plaint. The Petitioners being aggrieved by the said judgment, filed an appeal, and the final/substantive appeal bearing case No. WP/HCCA/COL/13/2021 (F) was fixed for argument on 09.02.2024.

The Petitioners aver that when the matters remained as such, on 16.02.2021, the Respondents filed an application in the District Court seeking an execution of the writ pending appeal. After the Petitioners filed their statements of objections, an inquiry was disposed of by way of written submissions. Thereafter, by order dated 07.10.2022, the Learned Additional District Judge allowed the application for writ pending appeal.

The Petitioners being aggrieved by the said order dated 07.10.2022 filed a leave to appeal application in case bearing No. WP/HCCA/Col/270/22/LA. When the matter was supported on 13.10.2022, the Court stayed the proceedings in the District Court of Colombo and number of dates were given by the Courts to support the matter. After hearing both sides, the Court fixed the case for order with regard to leave on 22.11.2022 and the stay order was extended.

We note that the Courts had taken a number of dates to deliver the said order. (22.11.2022/ 06.12.2022/ 23.01.2023/ 24.03.2023/ 19.05.2023/ 25.07.2023)

Thereafter, due to the reconstruction of the benches, the matter was refixed for argument on 21.11.2023. When the matter came up on 01.02.2024, the Journal Entry stated that:



What transpired from the said Journal Entry is that 09.02.2024 was the same date on which the final/substantive appeal in the case bearing No. WP/HCCA/COL/13/2021 (F) is listed for argument. The Petitioners wanted the appeal to be taken first.

In this context, the Petitioners have invoked the restitutionary jurisdiction of this Court against the said order of the Learned Judges dated 01.02.2024 marked P8 on the basis that the said order is patently erroneous, unjust and thus shocks the conscience of the Court.

We are mindful that the object of filing a writ pending appeal is to give entitlement to enjoy the fruits of the decree entered in his favour.

Section 761 of the Civil Procedure Code was interpreted by our Courts that within a reasonable time means as soon as possible.

The plain reading of the said Journal Entry is that in view of the suggestion made by the Counsel for the Petitioners that the Court should take up the appeal first, the Learned judges have indicated that it could be considered on the next date. The question before us is whether the Petitioners have the right to invoke the jurisdiction of *restitutio in integrum* to quash the said decision.

The remedy of *restitutio in integrum* has taken deep root in our legal system. The following cases elucidate the grounds on which the remedy of *restitutio in integrum* has been awarded.

In Sri Lanka Insurance Corporation Ltd v. Shanmugam and another [1995] 1 SLR 55 His Lordship Ranaraja J. held,

“Superior courts of this country have held that relief by way of restitution in integrum in respect of judgments of original courts may be sought where (a) the judgments have been obtained by fraud, (Abeysekera-supra), by the production of false evidence, (Buyzer v. Eckert), or non-disclosure of material facts, (Perera v. Ekanaike), or where judgment has been obtained by force or fraud, (Gunaratne v. Dingiri Banda, Jayasuriya v. Kotelawela). (b) Where fresh evidence has cropped up since judgment which was unknown earlier to the parties relying on it, (Sinnethamby-supra), and fresh evidence which no reasonable diligence could have helped to disclose earlier, (c) Where judgments have been pronounced by mistake and decrees entered thereon, (Sinnethamby-supra), provided of course that it is an error which connotes a reasonable or excusable error, (Perera v. Don Simon). The remedy could therefore be availed of where an Attorney-at-Law has by mistake consented to judgment contrary to express instructions of his client, for in such cases it could be said that there was in reality no consent, (Phipps-Supra, Narayan

Chetty v. Azeez), but not where the Attorney-at-Law has been given a general authority to settle or compromise a case, (Silva v. Fonseka).”

His Lordship Nawaz J. in Edirisinghe Arachchilage Indrani Chandralatha v. Elrick Ratnam, CA R.I. Case No. 64/2012 decided on 02.08.2017, reaffirmed these grounds as follows,

“Any party who is aggrieved by a judgment, decree or order of the District Court or Family Court may apply for the interference of the Court and relief by way of restitutio in integrum if good grounds are shown. The just grounds for restitution are fraud, fear, minority etc. Our Superior Courts have held that the power of the Court to grant relief by way of restitutio in integrum, in respect of judgments of original Courts, is a matter of grace and discretion, and such relief may be sought only in the following circumstances:-

- a) Fraud
- b) False evidence
- c) Non-disclosure of material facts
- d) Deception
- e) Fresh evidence
- f) Mistake
- g) Fear”

In the instant application, nothing was indicated by the Petitioners that the order made on 01.02.2024 falls under the above grounds. The particular order marked P8 is an order postponing the application made by the Counsels for the Petitioners. The question is whether that Court has taken any decision which allows invoking the extraordinary restitutionary jurisdiction. We do not see any merits in the said application. we are also mindful that writ pending appeals and appeals are different applications.

The purpose of filing a writ pending appeal is to enjoy the fruits of the order which is in favour. We are also mindful that the Court has also taken a number of days to deliver the order on leave to appeal.

For the above-said reasons, we hold that the Petitioner has failed to establish any exceptional circumstances to invoke the restitutionary jurisdiction, which is an extraordinary jurisdiction.

We dismiss the application with costs of Rs. 50,000/-.

JUDGE OF THE COURT OF APPEAL

R. Gurusinghe, J.

I AGREE

JUDGE OF THE COURT OF APPEAL