

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

In the matter of an Application for *restitutio-in-integrum* under section 753 of the Civil Procedure Code read with the Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Case No: RII/65/2024
Case No: NCP/HCCA/ANP/FA/33/2022
DC-Polonnaruwa
Case No: 13858/L

Hetti Appu Pathirennhelage Charlis Appuhamy,
No. 30, Marukona Janapadaya,
Balakaduwa,
Alawathugoda.

Plaintiff

Vs.

1. Bodahennadige Indrani Sepalika
 2. Don Piyatissa Kumarage
- Both of
No. 45-35, Luwis Peiris Mawatha,
Kandy.

Defendants

AND BETWEEN

Hetti Appu Pathirennhelage Charlis Appuhamy,
No. 30, Marukona Janapadaya,
Balakaduwa,
Alawathugoda.

Plaintiff-Appellant

Hetti Pathirennhelage Ganga Kumari,
No. 11, Perakum Mawatha,
28 Post, Polonnaruwa.

Substituted Plaintiff- Appellant

Vs.

1. Bodahennadige Indrani Sepalika
 2. Don Piyatissa Kumarage
- Both of
No. 45-35, Luwis Peiris Mawatha,
Kandy.

Defendant- Respondents

AND NOW BETWEEN

Hetti Pathirennhelage Ganga Kumari,
No. 11, Perakum Mawatha,
28 Post, Polonnaruwa.

**Substituted Plaintiff- Appellant-
Petitioner**

Vs.

1. Bodahennadige Indrani Sepalika
 2. Don Piyatissa Kumarage
- Both of
No. 45-35, Luwis Peiris Mawatha,
Kandy.

Defendant- Respondent- Respondents

Before: **R. Gurusinghe J.**

&

M.C.B.S. Morais J.

Counsel: Sachchindra T. De Zoysa for the Substituted Plaintiff-
Appellant- Petitioner.

M.Y. Mohamed Muzni with Isuru Karalliadde instructed by
Danushika Priyadarshini for the Defendant- Respondent-
Respondents.

Supported on: 12.07.2024

Decided On: **12.09.2024**

M.C.B.S. Morais J.

This is an application for *restitutio-in-integrum* under section 753 of the Civil Procedure Code read with the Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

In this instant case, the Substituted Plaintiff Appellant Petitioner (hereinafter sometimes referred to as the Petitioner) Ms. Hetti Pathirennehelage Ganga Kumari is challenging both the judgements of the Civil Appellate High Court of Anuradhapura dated 29th of November 2023 in case bearing No. NCP/HCCA/ANP/FA/033/22 and the District Court of Polonnaruwa dated 10th of March 2022 in Case bearing No. 13858/L.

The Petitioner's father initiated legal proceedings under case number 13858/L in the District Court of Polonnaruwa, seeking a judgment that the 1st Respondent holds no rightful claim to the disputed land under Deed No. 1010, and further requesting a declaration that the land described in the second schedule rightfully belongs to the Petitioner. The Petitioner asserts that the 2nd Respondent is the spouse of the 1st Respondent, both of whom have refuted the Petitioner's claims. However, both the District Court and the Civil Appellate High Court have rejected the Petitioner's applications.

Being aggrieved by the said decisions, Petitioner seeks permission to consider this *restitutio-in-integrum* application on the following grounds.

- a) *There are serious of miscarriage of justice in the judgement of their Lordships of the Civil Appellate High Court and the Learned District Judge, therefore Your Lordships have right to exercise the Restitutio-in-integrum powers and set aside the judgment of the Civil Appellate High Court and the District Court.*
- b) *The judgement of the District Court is contrary to the Law and against the fundamental principles of Law.*
- c) *Their Lordships of the Civil Appellate High Court as well as the Learned District Judge have determined the Deed No. 1010 was duly executed instrument by a Notary Public in terms of Notaries Ordinance and the Prevention of Fraud Ordinance is wrong.*
- d) *The Lordships of the Civil Appeal High Court as well as the Learned District Judge have not considered the Defendant's marking document 59.*

- e) *The Lordships of the Civil Appeal High Court as well as the Learned District Judge have not considered the fact that whether the Deed No. 1010 was duly executed and whether there was a consideration for execute the deed between the parties.*

The extraordinary jurisdiction of *restitutio in integrum* is meant to be used only in very rare and exceptional circumstances where no other legal remedies are available, and the court is faced with a situation so unjust that it demands intervention. This remedy is not one that courts will invoke lightly; instead, it is reserved for cases where specific and stringent criteria are met.

The invocation of the extraordinary jurisdiction of *restitutio in integrum* is tightly restricted to situations where an order is blatantly wrong on its face, leaves the Petitioner with no other remedy, it is ex-facie contrary to accepted legal principles and is so unjust that it shocks the conscience of the court. It is a remedy of last resort, reserved for only the most egregious cases, where an obvious and undeniable miscarriage of justice has taken place.

In the case ***SRI LANKA INSURANCE CORPORATION LTD. v. SHANMUGAM AND ANOTHER*** (1995) 1 SLR 55 Ranaraja J. held that,

“In this country the remedy of restitutio in integrum was recognised as a mode of relief as far back as the time of Sir Charles Marshall, and has taken deep root in the practice and procedure of our courts. (Abeysekera Vs. Haramanis Appu 14 NLR 353). At present, Article 138(1) of the Constitution has vested this court with sole and exclusive jurisdiction to grant relief by way of restitutio in integrum. This remedy cannot, unlike an appeal, be claimed by a party as of right. The power of this court to grant such relief is a matter of grace and discretion. (Usoof v. Nandarajah Chettiar 61 NLR 173). The power of restitution differs from revisionary power of this court in that the latter is exercised where the legality or propriety of any order or proceedings of a lower court is questioned. Restitution reinstates a party to his original legal condition which he has been deprived of by the operation of law. Thus it follows, the remedy can be availed of only by one who is actually a party to the legal proceeding in respect of which restitution is desired. (Perera v. Wijewickrema 15 NLR 411), (Menchinahamy v. Munaweera 52 NLR 409). A party seeking restitution must also show that he has suffered actual damage, (Phipps v. Bracegyrdle 35 NLR 302) although damages cannot be claimed in an application for restitution. (Dember v. Abdul Hafeel 49 NLR 62). Restitutio in integrum being an extraordinary remedy, it is not to be given for the mere asking

or where there is some other remedy available (Mapalathan v. Elayavan 41 NLR 115). It is a remedy which is granted under exceptional circumstances and the power of court should be most cautiously and sparingly exercised, (Perera v. Wijewickrama 15 NLR 411). A party seeking restitution must act with utmost promptitude, Babun Appu v. Simon Appu 11 NLR 115, (Menchinahamy v. Munaweera 52 NLR 411), and before a change has taken place in the position of the parties, (Sinnethamby v. Nallathamby 7 NLR 139). Where there has been negligence on the part of the applicant seeking relief or his attorney-at-law, restitution will not be granted, (Wickremasooriya v. Abeywardene 15 NLR 472). 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, (Don Lewis v. Dissanayake 70 NLR 8)”

Therefore, in the absence of these stringent conditions, we must refrain from utilizing this extraordinary measure, adhering instead to the ordinary legal processes and remedies available within the framework of civil litigation. None of the grounds mentioned above do not fall within the scope of *restitutio in integrum*. All these grievances could have been remedied by an appeal to the Supreme Court.

In the matter at hand, learned district judge of Polonnaruwa has dismissed the application on 10th of March 2022 and being aggrieved by the said decision the Petitioner has appealed to the Civil Appeal High Court of Anuradhapura and the learned judges of the said court also have dismissed the application.

However, according to the section 5C of the High Courts of Provinces (Special Provisions) (Amendment) Act No.54 of 2006, the Petitioner can appeal directly to the Supreme Court against any judgement, decree or order pronounced or entered by a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction granted by section 5A of this Act with leave of the Supreme Court first had and obtained. According to the Article 5A of the Act, a High Court has jurisdiction to hear appeals from District Courts and Family Courts.

It is pertinent to note that all the grounds urged by the Petitioner could have been adequately addressed by an appeal to the Supreme Court, in accordance with Section 5C of the High Courts of Provinces (Special Provisions) (Amendment) Act No. 54 of 2006. However, the Petitioner did not avail himself of this option, and this omission is attributable to his negligence. It is a well-established principle that when a party is afforded a clear legal avenue for redress, such as the right to appeal to the Supreme Court, the onus lies on that party to exercise the option within the prescribed period. In the present case, the party was fully aware of their right to appeal but chose not to act in a timely manner.

The party now seeks relief by way of *restitutio in integrum*. However, the Court cannot overlook the fact that this failure to appeal is not attributable to any external impediment but stems from their own inaction. *Restitutio in integrum* is not designed to rescue a party from the consequences of their own neglect or carelessness.

Their failure to exercise the option to appeal to the Supreme Court, when available and clearly within their rights, is a significant omission. It is neither a mere oversight nor a trivial lapse; it reflects a disregard for procedural diligence. The law favors those who act within the framework of due process, and the party's failure in this regard cannot be remedied by invoking *restitutio in integrum*.

In the case **A.K.W. Perera Vs. G.Don Simon** 62 NLR 118 Sansoni J. stated that,

*“Restitutio in integrum can be claimed on the ground of **Justus error**, which I understand to connote reasonable or excusable error. I am unable to see that such a ground exists in this case. It is, on the contrary, an example of damage arising from carelessness or negligence. I would refer in this connection to **Mapalathan v. Elayavan** 41 NLR 115 and **Dember v. Abdul Hafeel** 49 NLR 62. In those cases, it was held that restitutio would not be granted where there has been negligence on the part of the applicant for relief. The case is all the worse if the error is due to the act of the plaintiff himself, as would appear to be the case here.”*

As such, the Court finds that the request for restitution is untenable. The party's failure to appeal, being a product of their own neglect, precludes them from the relief they now seek.

In light of the above, as this case does not fall within the scope of *restitutio in integrum*, I refuse to issue notice on the Respondents.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal