

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

**In the matter of an application for
Restitutio-in-integrum under Article
138 of the Constitution of the Republic
of Sri Lanka.**

1. Gamage Rankirihami,
2. G. Sarath Chandralal,

(both of at) 10th Mile Post,
Alubodaweketiya,
Kella, Kolonna.

PLAINTIFFS

CA (RII) Application No. 54/2023

SP/HCCA/RAT/12/2022(FA)

D.C. Embilipitiya No.10387/L

- Vs.-

B.L. Weerawansha Appuhamy,
Urawela, Kella,
Kolonna.

DEFENDANT

AND BETWEEN

B.L. Weerawansha Appuhamy,
Urawela, Kella,
Kolonna.

DEFENDANT-APPELLANT

- Vs. -

1. Gamage Rankirihami.
2. G. Sarath Chandralal.

(both of at) 10th Mile Post,
Alubodawekeetiya,
Kella, Kolonna.

PLAINTIFF-RESPONDENTS

AND BETWEEN

B.L. Weerawansha Appuhamy,
Urawela, Kella,
Kolonna.

**DEFENDANT-APPELLANT-
PETITIONER**

-Vs.-

1. Gamage Rankirihami.
2. G. Sarath Chandralal,

(both of at) 10th Mile Post,
Alubodawekeetiya,
Kella, Kolonna.

**PLAINTIFF-RESPONDENT-
RESPONDENTS**

AND NOW BETWEEN

B.L. Weerawansa Appuhamy,
Urawela, Kella,
Kolonna.

DEFENDANT-APPELLANT-PETITIONER
(DECEASED)

Bambarawana Liyanage Thilaka Rathna
No. 392/3
Perakatiya,
Kella

SUBSTITUTED DEFENDANT-
APPELLANT-PETITIONER

- **Vs.** -

1. Gamage Rankirihami.
2. G. Sarath Chandralal.

(both of at) 10th Mile Post,
Alubodaweketiya,
Kella, Kolonna.

PLANTIFF-RESPONDENT-
RESPONDENTS

Before: R. Gurusinghe J.

&

Dr. Sumudu Premachandra J.

Counsel: Sandamal Rajapaksha with Aruni Danapala Arachchi and Hasini Haldamulla for the Defendant-Appellant.

Anuraddha Dharmaratne with Indika Jayaweera for the Plaintiff-Respondent-Respondent.

Written Submissions: By the Substituted Defendant-Appellant-Petitioner on 07th of April 2025

By the Plaintiff- Respondent-Respondents on the 02nd of April 2025

Argued On: 17/03/2025

Judgment On: 20/05/2025

Dr. Sumudu Premachandra J.

1] The Defendant-Appellant Petitioner (Hereinafter referred as “the Petitioner”) has filed this action against the Plaintiff-Respondent-Respondents (Hereinafter referred as “the Respondents) seeking inter-alia following relief:

1. to set aside or vary, revise the Judgment dated 29/10/2021 of the learned District Judge of Embilipitiya and
2. set aside the judgment dated 4th April 2023 of the Civil Appellant High Court held in Ratnapura.
3. He further prays to have a re-trial for the Embilipitiya DC Case bearing No.10387/L or ask to call the witnesses on behalf of the Defendant (the Petitioner).

2] This is an application for Restitutio-in-integrum. Thus, the Petitioner seeks a relief on the Article 138 of the Constitution of the Republic of Sri Lanka. The Respondent resisted this application, and they raised the following objections.

- a. The Defendant failed to prefer a leave to appeal the application to the Supreme Court against the judgment of the Civil Appellate High Court

of Sabaragamuwa dated 4th of April 2023, case bearing number HCCA/FA/12/2022.

- b. The relief of Restitutio-in-integrum is only available where there is no other remedy available.
- c. The Petitioner is guilty on lashes.
- d. The Petitioner slept over his right and now, he is not entitled to invoke the Jurisdiction of this court.
- e. The Defendant has been negligent in his conduct during the trial and after the judgment.
- f. The relief in Restitutio-in-integrum cannot be considered if the Petitioner is in own folly, negligence, or lashes
- g. The Petitioner has failed to disclose any exceptional circumstances which is a pre-requisite to invoke jurisdiction of this court.
- h. The Petitioner has failed to disclose the nature and extent of any damages and only made bare assertion.

3] Countering the objections made by the Respondents, the Petitioner says that Respondents have not come with a clean hand and is guilty of misrepresentation and suppression of material facts. Those were that;

- a) The Respondents have failed to establish their possession against the possession of the Petitioner since 1973.
- b) Although a Fiscal Officer came to execute the writ of possession against the Petitioner, the Petitioner continued to be in possession of the land in dispute. (he was never dispossessed)
- c) The Petitioner further says since the Respondents were not in possession, there was no necessity, therefore, he did not take any step to evict the Respondents.

4] The backdrop of this case is as follows; the Plaintiffs, by amended plaint, have filed this case against the Defendant to evict the Defendant and persons holding under him. The Plaintiffs say that the husband of the 1st Plaintiff, K. P. Somadasa, got the permit under the Land Development Ordinance to the land

in question and by Embilipitiya District Court Case bearing No. 4859/9, their rights were vindicated, the possession was given to them. They say, on 29/05/2008, they were dispossessed and by this instant action was filed for the recovery of possession. Thus, this is an action for recovery of possession under section 4 of the Prescription Ordinance. The After pleadings were completed, the matter went inter-parte. The evidence was concluded for the Plaintiffs and on 05/12/2019, the Defendant's evidence was also concluded. The Defendant was given a further date to call his remaining witnesses, which he failed to do. The learned trial judge delivered the judgment on 29/10/2021 on the available evidence considering the oral and documentary evidence of both parties. Being aggrieved to the said judgment, the Petitioner appealed to the Civil Appellate High Court of Ratnapura under case bearing No. SP/HCCA/RAT/12/2022. By judgement dated 04/04/2023, this appeal was dismissed with costs.

5] Both parties have filed written submissions. I now consider the matter in detail. The Petitioner's contention was although the Fiscal Officer came to execute the writ of Embilipitiya District Court Case bearing No. 4859/9, the Petitioner continued to remain in possession for 10 years, on his adverse, uninterrupted possession, he has the prescriptive title to the land in question, which learned judges of Civil Appellate High Court had failed to consider. Further, the Petitioner said despite several dates had been given to the Plaintiffs (the Respondents), he was given single opportunity to call witnesses and his application for postponement was disallowed by the learned trial judge, amounts to a denial of the principle of fair trial which warrants exercise the jurisdiction of this court under Article 138 of the Constitution. Further, the Petitioner contends that the judgment of the lower court is not in accordance with section 187 of the Civil Procedure Code, therefore it is bad in law.

6] I now consider the merits of this application. The Article 138 of the Constitution enacts:

*“138. (1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for **the correction of all errors in fact or in law** which shall be [committed by the **High Court, in the exercise of its appellate** or original jurisdiction or by any Court of First Instance], tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and **restitutio in integrum**, of all causes, suits, actions, prosecutions, matters and things [of which such High Court, Court of First Instance], tribunal or other institution may have taken cognizance:*

*Provided that no judgement, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which **has not prejudiced the substantial rights of the parties or occasioned a failure of justice.**” [Emphasis is added]*

7] The Petition dated 06th December 2023, paragraph 08, clearly shows that this application is sought under remedy of Restitutio in Integrum. The relief of Restitutio in Integrum has been developed by the plethora of apex court judgements. In century ago, in **PERERA et al. v. WIJEWICKREME et al** 15 NLR 411, His Lordship PEREIRA J.- agreeing with His Lordship Ennis J. held that;

“Restitutio in integrum is not granted in Ceylon if the applicant has any other remedy equally effectual open to him”

8] Moreover, the remedy is available for judgments of original courts entered consequent to misrepresentation of facts or fraud due to which the party seeking relief has suffered damages. In **Kusumawathie vs. Wijesinghe** [2001] 3 SLR 238, His Lordship Jayasinghe, J., held;

“When a party appears and complains that she has been wronged by a process of law, this Court would not helplessly watch and allow the fraud practised on that party to be perpetuated. Restitutio - in - integrum provides this Court the necessary apparatus to step in and rectify any miscarriage of and failure of justice. If this is not the case then there is a serious vacuum

in the law, which can be made use of by designing individuals as the Petitioner alleges had happened to her."

9] In **Menchinahamy v. Munaweera** 52 NLR 409, His Lordship Dias, S.P.J. held "*It has also been laid down that relief by way of restitutio in integrum should be sought for with the utmost promptitude*". Further in **Babun Appu v. Simeon Appu** 11 N. L. R. 44, His Lordship WENDT J. held that "*in the absence of fraud the remedy of restitutio in integrum is not available in a partition suit on the ground of discovery of fresh evidence after judgment. The only remedy available is an action for damages as provided for by the Partition Ordinance.*"

10] His Lordship Ranaraja J in **Sri Lanka Insurance Corporation v. Shanmugam and another** [1995] 1 SLR 55 has mentioned that the remedy of restitution in integrum is not available to a party that has been guilty of a blatant lack of due diligence.

11] Recently, His Lordship Nawaz J. in **Edirisinghe Arachchilage Indrani Chandralatha v. Elrick Ratnum**, CA RII Case No. 64/2012 decided on 02.08.2017, laid down following occasions that the remedy of restitution in integrum can be considered. Those are;

- a. Fraud
- b. False Evidence
- c. Non-disclosure of material facts
- d. Deception
- e. Fresh Evidence
- f. Mistake
- g. Fear
- h. Minority

12] More recent, in **Kumudu Samanthi Akmeemana v. Araliya Kankaanamge Somasiri de Silva & Others** CA/RII/1/2018, Decided on 21.02.2019, His Lordship Samayawardhena, J held,

*“It must be stressed that “the power to grant relief by way of restitutio in integrum **is a matter of grace and discretion.**” (Usoof v. Nadarajah Chettiar, 58 NLR 436) **The petitioner cannot seek restitution as of right.** There are several thresholds matters to be sorted out before addressing the core issue..... One such important hurdle to overcome is that “relief by way of restitutio in integrum should be sought for with the utmost promptitude.” Vide **Menchinahamy v. Muniweera, Babun Appu v. Simon Appu, Sri Lanka Insurance Corporation Limited v. Shanmugam**, it is crystal clear that the petitioner has not acted with the utmost promptitude when she decided to come before this Court more than two years after the District Court held against her. The delay is too long by any stretch of imagination particularly because the final order of the District Court against her was not ex parte but inter partes..... The explanation for delay over two years is unacceptable. Hence, on that ground alone, the application of the petitioner is liable to be dismissed.”*
[Emphasis is added]

13] In applying above legal principles to the case in hand, it is seen that the Petitioner has not exercised his right to appeal at the very first instance to the Supreme Court by way of special leave, against the judgment of Civil Appellate High Court Ratnapura filed under case bearing No. SP/HCCA/RAT/12/2022. Thus, it is clearly seen that the Petitioner has filed this case where there are other remedies, thus, the application should be dismissed on above premises as the relief of Restitutio-in-integrum only available where there is no other remedy available. It should be noted that the judgement of SP/HCCA/RAT/12/2022 has been given on 04th of April 2023 and this application was filed on 06th December 2023 after 8 months. There are no reasons had been given for the delay; thus, the Petitioner is guilty on lashes. That too contributes for the dismissal of this

application. Despite the there is remedy available to vindicate Petitioner's rights, the Petitioner has slept over his right and I am of the view, now, he is not entitled to invoke the jurisdiction of this court. It is seen that the Petitioner has been negligent in his conduct during the trial and after the judgment. In his evidence he has blamed his previous five attorneys that they had ruined his case. He denied the right of represent by a counsel in the latter part of the case at the trial court, just because he disbelieved all five previous counsels. He was bold enough to conduct his case without support of an attorney thereafter, thus, the Petitioner is in own folly and negligence, it cannot be condoned. If the Petitioner opted to conduct the District Court case without legal representation, he should take the repercussions. Later, he cannot say that he was denied a fair trial. Moreover, the Petitioner has failed to show any reason which shock the conscious of this court. Further, the Petitioner has not satisfied this court that impugned judgement had been obtained by a fraud, leading false evidence, the Respondent has not disclosed material facts at the trial or in the Civil Appeal High Court, it was obtained by deception and there is fresh evidence, that impugned judgement can be toppled or the judgement was given by mistake or fear. Thus, I am of the view that this application has no merits.

14] For the forgoing reasons, the application for restitutio in integrum is dismissed with costs.

Dr. Sumudu Premachandra

Judge of the Court of Appeal

I agree.

R. Gurusinghe

Judge of the Court of Appeal