

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

**CA Case No: RII/12/2023**  
**District Court Nugegoda**  
**Case No. D/1555/12**

Upali Mervin Senerath Dassanayaka,  
Giriulla Road,  
Pannala.

**Plaintiff**

**Vs.**

M.D. Kamani Manimekala Rajakaruna  
Saparamadu nee Dassanayake,  
19/10, Quarry Road,  
Pitakotte.

**Defendant**

**AND BETWEEN**

In the matter of an application under and  
in terms of Section 839 of the Civil  
Procedure Code.

M.D. Kamani Manimekala Rajakaruna  
Dassanayaka nee Saparamadu,  
19/10, Quarry Road,  
Pitakotte.

**Defendant- Petitioner**

**AND NOW BETWEEN**

In the matter of an application Revision  
and/or *Restitutio-in-integrum* under and  
in terms of Article 138 (1) of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

M.D. Kamani Manimekala Rajakaruna  
Dassanayake (nee Saparamadu),  
No. 11, Francis Road,  
Colombo 06.

**Defendant- Petitioner-  
Petitioner**

**Vs.**

M.M. Sumithra Kumari Senerath  
Dassanayake,  
No. 22, Negombo-Giriulla Road,  
Pannala (NWP).

**Respondent**

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

**Counsel:** Charaka Jayaratne with Pasinduni Fernando and Nethmi De Silva instructed by Thilanka Gunatilake for the Defendant-Petitioner- Petitioner.  
Rohan Sahabandu, PC with Chathurika Elvitigala and S. Senanayake for the Respondent.

**Written Submissions:** By the Defendant- Petitioner- Petitioner – on 31.08.2023, 06.11.2024  
By the Respondent – on 28.08.2023, 06.11.2024

**Argued on:** 12.09.2024

**Decided On:** 19.12.2024

**JUDGMENT**

**M.C.B.S. Morais J.**

This is an application for *restitutio-in-integrum* under Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

In this matter the Defendant-Petitioner-Petitioner M.D. Kamani Manimekala Rajakaruna Dassanayake (nee Saparamadu) (hereinafter sometimes referred to as the Petitioner), is challenging the judgment dated 04.04.2013 and the decree absolute dated 24.02.2014, case bearing No. D/1555/2012 in the District Court of Nugegoda.

Accordingly, the Petitioner has prayed for the following,

- a. Issue notice of this application to the Respondent,
- b. Call for and examine the record of the case bearing No. D/1555/2012 in the District Court of Nugegoda.
- c. Set aside the Judgment dated 04.04.2013 marked X14 hereto in case bearing No. D/1555/2012 in the District Court of Nugegoda.
- d. Set aside the Decree Nisi dated 04.04.2013 marked X8 hereto and the Decree Absolute dated 24.02.2014 marked X20 (b) hereto in case bearing No. D/1555/2012 in the District Court of Nugegoda.
- e. Restore the marital status of the Petitioner as the widow of late Upali Mervin Senerath Dassanayaka and/or restore the marital status of the Defendant- Petitioner that she enjoyed until the said judgment dated 04.04.2013 marked X14 hereto was pronounced;
- f. Grant and issue an interim order staying the operation Judgment dated 04.04.2013 marked X14 hereto and/or the Decree Absolute dated 24.02.2014 marked X20 (b) hereto entered in the Divorce case bearing No. D/1555/2012 in the District Court of Nugegoda, until the final hearing and the determination of this application.
- g. Grant costs; and
- h. Grant such other and further reliefs Your Lordships' Court shall seem fit.

The Petitioner states that the Petitioner and the late Upali Dassanayake entered matrimony on the 2<sup>nd</sup> of January 1976. The Petitioner claims that through marriage they gave birth to a son and a daughter on the 12<sup>th</sup> of November 1977 and the 28<sup>th</sup> of April 1981 respectively. The Petitioner further claims that the late Upali Dassanayake engaged in numerous extramarital affairs, including with the Respondent. Therefore, the Petitioner left the matrimonial house in 1995, yet had contact with the late husband for the sake of the children. However, the late Upali Dassanayake passed away on the 5<sup>th</sup> of January 2021 due to decompensated cirrhosis. Upon the death of the late Upali Dassanayake, the Petitioner has taken steps to exercise her

legal right to claim his pension payment as the Member of Parliament from 1987-1993. upon claiming the payment of Pension, the Petitioner was informed that the payment had already been claimed by the Respondent who claimed to be the legal wife of the late Upali Dassanayake. Subsequently, the Petitioner has become aware that the late Upali Dassanayake had filed a divorce action against the Petitioner and had obtained a decree of *vincula matrimonii* on the 24<sup>th</sup> of April 2014. The Petitioner states that she was unaware of the divorce proceedings of the case bearing No. D/1555/2012 in the District Court of Nugegoda. Further, the Petitioner mentions that the plaintiff of the above case, the late Upali Dassanayake has deliberately misdirected the court to issue summons and decree *nisi* to an address where the Petitioner had not resided.

It is apparent that Mr. Upali Mervin Senerath Dassanayake, has initiated a divorce claim under the matrimonial Fault of Constructive malicious desertion against the Petitioner on 13<sup>th</sup> of July 2012 in the District Court of Nugegoda. Accordingly, the respective summons was issued to the Petitioner on the subsequent dates at the Address mentioned on the plaint. Given that the Petitioner was not present in the court and not represented, the case was heard ex parte, and a decree nisi was entered on the 4<sup>th</sup> of April 2013. After multiple failed attempts to serve the decree nisi to the Petitioner by the Fiscal, on 04<sup>th</sup> October 2013, the learned District Court Judge of Nugegoda ordered the decree nisi to be served through the Grama Niladari of that division. However, the attorney-at-law for the late Upali Dassanayake has amended the caption of the plaint with a new address for the Petitioner as 'No. 192/15 Horana Road, Kottawa, Pannipitiya' where the Petitioner has never resided. According to the report of the Homagama Fiscal, the decree nisi was issued and served upon the Petitioner at the address of 'No. 192/15, Horana Road, Kottawa, Pannipitiya' on 19<sup>th</sup> of November 2013. Since there were no objections made by the Petitioner the decree nisi was made absolute by the learned District Court Judge on 24<sup>th</sup> of February 2014.

However, it is contested by the Petitioner that she was not aware of the Divorce claim filed by her late Husband and she did not receive the summons or the Decree nisi issued upon. Therefore, the Petitioner claims that the late Upali Dassanayake has fraudulently misdirected the District Court by providing fraudulent affirmations and the summons thereon have been served to an address where the Petitioner has not resided on the relevant dates.

In the case of *Paulis V. Joseph and Others* (2005) 3 Sri L R 162, it was held that,

*“Where one of the parties to the divorce action was dead, and if it is shown by the surviving spouse that divorce was obtained fraudulently without service of summons and by abuse and misuse of legal process the Court of Appeal has the power to grant restitutio - in- intergrum as well as act in revision and set aside the divorce.”*

According to the submitted materials and submissions made by both parties, we are of the view that the Petitioner has not received the summons and the decree nisi of the case bearing No. D/1555/2012. Further, the Petitioner has not been aware of the decree absolute made on 24<sup>th</sup> February 2014.

Therefore, the Petitioner has pointed out exceptional circumstances to revise the order of the learned District Court Judge of Nugegoda entered in Case No. D/1555/2012 dissolving the marriage of the Petitioner to the late Upali Dassanayake. Hence, this Court declares the order dated 24<sup>th</sup> of February 2014 of District Court of Nugegoda case No. D/1555/2012, null and void.

Considering all the materials presented to this court, it is clear that the late Upali Dassanayake has misdirected the court by providing false address of the Petitioner. Therefore, it is my view that the decree of *vincula matrimonii* against the Petitioner has been obtained fraudulently in case No. D/1555/2012.

Hence, we set aside the decree for divorce entered in case No. D/1555/2012 by the District Court of Nugegoda. Further, as for Prayer "e," we restore the marital status of the Petitioner as the widow of the late Upali Dassanayake and it shall remain unchanged by the proceedings held in Case No. D/1555/2012 of the District Court of Nugegoda. No Cost ordered.

**Judge of the Court of Appeal**

**R. Gurusinghe J.**

**I agree**

**Judge of the Court of Appeal**