

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

In the matter of an application for *Restitutio-In-Integrum* and Revision under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal

Case No: RII/0017/2020

District Court of Galle

Case No: 14171/P

Thalpe Ahangamage Darshani Dammika,
No. 4B/535
Colombo Road, Ginthota,
Galle

Plaintiff

Vs.

1. Suwinitha Samarawickrama
Colombo Road, Ginthota,
Galle.
2. Palana Widana Arachchige Lilasena,
(Deceased)
Colombo Road, Ginthota,
Galle.
- 2A. Wedamulla Madinage Somawathi,
No. 553/2, Colombo Road
Ginthota, Galle.
3. Thotagamuwa Widanage
Gunasena Perera,
No. 45 Gingaga Mawatha
Ginthota, Galle
4. Palane Widana Arachchige Saman,
No. 553/2, Colombo Road,
Ginthota, Galle
5. Katukurunda Hewa Manage
Champika Maliyadewa,
No. 553/1,
Colombo Road,
Ginthota, Galle

6. Katukurunda Hewa Mannage
Litine,
No. 17, Piyarathana Mawatha
Ginthota, Galle.

Defendants

And

1. Suwinitha Samarawickrama, (Deceased)
Colombo Road, Ginthota,
Galle.
- 1A. Katukurunda Hewa Managae
Sajith Prasanna
No. 553/1, Colombo Road
Ginthota, Galle.
5. Katukurunda Hewa Manage
Champika Maliyadewa,
No. 553/1,
Colombo Road,
Ginthota, Galle

1st& 5th Defendant-Appellants

Vs.

Thalpe Ahangamage Darshani Dammika
No. 4B/535,
Colombo Road, Ginthota,
Galle

Plaintiff-Respondent

- 2A. Wedamulla Madinage Somawathi,
No. 553/2
Colombo Road,
Ginthota, Galle
3. Thotagamuwa Widanage
Gunasena Perera
No. 45, Gingaga Mawatha
Ginthota, Galle
4. Palane Widana Arachchige Saman,
No. 553/2
Colombo Road,
Ginthota, Galle

6. Katukurunda Hewa Mannage
Litine,
No. 17, Piyaarathana Mawatha
Ginthota, Galle.

Defendant-Respondents

And Now Between

- 1A. Katukurunda Hewa Managae
Sajith Prasanna
No. 553/1, Colombo Road,
Ginthota, Galle

1A-Defendant-Appellant-Petitioner

Vs

Thalpe Ahangamage Darshani Dammika,
No. 4B/535
Colombo Road, Ginthota,
Galle.

Plaintiff-Respondent-Respondent

- 2A. Wedamulla Madinage Somawathi,
No. 553/2,
Colombo Road,
Ginthota, Galle.
3. Thotagamuwa Widanage
Gunasena Perera,
No. 45, Gingaga Mawatha
Ginthota, Galle.
4. Palane Widana Arachchige Saman,
No. 553/2
Colombo Road,
Ginthota, Galle
6. Katukurunda Hewa Mannage
Litine,
No. 19, Piyaarathana Mawatha,
Ginthota, Galle

Defendant-Respondent-Respondents

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

Counsel : Mahinda Nanayakkara

For the 1A Substituted Defendant-Appellant-Petitioner

Ranjan Senadheera

For the 2A and 4th Defendant-Respondents

Argued on : 25-10-2024

Decided on : 23-01-2025

R. Gurusinghe, J.

The plaintiff-respondent (hereinafter referred to as the “plaintiff”) filed an action in the District Court of Galle, seeking to partition the land described in the plaint. After trial, Learned District Judge of Galle entered the judgment on 11-01-2008. Being dissatisfied by the said judgment, the 1st defendant appealed to the Civil Appellate High Court of Galle. In the Civil Appellate High Court of Galle, the parties came to a compromise on 01-08-2014. All parties were represented by their respective Counsel. A President’s Counsel represented the 1st defendant-petitioner. The parties had sufficient rights to enter into such a settlement. As per the settlement, the plaintiff and the 1st defendant were entitled to 11 perches each, the 3rd defendant was entitled to 3.404 perches and the 2A and 4th defendants were entitled to 1.269 perches.

The interlocutory decree was entered, as per the settlement entered in the Civil Appellate High Court on 01-08-2014. Thereafter, a commission was issued to a surveyor to prepare a final scheme of division of the land. The 1A defendant participated in that inquiry before confirming the final scheme of partition and gave evidence accepting the settlement entered before the Civil Appellate High Court.

The 1st defendant died on 26-07-2017. In this application, the petitioner (hereinafter sometimes referred to as 1A defendant) was the 5th defendant. The 5th defendant was substituted in place of the deceased 1st defendant and added to the caption as 1A defendant. Six years after entering the settlement and participating in the subsequent proceedings, 1A defendant filed this application before this court on 16-10-2020. There is no acceptable explanation for such a long delay. Other than the 1A defendant, no one else challenged the settlement.

The remedy of *Restitutio-in-Integrum* is an extraordinary relief granted to a petitioner whose substantial rights were prejudiced or occasioned a failure of justice. In addition, there must be exceptional circumstances that warrant the intervention of this court.

In the case of Sri Lanka Insurance Corporation Ltd. v. Shanmugam and Another [1995] 1 Sri. L.R. Justice Ranaraja stated as follows;

Relief by way of Restitutio-in-Integrum in respect of judgments of original courts may be sought:

(a) where judgments have been obtained by fraud by the production of false evidence, non-disclosure of material facts or by force; or

(b) where fresh evidence has cropped up since judgments, which was unknown earlier to the parties relying on it or which no diligence could have helped to disclose earlier, or

(c) where judgments have been pronounced by mistake and decrees entered thereon provided, of course, it is an error which connotes a reasonable and "excusable error."

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 but not where the Attorney-at-Law has been given a general authority to settle or compromise a case.

1A defendant in this application challenged the validity of the settlement entered before the Civil Appellate High Court. However, the 1A defendant

had not pleaded any valid grounds, such as fraud or mistake, to set aside a settlement entered before the Civil Appellate High Court. The 1A defendant-petitioner pleaded vague grounds challenging the settlement. The 1A defendant states that mandatory provisions of the partition law had not been followed. However, he did not describe what provisions were not followed. Again, 1A defendant states that the procedure followed in the instant partition action per se is erroneous. However, he does not describe why he takes up such a position or what errors have been committed. Again, he says that the Civil Appellate High Court had incorrectly given shares to the parties; however, he does not describe what should be the correct shares or why he says the shares were given incorrectly. The 1A defendant-petitioner put forward some other similar grounds; however, none of such grounds are substantiated by the 1A defendant-petitioner.

It is to be noted that the first defendant was given 11 perches, and it was conceded that she was given a share more than what she was entitled to. The first defendant never challenged the settlement during her lifetime.

1A defendant has not stated that his rights were prejudiced in any way. The rights of the 1st defendant were not prejudiced by the settlement at all. The settlement was beneficial to the 1st defendant.

In the case of Hiniduma Dahanayakage Siripala alias Kiri Mahaththaya vs Attorney General SC Appeal No.115/2014 decided on 22.01.2020, Aluwihare PC. J. stated as follows:

21. With the promulgation of the 1978 Constitution, if relief is to be obtained in an appeal, a party must satisfy the threshold requirement laid down in the proviso to Article 138(1), which is placed under the heading "The Court of Appeal". The proviso to the said Article of the Constitution lays down that; "Provided that no judgment, 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".

22. The proviso aforesaid is couched in mandatory terms, and the burden is on the party seeking relief to satisfy the court that the impugned error, defect or irregularity has either prejudiced the substantial rights of the parties or has occasioned a failure of justice. It must be observed that no such Constitutional provision is to be found either in the '1948 Soulbury Constitution' or the 'First Republican Constitution of 1972'. 23. The Constitutional provision embodied in Article 138(1) cannot be overlooked and must be given effect to. None of the decisions (made after 1978) relied upon by the Appellants with regard to the issue that this court is now called upon to decide, appear to have considered the constitutional provision in the proviso to Article 138(1). It is a well-established canon of interpretation that the Constitution overrides a statute as the grundnorm. All statutes must be construed in line with the highest law. Judges from time immemorial have in their limited capacity, essayed to fill the gaps whenever it occurred to them, in keeping with the contemporary times, in statutes which do not align with the Constitution. However, such interpretations are not words etched in stone.

The 1A defendant-petitioner failed to establish any exceptional circumstances. The 1A defendant-petitioner failed to pass the threshold requirement laid down in Article 138(1) of the Constitution to succeed in this application. 1A defendant petitioner's rights were not prejudiced. No other party claims that their rights were prejudiced. The petitioner pleads no ground accepted by law to set aside the settlement entered between the parties. The settlement entered before the Civil Appellate High Court need not be reversed or interfered with on account of any defect, error or irregularity which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.

For the foregoing reasons, the 1A defendant petitioner's application is dismissed with costs. The petitioner filed this frivolous application to delay the partition of the land. The 1A Defendant Petitioner is ordered to pay Rs. 40,000/- each as costs of this application to the Plaintiff-Respondent and the 2A and 4th defendant-respondents.

Judge of the Court of Appeal.

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

Judge of the Court of Appeal.