

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

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

Court of Appeal

Case No: RII/0038/2023

DC Kuliypitiya:

Case No: 1147/L

Muthukuda Arachchilage Don Suranga
Dilruk,
No. 99/3, Muthukuda Plaza
Main Street,
Kuliypitiya

Plaintiff

VS

1. Gamma International (Private)
Limited
No. 46, Kandy Road,
Kiribathgoda, Kelaniya.
2. Gamma International (Private)
Limited,
No. 46, Kandy Road,
Kiribathgoda, Kelaniya.
3. Shakila Anjana Wijeratne
No. 45, Fathima Road,
Makola North, Makola.

Defendants

AND BETWEEN

Muthukuda Arachchilage Don Suranga
Dilruk,
No. 99/3 Muthukuda Plaza,
Main Street,
Kuliypitiya.

Plaintiff-Petitioner

VS

1. Gamma International (Private)
Limited,
No. 46, Kandy Road
Kiribathgoda, Kelaniya.
2. Nihal Gamini Wijeratne
No. 62/3/A,
National Housing Scheme,
Kiribathgoda, Kelaniya
3. Shakila Anjana Wijeratne
No. 45, Fathima Road,
Makola North, Makola.

Defendants- Respondents

AND NOW BETWEEN

Muthukuda Arachchilage Don Suranga
Dilruk,
No. 99/3 Muthukuda Plaza,
Main Street,
Kuliyapitiya.

Plaintiff-Petitioner Petitioner

Vs

1. Gamma International (Private)
Limited,
No. 46, Kandy Road
Kiribathgoda, Kelaniya.
2. Nihal Gamini Wijeratne
No. 62/3/A,
National Housing Scheme,
Kiribathgoda, Kelaniya
3. Shakila Anjana Wijeratne
No. 45, Fathima Road,
Makola North, Makola.

Defendants-Respondents-Respondent

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

Counsel : Pulasthi Rupasinghe with Ridmi Beneragama
for the Petitioners

Ronald Perera, PC. With Ashiq Hassim
Instructed by Ms Tharushika Fernando
For the 1st and 02nd Respondents

Jagath Wickramanayake, PC. With
Niranjala Gunathilake instructed by
Ms Tharushika Fernando
For the 3rd Respondent

Supported on : 05-03-2025

Decided on : 05-06-2025

R. Gurusinghe J.

The petitioner filed this *Restitutio-in-Integrum* application, seeking, inter alia, to set aside the order dated 16 March 2023 at the District Court of Kuliyaipitiya, in the case bearing No. 1147/L, and an order for the grant of an interim injunction as prayed for in the prayer to the plaint of the aforementioned case.

The petitioner stated in his petition, *inter alia*, that he was in possession of Lot No. 3 of Plan No. 2756, dated 03-08-1993, made by R. P. Navaratne, Licensed Surveyor, and that he was interested in purchasing the adjoining property to construct a shopping complex. The owner of the property described in the schedule to the plaint agreed to sell that land for a sum of Rupees Fifteen Million (Rs. 15.0 million). As the petitioner did not possess the funds to purchase the property, the petitioner borrowed a sum of Rupees Twenty Million (Rs. 20.0 million) from Gamma International (Pvt) Ltd., a company registered under the Companies Act No. 17 of 1982. Accordingly, the property described in the schedule to the plaint (hereinafter referred to as the property) was transferred by a deed of transfer bearing no. 421 dated 09-11-2007, attested by N.P.D. Malkanthi de Silva, Notary Public, naming Juliana Mary Claribel Pinto as the vendor and Gamma International (Pvt)

Ltd., as the purchaser. Gamma International (Pvt) Ltd., granted a power of attorney to the petitioner to manage the property. In addition, the said company entered into an agreement with the petitioner, where it was agreed that the petitioner had obtained a loan of Rupees Twenty Million (Rs. 20.0 million) from Gamma International (Pvt) Ltd. With this loan money, the property involved in this application was purchased in the name of Gamma International (Pvt) Ltd. Further, agreed that Gamma International (Pvt) Ltd would hold the property as a trust on behalf of the petitioner, and once the petitioner repays the Rupees Twenty Million (Rs. 20.0 Million) loan with the interest to the company, the company would transfer the property in the name of the petitioner.

The petitioner further stated that he had paid the two sole Directors of Gamma International (Pvt) Ltd., a sum of Rupees Seventy Nine Million, Five Hundred Thousand (Rs. 79,500,000/-) as of 31st December 2017, as per Clause No. 2 of the agreement, dated 17th April 2015. The two directors of Gamma International (Pvt) Ltd., signed a document accepting receipt of the aforementioned sum of Rupees Seventy Nine Million, Five Hundred Thousand (Rs. 79,500,000/-). That document is produced marked A13. The signatures on this document resemble those of the 2nd and 3rd respondents.

Gamma International (Pvt) Ltd., was not re-registered in accordance with the provisions of the Companies Act No. 7 of 2007, and as a result, the company's name was struck off the register of companies, in terms of sub-section 5 of Section 487 of the Companies Act No. 7 of 2007. As a result, the property held by the company is vested in and is at the disposal of the State. The petitioner claims that, as there was a trust, he became the owner of the property involved in this application, as the property was held by the company on trust for the petitioner, when the company's name was struck off. Furthermore, the petitioner claims that he has acquired prescriptive title to the property through possession since 2010.

The petitioner sought an interim injunction against the 1st, 2nd, and 3rd defendants to prevent them from disturbing the possession of the plaintiff-petitioner on entering that property. The 1st defendant is a newly formed company with the identical name Gamma International (Pvt) Ltd. However, this new company is not the company in whose name the property was purchased. The 2nd and 3rd defendants are the Directors of the previous Gamma International Company and the present Gamma International (Pvt) Ltd. The petitioner, as the plaintiff in the District Court case, sought a declaration of title to the property described in the schedule to the plaint.

The petitioner also sought to recover the Rupees Seventy Nine Million, Five Hundred Thousand (Rs. 79,500,000/-) paid to the 2nd and 3rd defendants because, by the time he paid that money to them, the Gamma International Company, which purchased the property, had ceased to exist.

The Additional District Judge of Kuliyaipitiya refused the petitioner's application for an interim injunction by his order dated 15 March 2023, on the basis that there was no *prima facie* case. When the name of the company is struck off, the property of the company generally vests in the State. However, as the petitioner claims, the question of whether he became the owner of the property should be decided at the trial.

This contention must be considered in light of Section 487(5) of the Companies Act No. 7 of 2007, which outlines the legal effect of a company being struck off the register, as well as the law relating to constructive trusts.

Section 487(5) of the Companies Act No. 7 of 2007 is as follows;

487(5) Where a company's name is struck off from the register under subsection (3), all property and rights whatsoever vested in or held on trust for the company immediately before the date on which the name is struck off, (including leasehold property but not including property held by the company on trust for any other person), shall vest in and be at the disposal of the State.

If the consideration paid by Gamma International (Pvt) Ltd., was a loan granted to the petitioner and the petitioner had repaid the loan with interest, and when the name of the company is struck off, the property in issue would become the property of the petitioner.

Gamma International (Pvt) Ltd, the previous company for which the property was purchased, no longer exists. Therefore, a respondent cannot claim title to the properties of the extinguished company. The petitioner has paid a sum of Rupees Seventy Nine Million, Five Hundred Thousand (Rs. 79,500,000/-) to the 2nd and 3rd respondents. However, respondents dispute this position. In these circumstances, there is a serious question to be decided at the trial.

In the case of Felix Dias Bandaranayake v The State Film Corporation and Another (1981)2 SLR 287 it was held as follows;

In deciding whether or not to grant an interim injunction the following sequential tests should be applied:

1. Has the plaintiff made out a strong prima facie case of infringement or imminent infringement of a legal right to which he has title, that is, that there is a serious question to be tried in relation to his legal rights and that the probabilities are that he will win.

2. In whose favour is the balance of convenience- the main factor being the uncompensatable disadvantage or irreparable damage to either party?

3. As the injunction is an equitable relief granted in the discretion of the Court do the conduct and dealings of the parties justify grant of the injunction. The material on which the Court should act as the affidavits supplied by plaintiff and defendant. Oral evidence can be led only of consent or upon acquiescence.

In these circumstances, where the vesting of property in the State under section 487(5) of the Companies Act No. 7 of 2007 is being challenged by the petitioner and given that the petitioner has already paid a sum of Rupees Seventy Nine Million, Five Hundred Thousand (Rs. 79,500,000/-) as consideration to the 2nd and 3rd respondents, a serious question of law and fact arises, warranting judicial examination. Furthermore, the respondents have no title to the property since the company's name was struck off. These issues could be decided at the trial. For the reasons stated above, the petitioner's application is allowed. The order of the Learned District Judge of Kuliyaipitiya dated 16-03-2023 is set aside.

The District Judge of Kuliyaipitiya is directed to issue an interim injunction as prayed for in the prayer to the plaint of the plaintiff-petitioner and to proceed with the matter.

Judge of the Court of Appeal.

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

Judge of the Court of Appeal.