

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

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

**CA Case No: CA (RII) 10/2024**  
**District Court of Nugegoda**  
**Case No. D/5369/2022**

Iranga Piyumal Kuruppu,  
No. 2/1/A, Field Mawatha,  
Kohuwala.

**Plaintiff**

**Vs.**

Rathnayaka Mudiyanseelage Dinusha  
Ruwani Rathnayaka  
No. 2/1, Field Mawatha,  
Kohuwala.

**Defendant**

**AND NOW**

Rathnayaka Mudiyanseelage Dinusha  
Ruwani Rathnayaka  
No. 2/1, Field Mawatha,  
Kohuwala.

**Defendant- Petitioner**

**Vs.**

Iranga Piyumal Kuruppu,  
No. 2/1/A, Field Mawatha,  
Kohuwala.

**Plaintiff- Respondent**

**Amended Caption**

Iranga Piyumal Kuruppu,  
No. 2/1/A, Field Mawatha,  
Kohuwala.

**Plaintiff**

**Vs.**

Rathnayaka Mudiyanseelage Dinusha  
Ruwani Rathnayaka  
No. 2/1, Field Mawatha,  
Kohuwala.

**Defendant**

**AND NOW BETWEEN**

Rathnayaka Mudiyanseelage Dinusha  
Ruwani Rathnayaka  
No. 2/1, Field Mawatha,  
Kohuwala.

**Defendant- Petitioner**

**Vs.**

Iranga Piyumal Kuruppu,  
No. 162/2, Horana Road,  
Kiriwattuduwa.

**Plaintiff- Respondent**

**Before:**

**R. Gurusinghe J.**

**&**

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

**Counsel:**

Varuna Nanayakkara instructed by S. Nanayakkara for the  
Petitioner.

Ershan Ariaratnam for the Respondent.

**Written Submission:** By the Defendant- Petitioner – on 11.04.2025  
By the Plaintiff-Respondent – on 28.02.2024 & 19.03.2025

**Argued on:** 24.02.2025

**Decided On:** 08.05 .2025

### **JUDGMENT**

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

This is an application for revision and *restitutio in intergrum/revision* under Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

The Petitioner is challenging the decision of the learned District Court Judge of Nugegoda dated 2<sup>nd</sup> of October 2023. Accordingly, the Petitioner has prayed for the following.

- I. “Direct notice to be issued to the Plaintiff-Respondent.
- II. grant an immediate interim order to stay the operation of the impugned order dated 2023.10.02 marked 'P12' delivered by the learned District Court Judge of Nugegoda,
- III. set aside and/or vary the said Order dated 2023.10.02 marked 'P12' of the Learned District Court Judge of Nugegoda,
- IV. grant an interim Order in favor of the Defendant-Petitioner against the Plaintiff-Respondent preventing the alienation of the properties more fully described in 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> schedule to the Petition dated 2022.07.19 marked 'P4'
- V. grant costs and, grant such other and further relief as to Your Lordships' Court shall seem meet.”

The Plaintiff-Respondent (hereinafter sometimes will be referred to as the Respondent) the husband, has initiated proceedings in the District Court of Nugegoda by way of a Plaint dated 9<sup>th</sup> of May 2022. The Respondent has sought to dissolve the decree of marriage between him and the

Defendant-Petitioner (Hereinafter sometimes will be referred to as the Petitioner) the wife, on the grounds of Constructive Malicious Desertion on the part of the Petitioner.

In the said matter, the Petitioner has sought a permanent injunction and until then, initially an enjoining order and thereafter an interim injunction from selling, disposing, leasing, mortgaging, renting and disposing of the property described in the schedule to the plaint. Accordingly, the learned District Court Judge of Nugegoda on 25<sup>th</sup> of July 2022 has granted the enjoining order in Favor of the Petitioner, preventing alienation of the property described in the Petition.

The Petitioner states that on service of the enjoining order and the notice of interim injunction, the Counsel for the Respondent has made an application to correct the proceedings in respect of the order made on 1<sup>st</sup> of August 2022. The Petitioner further states that since the Respondent not being present in the court on 31<sup>st</sup> of January 2023, the learned District Court Judge has dismissed the plaint. However, based on the applications made by the counsel to the Respondent on 25<sup>th</sup> of March 2023, the learned District Court Judge has re-instated the Respondents case.

In the meanwhile, the Respondent has also sought an interim injunction preventing the Petitioner from selling, disposing, leasing, mortgaging, renting and disposing the said property and both the applications were taken up together. Accordingly, parties were directed to file written submissions in respect of the interim injunctions sought. The learned District Court Judge of Nugegoda by order dated 2<sup>nd</sup> of October 2023, granted interim injunctions in favor of the Respondent and refused application of the Petitioner.

Therefore, it is the contention of the Petitioner that the order dated 2<sup>nd</sup> of October 2023 is contrary to law as the learned District Court Judge of Nugegoda has overlooked/ignored facts, thereby has invoked the jurisdiction of this Court under Article 138 of the Constitution of Sri Lanka.

The question in relation to the Respondent being prevented from entering the premises is considered and dealt under the Domestic Violence Act by the Magistrate Court. Although the Respondent claims that he has obtained loans to build the property, it needs to be established by the Respondent as the title of the property in question is apparently on the Petitioner. Moreover,

the rebuttable presumption under section 102 of the Evidence Ordinance applies until the Respondent proves otherwise.

It is also noted that the order dated 2<sup>nd</sup> of October 2023 delivered by the learned District Court Judge contains few errors in the final paragraph.

“මීලඟට සලකා බැලිය යුත්තේ විත්තිකාරිය විසින් වෛවාහක දේපල බැහැර කිරීම, කුලියට දීම වලක්වාලමින් පැමිණිල්ලට එරෙහිව ඉල්ලා ඇති අතුරුතහනම් නියෝගය සම්බන්ධයෙනි. මෙහිදී පැහැදිලිව දේපලෙහි හිමිකාරත්වය ඇත්තේ පැමිණිලිකාරියට බව සඳහන් කොට ඇත. එසේම ඒ අනුව පැමිණිලිකාරියට එකී දේපල හිමිව තිබේ නම් විත්තිකරුට එම දේපල විකිණීමට හෝ බැහැර කිරීමට. කුලියට දීමට හෝ බදු දීමට හැකියාවක් නැත. මක්නිසාදයත් සියලු නෛතික ලේඛන වලට එළඹිය යුත්තේ විත්තිකාරිය විසින් බැවිනි. ඒ අනුව එවැනි අතුරු තහනම් නියෝගයක් ලබාදීම නිෂ්ඵල වේ. ඒ අනුව එකී විත්තිය විසින් පැමිණිල්ලට එරෙහිව ඉල්ලා සිටින අතුරු තහනම් නියෝග ප්රතික්ෂේප කරමි.

මෙහිදී දෙපාර්ශ්වයටම කිසිදු ගාස්තුවක් නියම කිරීමක් සිදු නොකරමි.”

In the above citation from the judgement, there are errors in the underlined words, which could be corrected in the court below by an application under s189(1) of the civil Procedure code.

However, apart from the said mistakes, when looking at the merits of this case, the application has been made under article 138 of the constitution as *restitutio in integrum*/revision as mentioned in the caption by the Petitioner. In consideration of all the materials it is quite evident that the learned District Court Judge has apparently acted without duly considering that the title of the property is not a *sine qua non* to dispose of it by way of certain means. Hence, I am of the view that failure to correct such may have severe repercussions ahead.

Further, as established in the case of ***Felix Dias Bandaranayake Vs. the State Film Corporation (1981) 2 SLR 287***, the three elements required to issue an interim injunction is met as there is a *prima facie* case established by the Petitioner, and it is proved that there is no irreparable harm or uncompensable damage that would cause by providing the said relief and also considering the

circumstances of the case, it is evident that no party is prejudiced. Moreover, when applying the principles of the above case, I do not see any reason as to why the learned District Court Judge has not granted interim relief to the Petitioner.

Therefore, it is nothing but fair to revise the said order dated 2<sup>nd</sup> of October 2023 delivered by the learned District Court Judge of Nugegoda and issue an interim injunction against the Respondent preventing him from disposing the property as prayed for in prayer 'c' and 'd' of the petition.

This application is allowed.

No cost ordered.

**Judge of the Court of Appeal**

**R. Gurusinghe J.**

**I agree**

**Judge of the Court of Appeal**