

**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/0007/2022

Case No.

WP/HCCA/KAL/42/2012(F)

DC

Case No: 2601/L

1. Nayage Wimalawathy

2. Udumullage Kusumawathy

3. Disileen Kariawasam

4. Suduhakuruge Manjula  
Geethakumara

5. Arambage Somapala

All of Nadalpe, Mahagama West.

**Plaintiffs**

**VS**

1. Arambage Babynona

2. Suduhakuruge Keerthi Senaratne

3. Puswatte Liyanarachchige Piyasiri

4. Homadamuni Dewalge Aslin

5. Nayage Priyankara

All of Nadalpe, Mahagama West

**Defendants**

**AND**

1. Arambage Babynona,  
Nadalpe,  
Mahagama West,

**1<sup>st</sup> Defendant-Appellant**

**Vs.**

1. Nayage Wimalawathy
2. Udumullage Kusumawathy
3. Disileen Kariawasam
4. Suduhakuruge Manjula  
Geethakumara
5. Arambage Somapala

All of Nadalpe, Mahagama West

**Plaintiff-Respondents**

2. Suduhakuruge Keerthi Senaratne
3. Puswatte Liyanarachchige Piyasiri
4. Homadamuni Dewalge Aslin
5. Nayage Priyankara

All of Nadalpe, Mahagama West

**2<sup>nd</sup> to 5<sup>th</sup> Defendant-Respondents**

**AND NOW BETWEEN**

1. Arambage Babynona,  
Nadalpe, Mahagama West.

**1<sup>st</sup> Defendant-Appellant-Petitioner**

**Vs**

1. Nayage Wimalawathy
2. Udumullage Kusumawathy
3. Disileen Kariawasam
4. Suduhakuruge Manjula  
Geethakumara
5. Arambage Somapala

All of Nadalpe, Mahagama West

**Plaintiff-Respondents-Respondents**

2. Suduhakuruge Keerthi Senaratne
3. Puswatte Liyanarachige Piyasiri
4. Homadamuni Dewalge Aslin
5. Nayage Priyankara

All of Nadalpe, Mahagama West.

**2<sup>nd</sup> to 5<sup>th</sup> Defendant-  
Respondents-Respondents**

Before : R. Gurusinghe, J.  
&  
Dr. S. Premachandra, J.

Counsel : Dr. Sunil Cooray  
instructed by Niroshi R. Paranagama  
**for the Petitioner**

Rohana Deshapriya with Chanakya Liyanage  
Instructed by Buddika Gamage  
**for the 1<sup>st</sup>, 2<sup>nd</sup> and 7<sup>th</sup> Plaintiff-Respondents  
and 2<sup>nd</sup> to 5<sup>th</sup> Defendant-Respondents.**

Argued on : 20-11-2025

Decided on: 26-01-2026

### **JUDGMENT**

R. Gurusinghe, J.

The 1<sup>st</sup> defendant-petitioner filed this *Restitutio-In-Integrum* application seeking *inter alia* the following reliefs.

1. Restore the status of the proceedings of the Civil Appellate High Court of Kalutara that existed prior to the impugned settlement dated 16-05-2018.
2. Set aside the terms of settlement recorded in the judgment of the Civil Appellate High Court of Kalutara dated 16-05-2018.
3. Set aside the judgment of the Civil Appellate High Court of Kalutara in case no. WP/HCCA/KA/42/2012/(F) dated 16-05-2018.
4. Direct the Learned Judges of the Civil Appellate High Court of Kalutara to re-fix the appeal of the 1<sup>st</sup> defendant appellant petitioner's appeal, in the Case No. WP/HCCA/KA/42/2012/(F) for argument.

The plaintiff-respondents filed a case against the 1<sup>st</sup> defendant-petitioner in the District Court of Mathugama, seeking a declaration that they are entitled to use the road described in the first schedule to the plaint and part of that road that leads through the land of the 1<sup>st</sup> defendant-petitioner described in the second schedule to the plaint.

After trial, the Learned District Judge of Mathugama decided the case in favour of the plaintiff-respondents by his judgment dated 11-10-2011. The 1<sup>st</sup> defendant-petitioner appealed against that judgment to the Civil Appellate High Court of Kalutara. The matter was settled between the 1<sup>st</sup> defendant-petitioner and the plaintiff-respondent on 16-05-2018 in the Civil

Appellate High Court of Kalutara. The settlement was that the plaintiff-respondent would pay Rs. 25,000/- to the 1<sup>st</sup> defendant-appellant, and also to abide by the judgment of the District Court.

The 1<sup>st</sup> defendant-petitioner filed this application before this court on 17-02-2022, more than three years after the settlement. The remedy of *Restitutio-in-Integrum* is discretionary. It is an extraordinary remedy and will be granted under exceptional circumstances. The party seeking Restitution must act with utmost promptitude. The Court will not relieve parties of the consequences of their own folly, negligence or laches.

Relief by way of *Restitutio-in-Integrum* in respect of judgments of the original courts may be sought;

- a) Where judgments have been obtained by fraud, by 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 to 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 (vide *Sri Lanka Insurance Corporation Ltd., vs. Shanmugam and another* [1995] 1 Sri LR 55.)

The petitioner has not filed this application with promptitude. There is no allegation of fraud, production of false evidence, or non-disclosure of material facts in this case.

If the petitioner was dissatisfied with the judgment of the Civil Appellate High Court, the remedy was to file a Special Leave to Application before the Supreme Court, within 42 days from the pronouncement of the judgment. The petitioner in paragraph 32 of her petition stated that she had filed an application in the Supreme Court for Revision bearing no. 1/2021, and it was taken up for support in the Supreme Court on 03-02-2022, and the Supreme Court dismissed the application on the ground that it had no revisionary jurisdiction in relation to the Judgments or orders of the Civil Appellate High Court. Wickramasooriya vs Abeywardene 15 NLR 472 was an application for Restitutio-in-Integrum on the basis that, by an oversight of the plaintiff, the plaintiff lost one year's interest. The plaintiff applied to the Supreme Court by way of Restitutio-in-Integrum. The Court held that where

there has been negligence on the part of the plaintiff or his Attorney-at-Law, restitution will not be granted.

In the case of M.A. Don Lewis vs Dissanayake and others 17 NLR 8, (this was an application for Revision and Restitutio-in-Integrum). Court held *inter alia* “It was not the function of the Supreme Court, in the exercise of jurisdiction now invoked, to relieve parties of consequences of their own folly, negligence or laches. The maxim vigilantibus, non-dormientibus jura subveniunt provided a sufficient answer to the petitioner’s application....”

In Kotte Hewa Swarnamali Thilinka Deshabandu vs Ranatunga arachchige Harsha Deva and another SC/Appeal/130/2025 decided on 18-12-2025 Justice Samayawardhena held as follows: “Where a settlement is recorded in Open Court by the District Judge in the presence of the parties and their Attorneys-at-Law, and the parties are in the record signifying their consent to its terms, such settlement is final and binding. It constitutes a contract entered into among parties and once so entered, a party cannot thereafter resile from it merely because he later forms the view that the settlement is unfavourable to him. The only recognised grounds upon which such a settlement may be set aside are those applicable to rescission of a contract, mainly illegality, fraud, mistake, misrepresentation, coercion, undue influence or other similar vitiating factors. Such instances are rare.” In the same case Justice Samayawardhena cited the case of Lameer vs Senaratne [1995] 2 Sri LR 13, “this is an application for Restitution before the Court of Appeal.” Justice Ranaraja held that “when an Attorney-at-Law has been given several authorities to settle or compromise a case, as was admittedly done in the instant case, a client cannot seek to set aside a settlement so entered by way of Restitution more so where the client himself has signed the record accepting the terms of settlement.”

In the case of Silva vs Fonseka 23 NLR 447, it was held that “where a proctor has by his proxy general authority to settle and compromise a case without consulting his client, the client is not entitled to relief by way of Restitutio-in-Integrum if the proctor settles the case without his consent. But where the settlement has been made contrary to the express instructions of the client, relief by way of Restitutio-in-Integrum is available.” In the same case, Bertram CJ held that “We have never done so unless some departure from express instruction is shown.”

In this case, the petitioner has not shown that her Attorney-at-law acted contrary to her expressed instructions.

For the reasons stated above, the petitioner is not entitled to succeed in this application. The application of the petitioner is dismissed.

Judge of the Court of Appeal.

Dr. S. Premachandra J.  
I agree.

Judge of the Court of Appeal.