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

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

CA/RII/44/2025

District Court Case No. DLM 151/24

1) SATHKORALAGE SEBASTIAN GABRIEL FERNANDO,
No.518/A,
Konthanthivu,
Sinnapadu,
Puttlam.

2) BINDU KAPILARATHNA BANDARA WEERATHUNGA,
No.95/3,
Tiwerton Estate,
Kiribathkumbura,
Kandy.

{Appearing through his Power of Attorney Sathkoralage Sebastian Gabriel Fernando of No.518/A, Konthanthiva,
Sinnapadu, Puttlam}

PLAINTIFFS

Vs.

BUTHGAMUWA MUDIYANSELAGE INDRASENA
No.540/C, Samadhi Mawatha,
Malwana.

DEFENDANT

In the matter of an application in terms of Section 839 of the Civil Procedure, code to be read together with Section 18 of the CPC

LANDS DEVELOPMENT (PVT) LIMITED,
No.21/1, Bodhiraja Mawatha,
Jayanthipura,
Battaramulla.

PETITIONER

Vs.

1) SATHKORALAGE SEBASTIAN GABRIEL FERNANDO,
No.518/A,
Konthanthivu,
Sinnapadu,
Puttalam.

2) BINDU KAPILARATHNA BANDARA WEERATHUNGA,
No.95/3,
Tiwerton Estate,
Kiribathkumbura,
Kandy.

{Appearing through his Power of Attorney Sathkoralage Sebastian Gabriel Fernando of No.518/A, Konthanthiva,
Sinnapadu, Puttlam}

PLAINTIFF-RESPONDENTS

3) BUTHGAMUWA MUDIYANSELAGE INDRASENA
No.540/C, Samadhi Mawatha,
Malwana.

DEFENDANT-RESPONDENT

AND NOW BETWEEN

LANDS DEVELOPMENT (PVT) LIMITED,
No.21/1, Bodhiraja Mawatha,
Jayanthipura,
Battaramulla.

PETITIONER-PETITIONER

Vs.

1) SATHKORALAGE SEBASTIAN GABRIEL FERNANDO,
No.518/A,
Konthanthivu,
Sinnapadu,
Puttalam.

2) BINDU KAPILARATHNA BANDARA WEERATHUNGA,
No.95/3,
Tiwerton Estate,
Kiribathkumbura,
Kandy.

{Appearing through his Power of Attorney Sathkoralage Sebastian Gabriel Fernando of No.518/A, Konthanthiva,
Sinnapadu, Puttlam}

PLAINTIFF-RESPONDENTS-RESPONDENTS

3) BUTHGAMUWA MUDIYANSELAGE INDRASENA

No.540/C, Samadhi Mawatha,
Malwana.

DEFENDANT-RESPONDENT-RESPONDENT

4) W.R.A.N.S. Wijayasinghe,
Registrar General,
Registrar General's Department.
No.234/A3,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

RESPONDENT

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel Harith de Mel with Varsha Gunawardana instructed by Amindika Rathnayake for the Petitioner.

Sumedha Mahawanniarachchi instructed by Binara Silva for the Defendant-Respondent-Respondent.

Written Submissions **:** On Behalf of the Petitioner-Petitioner on 22/12/2025

On Behalf of the Defendant- Respondent-Respondent on 19/12/2025

Argued On : 19/11/2025

Judgement on : 29/01/2026.

Dr. Sumudu Premachandra J.

1] The Petitioner, a land development company, has filed an application for Revision and/ or Restitutio Integrum in this court, and they are seeking the court's intervention regarding a land dispute in Rajagiriya involving approximately 4 acres. The Petitioner alleges that the Respondents have engaged in fraudulent and collusive actions in the District Court (specifically in cases DLM 5/19 and DLM 151/24) to secure unlawful settlement decrees. The Petitioner invokes the court's jurisdiction to prevent the abuse of the judicial process, land fraud, and a miscarriage of justice, asserting that they were in possession of the land until being partially dispossessed.

2] The Petitioner claims title through a 2004 deed (No. 2112) and subsequent settlements from a partition case. Conversely, the Plaintiff-Respondent and Defendant-Respondent claim the same land through later deeds (No. 738 in 2017 and No. 832 in 2018). The Petitioner argues that the later deeds are fraudulent or based on forged documents (a "Last Will") and notes that multiple criminal investigations and district court actions (DLM 139/2012) are currently pending regarding these competing claims.

3] It is mentioned that further complicating the matter, there were several commercial transactions involving Oak Real Estate (Pvt) Ltd and Oak City (Pvt) Ltd, and the Petitioner sold undivided shares of the property to these entities, but claims the transactions failed due to non-payment and non-compliance. Consequently, the Petitioner executed a Mortgage Bond (No. 586) and a 2019 Deed of Declaration to safeguard their rights, asserting they remain the lawful owners. The Petitioner has also cited the Registrar General as a respondent to ensure compliance with court orders and has disclosed ongoing arbitration and mortgage actions to provide a full picture of the extensive litigation surrounding the property.

4] The Petitioner alleges a sophisticated "land-grabbing" scheme involving the fraudulent acts to claim title to the impugned property. The dispute centers on two conflicting deeds: Deed No. 738 (2017) and Deed No. 832 (2018). In an earlier case (DLM 5/19), a judgment was obtained declaring Deed No. 738 as a "Last Will" rather than a valid transfer deed, effectively setting it aside. However, in a subsequent case (DLM 151/24), the parties involved reached a settlement decree that directly contradicted this by declaring the plaintiffs as owners based on the very same Deed (No. 738). The Petitioner argues this settlement was a "sham" designed to bypass previous court orders and facilitate an unlawful land grab.

5] The Petitioner claims that the parties in DLM 151/24 intentionally withheld information about the existing orders in DLM 5/19 from the Court to secure a fraudulent settlement. Furthermore, investigations by the Criminal Investigations Department (CID) into Case No. B 19979/01/19 led to the arrest of several individuals—including Aloysius Lawrence Keppetipola and others for the forgery of deeds related to this land. The Petitioner asserts that these legal manoeuvres were "collusive actions" that abused the judicial process and would shock the conscience of the court.

6] In response to these perceived frauds, the Petitioner sought relief under Section 839 of the Civil Procedure Code in DLM 151/24, initially obtaining an interim order to protect their interests as a bona fide purchaser. However, on 04/06/2025, the Additional District Court Judge dismissed the Petitioner's application and vacated the interim order. The Judge concluded that the Petitioner, as a third party, could not be affected by the judgment in that specific action and failed to see a direct connection between the lands. The Petitioner now challenges this conclusion as "grossly erroneous," maintaining that the litigation is part of a wider unlawful scheme to encumber and seize their land investments.

7] Thus, the Petitioner seeks to set aside a judgment and settlement decree in case DLM 151/24, alleging that the proceedings were a product of fraud, collusion, and an abuse of the court process. The Petitioner, claiming to be a bona fide purchaser of the subject land, argues that the Additional District Judge erred by failing to recognize their legal interests and by allowing a settlement that directly violates existing court orders in another case (DLM 5/19). The Petitioner contends that the parties in DLM 151/24 misled the court to the unlawfully appropriate land, causing a "miscarriage of justice" and "irreparable harm" to third-party owners.

6] A central point of the grievance involves discrepancies in land registration. The Petitioner highlights that while a Lis Pendens was sought for land folio A 484/126, investigation revealed the title flows into folio A 647/55, where no such registration existed as of July 2025. This lack of proper registration is presented as evidence of a "fraudulent and collusive scheme" designed to facilitate land racketeering. The Petitioner asserts that the impugned Order dated 04/06/2025, is "palpably wrong" and failed to consider documentary evidence that proves the land claimed by the Petitioner is the same as that involved in the dispute.

7] In response to these issues, the Petitioner is seeking urgent Interim Orders to restrain the Respondents from selling, leasing, or mortgaging the property until the matter is resolved. Furthermore, they are invoking the court's power of restitutio in integrum to quash the entirety of the proceedings in DLM 151/24, including the Plaint, the Judgment dated 16/01/2025, and the subsequent Decree.

8] The Petitioner Prays for the following reliefs;

a) Issue notice of this Application on the Plaintiff Respondents, Defendant Respondents and the 4th Respondent;

b) Make Interim Order restraining the Plaintiff Respondents, the Defendant Respondent, their servants and / or agents and / or any other person or persons from disposing and/or alienating the land which is the subject matter of the Plaint and Judgment in DLM 151/24 to any person by way of a declaration, transfer, lease, mortgage or causing any encumbrance whatsoever until the hearing and final determination of this Application;

c) Make Interim Order restraining the Plaintiff Respondents, the Defendant Respondent, their servants and / or agents and / or any other person or persons from taking any steps whatsoever relying on or arising from the Judgment and Decree in DLM 151/24 until the hearing and final determination of this Application;

d) Make Interim Order restraining the Plaintiff Respondents, the Defendant Respondent, their servants and / or agents and / or any other person or persons from causing any registration of an instrument or encumbrance under the Registration of Documents Ordinance under the Folios Numbered A 647/55 in the Land Registry of Delkanda relying on or arising from the Judgment and Decree in DLM 151/24 until the hearing and final determination of this Application;

e) Make Interim Order Stay any further proceedings in DLM 151/24 until the hearing and final determination of this Application;

f) By way of Interim Order direct the 4th Respondent (subject to costs being paid by the Petitioner) to:

i. Produce the Duly Certified Copy of the Monthly Lists of Notary C.A.J Guneratne for the Month of November 2017 (Produced to Colombo Land Registry)

ii. Produce a Certified Copy of Deed of Sale Numbered 738 dated 30th November 2017 attested by C.A. J. Guneratne (Duplicates produced to Colombo Land Registry)

iii. Produce the Folio bearing number A 396/115 in the Delkanda Land Registry

iv. Produce the Duly Certified Copy of the Monthly Lists of Notary Harischandra de Silva for the Month of January 2018; (Produced to Colombo Land Registry)

v. Produce a Certified Copy of Deed of Sale Numbered 832 attested by Harischandra de Silva Notary Public dated 15/01/2018 15th January 2018 (Duplicates produced to Colombo Land Registry)

vi. Produce the Folio bearing number A 421/115 in the Delkanda Land Registry

g) Act in restitutio in integrum or revision and make Order quashing or cancelling or setting aside the judgment and decree in case number DLM 151/2024 District Court of Colombo dated 16th January 2025

h) Act in restitutio in integrum and make Order quashing or cancelling or setting aside any steps taken by the Respondent arising from the judgment and decree in case number DLM 151/2024 District Court of Colombo dated 16th January 2025

i) Make Order upon the 4th Respondent to register the Interim or Final Orders of Your Lordships Court under the Folios Numbered A 647/55 in

the Delkanda Land Registry relying or in any manner as this Court deems fit;

j) Act in restitutio in integrum or revision and make Order quashing or cancelling or setting aside the Order dated 4th June 2025

k) Act in restitutio in integrum and order the District Court to dismiss in limine the Action of the Plaintiff in DLM 151/24

l) Make all and necessary Orders to the Registrar Lands of the relevant Division as Your Lordships Court pleases in respect of the actions or steps of the parties to this Application or their privies.

m) Act in Restitutio in integrum and direct the District Judge to make inquiry in the appearance of the 2nd Plaintiff by way of a Power of Attorney of the 1st Plaintiff

n) Act in Restitutio In integrum and make such other Orders as Your Lordships Court may deem fit in respect of DLM 5/19 in the District Court of Colombo.

o) Make Order for the Registrar of Your Lordships Court to Register a Lis Pendens in Folios Numbered A 647/55 in the Delkanda Land Registry

p) Make an Order to call for the record of DLM 151/2024 from the District Court of Colombo,

q) Grant costs; and

r) Such other reliefs as Your Lordships' Court shall seem fit.

9] The Plaintiff-Respondents state in their objections that a CID investigation has found the Petitioner's previous complaints to be without merit, and that the authorities are now investigating whether the Petitioner's Managing Director lodged a false complaint.

10] They further argue that it is the Petitioner, not themselves, who is abusing the process of the Court by initiating these legal actions. They clarify that their own filing in the District Court of Colombo, Case No. DLM-00151-24 was necessary because the land in question had been legally divested to them and a third party by the Government. They contend that the Petitioner's claim is based on an outdated title that existed before the land was vested in the Government. Consequently, the Plaintiffs request that the Court dismiss the petition, award them legal costs, and grant any other relief the Court deems appropriate.

11] The Defendant-Respondent-Respondent raises preliminary objection to dismiss the Petitioner's application for Revision and Restitutio in Integrum. The argument is that the Petitioner has filed in the wrong forum, asserting that the High Court, rather than the Court of Appeal, has the proper jurisdiction to hear such a revision.

12] Furthermore, the Defendant-Respondent claims that the Petitioner was never a party to the impugned legal action, is not affected by the judgment in question, and has suppressed or misrepresented facts to mislead the court.

13] The Defendant Respondents contend that the Petitioner's complaints are baseless and that it is actually the Petitioner who has abused the judicial process by instituting multiple actions across different courts.

14] The case record of DLM 001151-24 shows that the Petitioner initially sought to intervene in the impugned Case No. DLM-00151-24, under sections 18 and

839 of the Civil Procedure Code, but the application was refused. Consequently, the Petitioner filed the current dual-remedy application in this court, sought above reliefs.

15] I now consider the preliminary objection first. The Defendant-Respondent first argues that the court lacks jurisdiction to hear the Revision Application stating that under the Section 5A(1) of the High Court of the Provinces (Special Provisions) (Amendment) Act, No. 54 of 2006, the correct forum for revisionary jurisdiction over District Court orders is the High Court exercising Civil Appellate Jurisdiction, not the Court of Appeal where the petition was filed. They highlight that by Section 5A(1) of the High Court of the Provinces (Special Provisions) (Amendment) Act, No. 54 of 2006, the revisionary power of this court was decentralised and it is now vested with the High Court of Civil Appeal.

16] Section 5(A)(1) of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006 established what is commonly called Civil Appellate High Courts or High Courts of Civil Appeal. The said section reads,

> *"5(A) (1) A High Court established by Article 154P of the Constitution for a Province,* ***shall have and exercise appellate and revisionary jurisdiction*** *in respect of judgments, decrees and orders delivered and made by any District Court or a Family Court* ***within such Province*** *and the appellate jurisdiction for the correction of all errors in fact or in law, which shall be committed by any such District Court or Family Court, as the case may be".* [Emphasis is added]

17] Original Article 138 of the Constitution confers the revisionary and restitutio in integrum jurisdiction of the Court of Appeal. It says,

"138(1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any Court of First Instance, tribunal or other institution ***and sole and exclusive*** *cognizance* ***by way of appeal, revision and restitutio in integrum of all causes suits, actions, prosecutions, matters*** *and things of which such Court of First Instance, tribunal or other institution may have taken cognizance…"* [Emphasis is added]

18] However, after the 13th Amendment to the Constitution, brought in 1987, amended Article 138 currently reads as follows;

*"138(1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law an appellate jurisdiction for the correction of all errors in fact or in law which shall be [****committed by the High Court, in the exercise of its appellate or original jurisdiction*** *or by any Court of First Instance], tribunal or other* ***institution and sole and exclusive cognizance by way of appeal, revision and restitutio in integrum of all causes suits, actions, prosecutions, matters*** *and things [of which such High Court, Court of First Instance] tribunal or other institution may have taken cognizance:…"*

19] Thus, it is abundantly clear that revisionary jurisdiction is not taken away from the Court of Appeal; only another concurrent jurisdiction was created by 5(A)(1) of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006.

20] In ***Weragama v. Eksath Lanka Wathu Kamkaru Samithiya and Others*** [1994] 1 Sri LR 293 It was held that the Jurisdiction of the Court of Appeal is not an entrenched jurisdiction because Article 138 provides that it is subject to

the provisions "of any law", "Hence it was always constitutionally permissible for that jurisdiction to be reduced or transferred by ordinary law." Section 5(A)(1) of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006 was made as constitutionally permissible for that jurisdiction to be reduced or transferred by ordinary law. However, original jurisdiction was not completely taken away from this legislation.

21] Once the High Court of the Provinces (Special Provisions) Act No. 10 of 1990 was passed, the same ambiguity arose. From that Act Provincial High Court was created[1] in relation to Matters arising from the Magistrate Court, Primary Court, Labour Tribunal and Agrarian Services Tribunal. His Lordship Eric Basnayake J ***in Sharif and Others vs. Wickramasuriya and Others*** (2010) 1 SLR 255 considered this issue of conflicting jurisdiction and held;

> *"I am of the view that the jurisdiction enjoyed by the Court of Appeal through Article 138 remains intact. Through Article 138 one has the liberty to invoke the jurisdiction of the Court of Appeal or to resort to a Provincial High Court in terms of Article 154P (3) (b). If one chooses to go to the High Court, an appeal would lie to the Supreme Court with leave first obtained from the High Court (Section 9 of the Act 19 of 1990). If one invokes the jurisdiction of the Court of Appeal under Article 138 an appeal would lie from any final order or judgement of the Court of Appeal to the Supreme Court with leave of Court of Appeal first obtained (Article 128(1) of the Constitution). It is thus clear that both courts enjoy concurrent jurisdiction on matters referred to in*

[1] Section 4. "A party aggrieved by any conviction, sentence or order, entered or imposed, by a Magistrate's Court, a Primary Court, a Labour Tribunal or by an order made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979 may, subject to the provisions of any written law applicable to the procedure and manner for appealing and the time for preferring such appeals, appeal therefrom to the High Court established by Article 154P of the Constitution for the Province within which such court or tribunal is situated or within which the land which is the subject of the order made under the Agrarian Services Act, is situated."

Article 154P (3) (b). The jurisdiction enjoyed by the Court of Appeal had not been disturbed by Articles of the Constitution or by the Acts of Parliament."

His Lordship concluded;

"I am of the view ***that it is more expedient for the Court of Appeal to hear and conclude this case rather than to transfer it to High Court*** *and for the reasons given on the merits I find that the learned Judge has gravely erred in her order."* [Emphasis is added]

22] In ***Wanni Arachchi Kankanamge Siriyalatha and another* v *Kospalage Don Kapila Lankaratne***, Court of Appeal Case No: CA/CPA/0073/2025, decided on 31.10.2025, His Lordship Justice Dissanayake confirming that the Provincial High Court and the Court of Appeal exercise concurrent jurisdiction under Article 138 of the Constitution has noted;

"Upon a plain reading of Article 138 of the Constitution as amended, Article 154P(1), Article 154P(3)(b), and Article 154P(6) in conjunction with sections 5 and 12 of the Act, it makes it abundantly, clear that both Courts namely; the Court of Appeal as well as the High Court established by Article 154P(1) of the Constitution which enacted by the Thirteenth Amendment to the Constitution, now, enjoy and exercise concurrent or parallel or coordinate appellate and revisionary jurisdiction on matters referred to in Article 154P(3)(b) of the Constitution as quoted above that the Court of Appeal had solely, and exclusively, exercised before the Thirteenth Amendment to the Constitution.

In the result, I am of the view that the revisionary jurisdiction that was solely, and exclusively, vested with the Court of Appeal before the Thirteenth Amendment to the Constitution, would after Thirteenth Amendment to the Constitution, now, be exercised by a High Court established by Article

154P(1) of the Constitution which enacted by the Thirteenth Amendment to the Constitution, concurrently or parallel or coordinately with the Court of Appeal"

23] In ***Hiniduma Dahanayakage Siripala vs The Hon. Attorney General***, SC Appeal No. 115/2014, decided on 22.01.2020, Aluwihare PC. J., held 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."

24] In view of the above legal stance, I hold this court have concurrent jurisdiction, thus, first preliminary objection is dismissed.

25] The next preliminary objection was that the Petitioner is not a party to the impugned action, thus, no restitutio in integrum can be filed. This position was clearly held in ***Perera vs Wijewickrama*** 15 NLR 411. In that Pereira J. held that;

"the remedy of restitutio in integrum can only be availed of by one who is actually a party to the contract or legal proceeding in respect of which restitution is desired."

26] This position was cemented in ***Menchinahamy vs Munaweera*** 52 NLR 409 Dias S.P.J., held as follows;

"The remedy by way of restitutio in integrum is an extraordinary remedy and is given only under very exceptional circumstances. It is only a party to a contract or to legal proceedings who can ask for this relief. The remedy must be sought for with the utmost promptitude. It is not available if the applicant has any other remedy open to him."

27] The similar view was taken in ***Dissanayake Vs Elisinahami*** 1978/79 – (2) SLR 118, ***Ranasinghe Vs Gunasekara*** [2006] 2 SLR 393 and ***Sri Lanka Insurance Corporation Ltd Vs Shanmugam*** [1995] 1 SLR 55. In view of the above, it is seen that the Petitioner was not a party to the action. Thus, our long line authorities show that it is only available for a party to a contract or to legal

proceedings. Since, the Petitioner was not a party to the impugned District Court action, I hold the Petitioner cannot file an action for *restitutio in integrum.* Thus, I uphold the second preliminary objection. But, in this application, the Petitioner prayed reliefs under revisionary jurisdiction and *restitutio in integrum,* both. I now consider whether, third party can file a revision application.

28] In ***Mariam Beebee v. Seyed Mohamed*** 68 NLR 36, his Lordship Sansoni C.J. held:

> *"The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriages of justice. It is exercised in some cases by a Judge of his own motion, when* ***an aggrieved person who may not be a party to the action brings*** *to his notice the fact that, unless the power is exercised, injustice will result."* [Emphasis is added]

29] Further in ***SOMAWATHIE v. MADAWELA AND OTHERS*** [1983] 2 SLR 15, SOZA J., allowing third party who was not served notices in an action for partition held;

> *"If as a result of such persistent and blatant disregard for the provisions of the law a miscarriage of justice results as here, then this Court will not sit idly by. Indeed, the facts of this case cry aloud for the intervention of this Court to prevent what otherwise would be a miscarriage of justice."*

30] Moreover, in the case of ***Maduluwawe Sobhitha Thero Vs. Joslin*** reported in [2005] 3 SLR 25 the Petitioner who was not a party to a partition action had filed a revision application to set aside the judgement, interlocutory decree and

the final decree and Justice Wimalachandra held that if the Court of Appeal fails to invoke its power of revision grave injustice will result to the Petitioner and permitted the Petitioner to intervene in the partition action and to file a statement of claim.

31] In the case of ***Gnanapandithen and another Vs. Balanayagam and another*** [1998] 1 SLR 391 the refusal to grant leave by the Court of Appeal was mentioned by His Lordship G.P.S. De Silva CJ as follows;

> *"I am accordingly of the view that the Court of Appeal was in serious error when it declined to exercise its revisionary powers having regard to the very special and exceptional circumstances of this partition case"*

32] In the case of ***Amarasinghe Vs Wanigasooriya*** reported in 1994 (2) SLR 203 S.N. Silva – J (as he then was) stated thus;

> *"it is settled law that a glaring blemish which taints the proceedings in a partition action and results in a miscarriage of justice to a person not being a party to the action may appropriately be remedied by an application in revision"*

33] Thus, I am of the view that the application should not be refused merely because the Petitioner was not a party to the original action, as the Petitioner prayed relief under both categories, though *restitutio in integrum* failed, the application for revision survives. As Defendant-Respondents say, pleading both relief in the same application cannot be considered as against the principle of approbation and reprobation. It is my considered view that *restitutio in integrum* and revision are two sides of the same coin and can be pleaded in a single action for separate reliefs. There is no legal bar that prevents two reliefs, restitutio in integrum and revision, from being pleaded in one action.

34] In relation to seeking redress by a third party, it is our considered view that no action for *restitutio in integrum* lies as the plethora of previous judgements held. If the situation demands for the interest of justice, who is not a party to the action, if both reliefs have been pleaded, we are of the view that the action should not be dismissed. In the case in hand, since both reliefs have been pleaded (*restitutio in integrum and Revision),* we consider this application as a revision application and decide as stated below.

35] If revision is concerned, certain thresholds need to be overcome. Firstly, the party should not be guilty of laches. In the instant application, the Petitioner sought to intervene in the action under section 18 of the Civil Procedure Code, but the learned trial judge refused the application. Thereafter, the Petitioner filed an application under section 839 of the Civil Procedure to vacate the impugned settlement and consent decree, which was again refused by the learned trial judge. Thus, there is no laches involved in this case, and no objection was taken in this regard.

36] Secondly, in a revision application, exceptional circumstances should be pleaded. In ***Rustom v. Hapangama*** [1979] 2 SLR 225, His Lordship Vythialingam J., held that exceptional circumstances should be considered subjectively, on a case-by-case basis. His lordship noted thus;

> *"It is not possible to define with precision what matters would amount to exceptional circumstances and what would not. Nor is it desirable, in a matter which rests so much on the discretion of the Court to categorise these matters exhaustively or to lay down rigid, and never to be departed from, rules for their determination."*

37] When considering the factual backdrop of this case, the Petitioner alleges a "total fraud" and collusion between the Plaintiffs and the Defendant-Respondent (Indrasena) in case DLM 151/24 to legitimise land claims through a fraudulent

settlement decree. Specifically, the Petitioner contends that the parties entered into a collusive agreement on 16/01/2025, which treated Deed No. 738 and Deed No. 832 as valid, despite the fact that Deed No. 738 had already been declared null and void by a court in a prior case, DLM 5/19. The Petitioner states that the parties intentionally concealed the existence of the DLM 5/19 judgment and the Petitioner's own intervention applications from the court. By doing so, they allegedly abused judicial processes to deprive the Petitioner of land rights and possession, violating Section 408 of the Civil Procedure Code, which requires a settlement to be "lawful" to be recorded as a decree. On that footing the Petitioner sought reliefs.

38] On careful perusal of the bundle of documents which placed before court, B1 is the certified copy of the case No. DLM-00151-24 of the District Court of Colombo. The Petitioner seeks to set aside the settlement and consent decree of this case. It is seen that this case was filed on 16/12/2024. Within two days, on 19/12/2024, the plaint was amended. Interim relief was sought, and the Defendant Indrasena, in that case, filed objections on 02/01/2025, within two weeks. However, on 16/01/2015, again within two weeks, a settlement was arrived between the parties, and a consent decree was entered within a month.

39] It should be noted that before this case, DLM-00042-22 of DC Colombo was filed on 16/03/2022 by the Petitioner against Indrasena, Gabriel Fernando, and Bindu Weerathunga Chandramohan Shangaralingam Oak Real Estate (Pvt) Limited.

40] Moreover, before this impugned action, B 19999/01/19 was filed in the Colombo Chief Magistrate Court, on 10/10/2019, by the Commercial Crime Division of the Criminal Investigation Department (CID) for criminal charges of cheating, forgery, etc.... for 3.7 billion worth of land against Lawrence Keppetipola, J.A. Gunawardene, A.A. Amith B.M. Indrasena, Sebestian Gabrial Fernando. Further, DLM 00005/2019 was filed by Indrasena against Lawrence

Keppetipola. They were parties to the above pending cases; they should be well aware of these cases. All these facts were concealed when the impugned consent decree was obtained. Thus, a consent decree was obtained on fraud and by suppression of material facts, and thus cannot be permitted to stand. The above stance was proved by the investigation of CID and the Government Analyst's Report.

41] Thus, it is apparent that a fraud had been committed in obtaining the consent judgment and decree. The principle is "Fraud vitiates everything" (from the Latin *fraus omnia vitiat*). This is a fundamental legal principle, meaning any contract, judgment, or solemn act tainted by deliberate deception is rendered void or invalid, because fraud undermines the very foundation of truth and justice, allowing courts to set aside even final orders to prevent injustice, as fraud unravels all legal processes.

42] Lord Denning in ***Lazarus Estates Ltd v. Bearely*** (1956) 1 All ER 341 at 345: held;

> *"No Judgment of a Court or order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is specially pleaded and proved. But once it is proved it vitiates judgments, contracts, and all transactions whatsoever"*

43] Further, Bertram C.J. in ***Suppramaniam v. Erampakurukal*** (1922) 23 NLR 417 at 435, citing Black on Judgments Vol 1, Section 292-293, states *"Fraud is not a thing that can stand even when robed in a judgment*".

44] In the case of ***Gunasekara Vs Leelawathie*** Sri Kantha Law Report Vol 5 Page 86, it was held what a compromise decree is but with the command of a

judge superseded it. It can therefore be set aside on any of the grounds, such as fraud, mistake, misrepresentation, etc.

45] Further in ***SARANELIS AND ANOTHER v. AGNES NONA*** [1987] 2 Sri LR 109, DHEERARATNE, J., observed that the compromise made without a plan with regard to right of way can be set aside under section 89 of the Civil Procedure Code. His Lordship noted;

> *"The general principle that should be followed is that a settlement entered into by the parties and notified to Court in terms of s. 408 of the Civil Procedure Code should not be lightly interfered with whether a decree has been entered by Court in pursuance thereof or not. But in this case the Court had been misled into recording the settlement in regard to a roadway without a plan or even a sketch so that there would be no uncertainty about the course of the right of way. Besides the settlement involved the rights of the Municipal Council who was not a party. In these circumstances as the Court was misled setting aside the settlement using the inherent powers of Court under s. 839 of the Civil Procedure Code was warranted in the interests of justice"*

46] In the circumstances, we see that the Respondents engaged in "collusive litigation" and "litigation skullduggery" by obtaining a settlement decree in District Court case DLM 151/2024 without disclosing true facts. In ***Attorney General v Podisingho*** 51 NLR 385 at 390, where it was held;

> *"In my view such exceptional circumstances would be (a) where there has been a miscarriage of justice, (b) where a strong case for the interference of*

this Court has been made out by the petitioner, or (c) where the applicant was unaware of the orders made by the Court of trial."

47] In the impugned action, the Petitioner was not made a party and not allowed to intervene. I think this is a fit and proper case to invoke our revisionary jurisdiction. Thus, act in revision we set aside the judgment and decree in the case No. DLM 151/2024 dated 16/01/2025 (prayer "g" of the petition) and legal proceedings in that case thereafter (prayer "h"), and order dated 04/06/2025 (prayer "J") and dismiss the action of the Plaintiff in DLM 151/2024 (prayer "k").

48] Consequently, the application for revision is allowed, with costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL