

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

In the matter of an application for revision and/or
Restitution in integrum under and in terms of
Article 138 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Dissanayake Mudiyansele Nirasha Ayesani
Dissanayake,

Thepelpala, Mawathagama,

Plaintiff

CA.No. RI/03/2018

Vs

DC. Kurunegala No. 8109/L

Yapa Mudiyansele Wijebandara,
Kotikapola, Pattiyagodella,
Tepelpala, Mawathagama,
Seeradunna.

Defendant.

AND NOW

Yapa Mudiyansele Wijebandara,
Kotikapola, Pattiyagodella,
Thepelpala,
Mawathagama.

Defendant-Petitioner

Vs.

Dissanayake Mudiyansele Nirasha Ayesani
Dissanayake,
Thepelpala, Mawathagama,
Seeradunna.

Plaintiff-Respondent.

CA No. 03/2018 /RI

DC Kurunegala No. 8109/L.

Before : E.A.G.R. Amarasekera. J

Counsel : Mr. Rasika Dissanayake for the Defendant Petitioner

Decide on : 16.03.2018.

E.A.G.R. Amarasekera. J

This is an application for Revision and/or Restitutio in integrum under and in terms of Article 138 of the constitution. In the prayer to the Petition the Defendant Petitioner (herein after sometimes referred to as the Defendant and/or the Petitioner) has prayed inter alia that this court be pleased to;

- a) Issue notice on the Plaintiff-Respondent,
- b) Declare that the settlement dated 30.01.2015 entered in the case bearing No.8109/L of the District Court of Kurunegala is null and void,
- c) Set aside the settlement dated 30.01.2015 of the case bearing No. 8109/L in the District Court of Kurunegala,
- d) Make an order to restore the Petitioner in possession of the property described in the 3rd schedule to the plaint of the case bearing No. 8109/L in the District Court of Kurunegala,
- e) Make an order to retransfer the property described in the 3rd schedule to the plaint of the case bearing No. 8109/L in the District court of Kurunegala, in the name of the Petitioner upon the payment of the outstanding amount to the Plaintiff Respondent,

- f) Make an order to restore the *status quo ante* of the property described in the 3rd schedule to the plaint of the case bearing No. 8109/L in the District Court of Kurunegala, which prevailed as at 30.01.2015. and
- g) Grant an interim order preventing the Plaintiff Respondent from taking any step to alienate the said property in any manner and/or creating any encumbrance upon the said property described in the 3rd schedule to the plaint of the case bearing No. 8109/L in the District Court of Kurunegala, until the hearing and final determination of this application,

The Counsel for the Petitioner supported the application on 28.02.2018 to get notice of the application issued on the Plaintiff Respondent. (herein after sometimes referred to as the Plaintiff and/or the Respondent)

The Petitioner's position is that under and by virtue of the partition deed marked as P1 he became the owner of the Land called "Oliduwawe Bogahamula Kumbura and Pillewa" and he from time to time borrowed money from various persons by keeping the said land or parts of it as security by executing several deeds of transfer in favour of the creditors who lent money to him. Some of those deeds have been marked as P2, P3, P4 and P5. The Petitioner further states that in the same manner he borrowed money from the Respondent by transferring the premises in suit to the Respondent by deed marked as P6. The Petitioner states as he together with his family members continued to be in possession of the subject matter and at the request of the Respondent a lease agreement marked as P7 too was executed between the Petitioner and the Respondent.

Since the Petitioner had executed the lease agreement P7 during the continuation of the tenancy the Petitioner is barred from challenging the ownerships to the lease hold property of the Respondent at the time they entered to the lease agreement (vide section 116 of the Evidence Ordinance). Therefore, it is doubtful whether the Petitioner can now claim that deed of transfer marked as P6 was written as a

security for money borrowed. On the other hand, the Petitioner had admitted Respondent's ownership to the subject matter in the settlement recorded in the District court.

The lease agreements marked as P8, P9 and P10 only indicate that the Petitioner too had rented out the property described in the schedule to those deeds to various third parties on certain occasions. Land registry extracts marked as P11 only show that some of the deeds referred to above have been registered in the books of the land registry.

Documents marked P12(i) to P12(Xiii) only indicate that there were communications with regard to electricity consumption form Electricity Board with the Petitioner to the premises referred to in those documents.

P13(i) and P13(ii) indicate that there were communications also from the Mawathagama Pradeshiya Sabha to the Petitioner with regard to an unauthorized construction.

However, it is clear from the petition that the Respondent filed an action bearing No.8109/L in the District Court Kurunegala against the Petitioner seeking inter alia to eject the Petitioner form the land in suit on the basis of unlawful occupation of the premises in suit by the Petitioner. The Petitioner's stance is that after filing the answer praying for the dismissal of the action, the Petitioner and the Respondent entered in to an agreement outside the District Court to settle the entire matter amicably. The Petitioner states that as per the said agreements and mutual understanding the Respondent agreed to pay a sum of Rs. 80,00,000/- to the Petitioner after deducting the money borrowed from the Respondent to vacate the premises. The Petitioner's position is that as per the said agreement entered in to on 26.01.2015 a settlement was entered in the action between the parties on

30.01.2015. A certified copy of the entire case record of case No. 8109/L has been marked as P14. As per the certified copy of case No. 8109/L which contains only 31 pages, the settlement entered on 30.01.2015, indicates that;

1. The Defendant admitted that the Plaintiff was the lawful owner of the land described in the schedule to the plaint and the Plaintiff was in lawful possession of the same.
2. Both the parties admitted that the Defendant was the lessee of the said land.
3. As per the settlement between the Plaintiff and the Defendant, the Defendant had to hand over the possession of the subject matter which is described in the 3rd schedule to the Plaint on 28.01.2015.
4. Accordingly, Plaintiff agreed to pay Rs. 500000/- for the improvements done by the Defendant and the Defendant agreed to accept the same.
5. Accordingly, the Plaintiff has paid the said Rs. 500000/- in open court and parties have agreed to terminate the proceedings.

The learned District Judge after accepting the said terms and conditions has ordered to enter decree accordingly. It should be noticed both the parties were represented by their lawyers and the learned judge has explained the terms and conditions to the parties.

It is clear from the certified copy of the case No. 8109/L that other than aforesaid conditions and terms, purported conditions and terms of the purported agreements entered outside court on 26.01.2015 have not become part and parcel of the settlement entered in open court on 30.01.2015. The copies of the said purported agreement entered outside courts are marked as P14(i) to 14(iii) but they are from the certified copy of the case record of case No. 14635/M (P17) filed later on by the Petitioner in the District court of Kurunegala against the Respondent. Those documents marked as P14(i) to P14(iii) were not tendered to District Court as part and parcel of the settlement entered in open court in case No. 8109/L.

The cheques marked as P15(i) to P15(iv) or the letter marked as P16 has no relevance to the settlement recorded in open court in case No. 8109/L.

The learned District Judge is duty bound to execute the decree entered by him on an application to execute it when there is no appeal pending against that decree. Even there are provisions to execute writs pending appeal. If there were agreements outside court and conditions and terms of such agreements were relevant to the settlement it was the duty of the Petitioner and his lawyers to bring those agreements to the notice of the learned District Judge and get the relevant terms and conditions included in the settlement. Without getting all the terms and conditions of the purported agreements included in the settlement entered in open courts, the Petitioner cannot now be allowed to claim all those conditions are part & parcel of the settlement entered in open courts in case No. 8109/L. It should be noted no clear reference had been made to those three purported agreements marked as P14(i) to P14(iii) in the settlement entered in open court or no copies of three purported agreements tendered to the District court to make them part and parcel of the settlement entered in open courts.

On the other hand, whether these three purported agreements marked as P(14i) (P14(ii) and P14(iii) are genuine, relevant and valid have to be tried and decided after a full trial. Merely because they are tendered with an affidavit of the Petitioner, this court cannot consider them as genuine, relevant and valid. As per the answer filed by the Petitioner in Case No. 14635/M (Page 14 of P17) it is clear that the Respondent challenge the validity and relevance of agreements marked as P14(i) and P14(ii).

Therefore, it is my considered view that the learned District Judge has to execute the decree he entered. There is nothing to show that is was entered per incuriam or by fraud perpetrated by the Respondent. If the purported

agreements entered outside courts were not made part & parcel of the settlement entered in open court, Petitioners now cannot claim there was fraud when the Respondent took step to execute the decree. If there are other valid agreements outside Court which were not incorporated in to the settlement in open court, the breach of such agreement may give rise to a different cause of action but not a right to get the settlement vacated through this type of application. I do not see any miscarriage of justice has taken place. I do not see any exceptional circumstances to allow the prayers of the Petition. The execution of the decree entered by the District court is merely the result of an agreement of parties who were represented by their lawyers. I see no illegality in executing a decree entered by court with the agreement of parties who were represented by the lawyers.

I neither see any material to say that there was a fraud perpetrated by the Respondent at the time they entered the settlement nor any ground to establish mistake or misrepresentation. In such a back drop if the petitioner violates the settlement and decree entered, the Respondent is entitled to the writ of execution. Therefore, I decline to issue notice on the Respondent and dismiss this application.

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E.A.G.R. Amarasekera. J