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

1. Rizleigh Bertram Grand,
2. Needra Grand of
   No.A1, Tayer Motores,
   P.O. Box 7310,
   Dubai.
   Appearing by Power of Attorney
   Holder Indrani Ursula Grand of
   No.31/43B,
   Balagalawatta Road,
   Hendala, Wattala.
   Petitioners

CA CASE NO: CA/RI/6/2016
HC GAMPAHA CASE NO: WP/HCCA/GPH/217/2003(F)
DC NEGOMBO CASE NO: 4904/L

Vs.

1. Portia Kekulawala of No.491,
   Mosko Street, San Francisco,
   Uniterd States of America
   (Present address Nore Street,
   No.363, Apartment House, No.31,
   California) appearing by her

Power of Attorney Holder Anthony
Osmand Dushantha Kekulawala
alias Anthony Dushantha
Kekulawala, No. 20,
Turner Road, Colombo 8.
Plaintiff-Appellant-Respondent

2. Suranganee Kolonne nee Mary
Thiris Suranganee Sumithra Devi
Kakulawala,
No.72/19, Canel Road,
Hendala, Wattala.
Now at
No. 556/15,
Negombo Road,
Kapuwatta, Jaela.
Defendant-Respondent-
Respondent

3. Pradeetha Thilakaratne,
No. 428/5A,
Kandaiyaddapaluwa.
Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Jacob Joseph for the Petitioner.
Dr. Sunil Cooray for the Respondents.
(No written submissions were filed on behalf of the Respondents.)

Decided on: 24.06.2019

Mahinda Samayawardhena, J.

The petitioners have filed this application for *restitutio in integrum* seeking in the prayer to the amended petition dated 14.06.2016 (a) to set aside the Judgment of the Civil Appeal High Court of Gampaha dated 14.05.2009, the decree entered thereon by the District Court, ejectment of them in execution of the said decree; and (b) to grant *restitutio in integrum* and restore the petitioners in possession.

This application of the petitioner in my view cannot be maintained on two threshold grounds.

The first one is that, *restitutio in integrum* or restitution, as its name implies, requires that the party be restored to its former position. The application for *restitutio in integrum* can only be filed by a party to the action, and it is not available to a third party, such as the petitioners in this application. *(Vide Perera v. Wijewickreme (1912) 15 NLR 411, Menchinahamy v. Muniweera (1950) 52 NLR 409, Dissanayake v. Elisinahamy [1978/79] 2 Sri LR 118, Sri Lanka Insurance Corporation Ltd v. Shanmugam [1995] 1 Sri LR 55, Fathima v. Mohideen [1998] 3 Sri LR 294 at 300, Velun Singho v. Suppiah [2007] 1 Sri LR 370)*

The history of the application is concisely as follows: The plaintiff-respondent filed the land action against the defendant-respondent in the District Court. The District Court held with the defendant-respondent. This was revered by the Civil Appeal High Court in appeal. The defendant-respondent did not prefer an appeal against the Judgment of the High Court. In the meantime, the defendant-respondent sold the land to the

petitioners by two deeds. With the strength of that Appeal Judgment decree was entered and the petitioners were ejected.

The main relief of the petitioners is to set aside the Judgment of the Civil Appeal High Court. This Court has no jurisdiction to set aside the Judgement of the Civil Appeal High Court and only the Supreme Court has jurisdiction to do it. Let me now explain it.

According to Article 154P to the Constitution introduced by the 13th Amendment, there shall be a High Court for each Province. The High Court of the Provinces (Special Provisions) Act No.19 of 1990, made provisions regarding the procedure to be followed in, and the right to appeal to and from, such High Court, and for matters connected therewith. By this Act, the High Courts of the Provinces were given original criminal jurisdiction as well as appellate jurisdiction basically against the Judgments and Orders of the Magistrates' Courts, Primary Courts and Labour Tribunals of the relevant Provinces.

By the High Court of the Provinces (Special Provinces) (Amendment) Act No. 54 of 2006, sections 5A, 5B and 5C were introduced to the aforesaid Principal Act No. 19 of 1990. This was done to confer appellate and revisionary jurisdiction to the said Provincial High Courts against the Judgments and Orders of the District Courts of the relevant Provinces. Those High Courts, although it is a misnomer, are conveniently known as High Courts of Civil Appeal.

After the said amendment by Act No. 54 of 2006, section 5A of the Principal Act No.19 of 1990 (without the proviso) reads as follows:

"*5A(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.*

(2) The provisions of sections 23 to 27 of the Judicature Act, No. 2 of 1978 and sections 753 to 760 and sections 765 to 777 of the Civil Procedure Code (Chapter 101) and of any written law applicable to the exercise of the jurisdiction referred to in subsection (1) by the Court of Appeal, shall be read and construed as including a reference to a High Court established by Article 154P of the Constitution for a Province and any person aggrieved by any judgment, decree or order of a District Court or a Family Court, as the case may be, within a Province, may invoke the jurisdiction referred to in that subsection, in the High Court established for that Province:"

According to section 5A(2), the procedure to be adopted in the High Court of Civil Appeal is the same procedure which is being adopted in the Court of Appeal.

Section 5C deals with the subject of appeals from the Judgments and Orders of the High Court of Civil Appeal. According to this section, there is only one direct appeal to the

Supreme Court, with leave obtained, against the Judgments and Orders of the High Court of Civil Appeal. That section reads as follows:

"*5C (1) An appeal shall lie directly to the Supreme Court from any judgment, decree or order pronounced or entered by a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction granted by section 5A of this Act, with leave of the Supreme Court first had and obtained. The leave requested for shall be granted by the Supreme Court, where in its opinion the matter involves a substantial question of law or is a matter fit for review by such Court.*

(2) The Supreme Court may exercise all or any of the powers granted to it by paragraph (2) of Article 127 of the Constitution, in regard to any appeal made to the Supreme Court under subsection (1) of this section."

The learned counsel for the petitioner will accept that a party cannot by way of a final appeal come before this Court against the Judgment or Order of the High Court of Civil Appeal. But the argument of the learned counsel seems to be that, nevertheless, a party can come before this Court against the Judgment or Order of the High Court of Civil Appeal by way of revision and/or *restitutio in integrum* in terms of Article 138 of the Constitution.

If that argument is accepted, section 5C becomes meaningless, and the intention of the legislature will blatantly be defeated, as any party dissatisfied with any Judgment or Order of the High Court of Civil Appeal can come before this Court by way of

revision and/or *restitutio in integrum*. Then the party dissatisfied with the Judgment or Order of the District Court will have three appeals—first to the High Court of Civil Appeal, second to the Court of Appeal, and third to the Supreme Court. That was obviously never the intention of the legislature. One of the main objectives of setting up High Courts of Civil Appeal is to curb laws delays in civil litigation and not to expand it.

Article 138(1) of the Constitution (without the proviso) reads as follows:

"*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*:"

It is significant to note that Article 138 does not confer unrestricted, unfettered, absolute power for revision and *restitutio in integrum* on the Court of Appeal against Judgments and Orders of the High Courts. If I may repeat, it says: "*The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction…..*"

"*Any law*" encompasses the laws introduced by Act Nos. 19 of 1990 and 54 of 2006.

The question whether the Court of Appeal has jurisdiction to sit on Judgments and Orders made by the High Courts of Civil Appeal was particularly dealt with by Justice Salam (with Justice Rajapaksha agreeing) in the Court of Appeal case of *Stephan Gunaratne v. Thushara Indika Sampath [CA (PHC) APN 54/2013 (REV)]* decided on 23.09.2013.

That is a case where the plaintiff-petitioner in a partition action came before this Court by way of revision against the Judgment of the High Court of Civil Appeal at Ratnapura. Dismissing the application *in limine* without issuing notice, Justice Salam stated:

"*The question that now arises for consideration is whether the Court of Appeal can exercise its revisionary powers under Article 138 of the Constitution in respect of a judgment of the High Court pronounced under the Provisions of Act No 54 of 2006 when the proper remedy is to appeal to the Supreme Court. Appreciably, Section 5A of Act No 54 of 2006 quite specifically states that all relevant written laws applicable to an appeal, in the Court of Appeal are applicable to the High Court as well. This undoubtedly demonstrates beyond any iota of doubt that the scheme provided by Act No 54 of 2006 to facilitate an appeal being heard by the Provincial High Court is nothing but a clear transfer of jurisdiction and in effect could be said that as far as appeals are concerned both the High Court and the Court of Appeal rank equally and are placed on par with each other. Arising from this statement of law, it must be understood that if the Court of Appeal cannot act in revision in respect of a judgment it pronounces in a civil appeal, then it cannot sit in revision over a judgment entered by the High*

Court in the exercise of its civil appellate jurisdiction as well, for both courts are to be equally ranked when they exercise civil appellate jurisdiction."

Hence I hold that the Court of Appeal has no appellate jurisdiction to set aside Judgments or Orders of the High Court of Civil Appeal by way of final appeal, revision or *restitutio in intergrum*. That is vested exclusively in the Supreme Court.

Application of the petitioner is dismissed without going into the merits. No costs.

Judge of the Court of Appeal