

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

In the matter of an application
under Article 138 (1) of the
Constitution of the Democratic
Socialist Republic of Sri Lanka for
Restitutio in Integrum and Revision

CA/RII/Mt/02/2022

D.C. Kaluthara Case No. 5771/P

1. Sendanayake Kankanamlage Don
Welis Perera alias Welis
Sendanayaka, (deceased)

1A. Nalini Punyasili Sendanayake,
(deceased)

“Senani”,
Galpatha,
Kalutara.

1B. Lokumanage Wasantha

Ratnamali Abewardane,

“Senani” Galpatha, Kalutara

1B Substituted Defendant –

Petitioner Petitioner

Vs.

Vithanage Lal Siriwanasa Perera,
Manana, Pelpola, Galpatha

Maharagama.

Plaintiff – Respondent

Respondent Respondent

Before: Hon. D.N. Samarakoon, Judge of the Court of Appeal
Hon. Sasi Mahendran, Judge of the Court of Appeal

Counsel: Prabath de Silva, with Nadeeka Madushani Kularatne, AAL for 1st B
defendant petitioner petitioner.
Thilina Liyanage, AAL instructed by Ruwangi Gopallawa, AAL for the
plaintiff respondent respondent.

Supported on: 31.10.2022

Date: 18.05.2023

ORDER

D.N. Samarakoon, J.

Whereas the judgment was dated 08.09.1992, after several unsuccessful litigations, the 01stA substituted defendant appellant petitioner petitioner Miss Nalini Sandanayake was before the Supreme Court in SC/HCCA/LA/No. 125/2018 when she entered into a settlement with the plaintiff respondent respondent by which Miss Nalini Sandanayake agreed to withdraw the appeal and the plaintiff agreed to get the subject matter land partitioned as per the judgment, but not as per the Final Decree or Interlocutory Decree.

The petitioner states that due to a mistake it was not mentioned in the order of the Supreme Court dated 08.07.2018 that the withdrawal was subject to the terms of settlement J.18 (X.1) Miss Nalini Sandanayake, filed a petition dated 10.12.2019 in the District Court of Kalutara togetherwith the order of the Supreme Court dated 10.09.2019 praying the District Court to enter an amended Interlocutory Decree, in conformity with the judgment dated 08.09.1992.

After the present petitioner, 1st B substituted defendant petitioner petitioner was substituted, in place of Miss Nalini Sandanayake, the petition dated 10.12.2019 was supported on 04.10.2021. Plaintiff's counsel objected to the said petition.

Whereas the learned Additional District Judge fixed the order for 22.10.2021, the 1st B substituted defendant petitioner petitioner filed written submissions. It is stated that averments pleaded in paragraphs 31(a) to 31(e) of the petition were pleaded in the written submissions.

The learned Additional District Judge by order dated 22.10.2021 dismissed the said petition. The petitioner then filed an application before the Supreme Court under section 839 of the Civil Procedure Code, moving the Supreme Court to make order that the learned Additional District Judge be directed to enter amended Interlocutory Decree in conformity with the order of the Supreme Court dated 10.09.2019. The Supreme Court made its order dated 19.01.2022 dismissing the petition, on the basis that it is functus officio. (This fact is stated in Written Submissions filed by the petitioner dated 18.11.2022)

The petitioner by the present application seeks to invoke (1) the revisionary jurisdiction of this Court to set aside the inaccurate Interlocutory Decree inconsistent with the judgment dated 08.09.1992 and to require the learned District Judge to enter an amended Interlocutory Decree in conformity with the judgment and to invoke (2) the jurisdiction of restitutio in integrum in order to restore the terms of settlement marked J.18 (X.1) as per the order of the Supreme Court dated 10.09.2019.

The petitioner has pleaded several exceptional grounds in paragraph 31 (I) to (V) of the written submissions dated 18.11.2022.

The petitioner cites in paragraph 38, **Navaratnam vs. Somawathie Siriwardane (1968) 70 NLR 361**, in which it was decided that,

“A decree is “ the formal expression of an adjudication ”—s. 5 of the Civil Procedure Code. Can it be said that it was the intention of the Legislature that “the formal expression of the adjudication ” should be “ final and conclusive for all purposes against all persons whomsoever ” even though it erroneously sets out the terms of the adjudication ? The answer is to be found in s. 26 which, as stated earlier, directs that the decree which “ shall be signed by the Judge ” shall be “ in accordance with the findings in the judgment ”. A judge is not empowered to sign any other decree”.

In the circumstances, satisfied on a prima facie basis, this Court issues notices on the respondent and also issue a stay order as per paragraph (a) of the prayer to the petition dated 15.12.2021 (this matter was supported on 31.10.2022) to be in force until the next date of this application.

Judge of the Court of Appeal

Sasi Mahendran J.

I agree.

Judge of the Court of Appeal