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

In the matter of an application for Appeal in terms of Section 5(c)(1) of the High Court of the Provinces (Special Provisions) Amendment Act No. 54 of 2006.

W.G.M.Premadasa Silva,
No. 26/4, Station Lane,
Nugegoda.

Plaintiff

SC Appeal No. 68/2017
SC (HCCA) LA/325/2016
UVA/HCCA/BDL/RA/01/2015 (F)
DC Moneragala case No.2149/L

V.

1. A.K.G. Janis,
No. 64, Dutugemenu Road,
Monaragala.

2. A.K.G. SeethaRanjani,
Kawdawa, Wedikumbura,
Moneragala.

.

Defendants

AND BETWEEN

1. A.K.G. Janis,
No. 64, Dutugemenu Road,
Monaragala.

2. A.K.G. SeethaRanjani,

Kawdawa, Wedikumbura,
Moneragala.

.

Defendants-Petitioners

V.

W.G.M.Premadasa Silva,
No. 26/4, Station Lane,
Nugegoda.

Plaintiff-Respondent

AND NOW BETWEEN

W.G.M.Premadasa Silva,
No. 26/4, Station Lane,
Nugegoda.

Plaintiff-Respondent-Appellant

V.

1. A.K.G. Janis,
No. 64, Dutugemenu Road,
Monaragala.

2. A.K.G. SeethaRanjani,
Kawdawa, Wedikumbura,
Moneragala.

Defendants-Appellants
Respondents

Before : **Kumudini Wickremasinghe, J**
K. Priyantha Fernando, J
Sampath B. Abeykoon, J

Counsel : P.K. Prince Perera instructed by S.L. Samarakoon for the Plaintiff-Respondent-Appellant.

Gamini Perera with Manoj Kumar de Silva instructed by Ms. Niluka Dissanayake for the Defendant-Petitioner-Respondents.

Argued on : 05.06.2025

Decided on : 09.07.2025

K. PRIYANTHA FERNANDO, J

1. The plaintiff- respondent - appellant (hereinafter referred to as the Appellant), instituted an action in the District Court of Monaragala in Case No. 2149/L against the 1st and 2nd defendants - petitioners - respondents (hereinafter referred to as the respondents) seeking for a declaration of title to the property described in the 2nd schedule to the plaint, to evict the respondents and those under them from the said property and recover damages from the respondents.

2. On 19.09.2012, the day in which the case was fixed for trial, the appellant was present in Court represented by his Counsel along with the 1st respondent who had also been present, with the Counsel for the respondents. The parties have agreed to the settlement terms submitted to Court by the Counsel who appeared for the respondents. As per J/E dated 19.09.2025 (page 107 of the brief) the plaintiff and 1st defendant have signed the settlement. As per the proxy (page 220 of the brief) the proxy has been filed on behalf of both the Respondents.

3. Thereafter, the respondents made an application before the District Court of Monaragala, to set aside the settlement entered on 19.09.2012.

The respondents also took the position that, as the 2nd respondent was not present in Court on the date of the settlement, she is not legally bound to act in terms of the settlement. It was further submitted that the 2nd Respondent is in fact, the true owner of the corpus. The respondents also contended that, although the 1st Respondent was present in Court at the time the settlement was recorded, he did not fully comprehend the significance and implications of the terms of the settlement, owing to his advanced age.

4. The learned District Judge, by his judgment dated 31.10.2012 dismissed the respondent's petition and upheld the terms of the settlement entered on 19.09.2012. Being aggrieved by the said order of the learned District Judge, the 1st and 2nd respondents filed two applications seeking leave to appeal bearing No. UVA/HCCA/BDL/ 29 / 12, dated 16.09.2012 and an appeal bearing No. UVA / HCCA/BDL/11/13 (F) dated 05.12.2012, before the learned Judges of the Civil Appellate High Court of Uva Province seeking to set aside the order of the Learned District Judge. Both applications were dismissed.

5. Thereafter, invoking the revisionary jurisdiction in the Civil Appellate High Court of Uva Province, the 1st and 2nd respondents filed another application for revision dated 07.01.2015, seeking to revise the order dated 31.10.2012 of the Learned District Judge of Moneragla. The Civil Appellate High Court of Uva Province, by Judgement dated 25.05.2016 set aside the terms of the settlement recorded on 19.09.2012 in case No.2149 of District Court along with all consequential proceedings, decrees and orders and directed to start the trial *de novo*.

6. Aggrieved, the instant appeal was preferred to this Court by the appellant against the said judgment of the Civil Appellate High Court and leave to appeal was granted by this Court on the following question of law set out in para 15 (c), (e) and (f) of the petition dated 07.07.2016.

> *"(c) Have their Lordships in the Civil Appellate High Court of Uva Province erred in Law by not considering that fact that the same Attorney-at-Law appeared for both of them from the beginning and they have filed answer together?*
>
> *(e) Have their Lordships in the Civil Appellate High Court of Uva Province erred in Law by allowing the Petition of the 1st and 2nd*

Respondents when there are no exceptional circumstances pleaded in the Petition?

(f) Have their Lordships in the Civil Appellate High Court of Uva Province erred in Law by falling to recognize the practice by court in reaching settlements between parties in open court in spite of section 408 of the Civil Procedure Code?"

7. The learned Counsel for the appellant contended that the petition filed before the District Court of Monaragala reveals that the 1st and 2nd respondents were, in essence, seeking to renegotiate the terms of a settlement to which they had previously consented. They further contended that respondents' claim of lack of consent is simply an excuse that seems to have been made up just to question the validity of the settlement order.

8. It is the contention of the learned Counsel for the appellant that the answer filed in the District Court proceedings was jointly tendered on behalf of both the 1st and 2nd respondents by the same Attorney-at-Law. On that basis, it was argued that the respondents cannot now disclaim the settlement, as they have been jointly represented and have actively participated in the proceedings up to the point of settlement. The learned Counsel further stated that, the mere absence of the 2nd respondent from Court does not render the order invalid, particularly as the Counsel representing the respondents was present at the time the order was made.

9. The learned Counsel for the respondents submitted that, on 19.09.2012 (day of settlement), only the appellant and the 1st respondent had been present in Court, and that the 2nd respondent had been absent. They submitted that, the proceedings of that day shows that Counsel Mr. Wijetunga along with Ms. Kamala Ratnayaka had reportedly appeared for the respondents and that the registered attorney & proxy holder for the respondents Ms. Dinusha Opanayaka was not present in Court.

10. At the hearing, the learned Counsel for the respondents stated that, the 2nd respondent was totally unaware of a settlement on 19.09.2012 and

for that matter no settlement had ever been discussed with them by their registered attorney or the Counsel. The learned Counsel further submitted that, no terms of settlement were drawn up, shown or explained to the respondents. They took up the position that the 2nd respondent did not consent to nor sign such terms therefore are not bound by the settlement at all. He also argued that, the parties have to act as per settlement within a month and as it had not been given effect to within such time it cannot now be implemented. The respondents also prayed for the settlement to be declared null and void and sought an order declaring the 2nd respondent to not be bound by the settlement and the case to be fixed for trial.

11. The learned Counsel for the respondents further submitted that, the alleged settlement dated 19.09.2012 is not in compliance with section 408 of the Civil Procedure Code, as it was not notified to Court by motion in the presence of all parties concerned and thus the settlement, judgment and decree based on that are liable to be set aside. Referring to the case of ***Gunawardena v. Ran Manike 2002 3 SLR 243***, the Counsel for the respondents submitted that, where there has been a settlement or compromise it must be in strict compliance with the provisions of section 91 and section 408 of the Civil Procedure Code.

12. When considering the first question of law, it is evident that the answer filed before the District Court of Monaragala was submitted jointly on behalf of both the 1st and 2nd respondents. The proxy on record indicates that both respondents were represented by the same registered Attorney-at-law. It is also pertinent to observe that, in terms of Section 408 of the Civil Procedure Code, it is not a legal requirement for the parties to be personally present when a settlement is communicated to Court. Given that both the 1st and 2nd respondents had retained the same Attorney, as reflected in the pleadings and proxy, it can reasonably be inferred that the registered attorney represented the interests of both parties and, in turn, retained the services of the same Counsel to appear on behalf of both respondents.

13. It is to be noted that, the terms of the settlement were submitted to Court by the Counsel for the respondents. Therefore, the Counsel for the respondents cannot say that they were not aware of the terms. It

appears from the record that the parties were, at the outset, in agreement with the terms of settlement reached before the District Court. However, the subsequent claim that one of the respondents had not consented to the settlement appears to be an afterthought, advanced later on in an attempt to move away from the agreed terms and to invalidate the settlement order. Further, the parties had agreed to act on the settlement within one month. However, by the time the respondents filed the petition in the District Court one month's time had already lapsed.

14. It is also pertinent to observe that, should the 2nd respondent maintain that she did not consent to the terms of the settlement, and that the attorney who represented her nonetheless proceeded to agree to such terms, it would necessarily imply that the Attorney acted without instructions. If this was indeed the case, such conduct would constitute a breach of professional ethics and warrant appropriate disciplinary action. However, the 2nd respondent has not made any such complaint against the attorney.

15. In his book ***Professional Ethics and Responsibilities of Lawyers*****,** Justice Amerasinghe has pointed out that,

> *"In general, a lawyer comes into a matter only if he is 'instructed' by a client…"* [page 304]
>
> *"An attorney should not act in a professional capacity for a party in any matter, whether contentious or otherwise, except at the request of a party or at the request of a registered attorney."* [page 305]

16. Thus, it is a fundamental requirement that an Attorney-at-Law must obtain instructions from his client in order to represent such a client. In the instant case, However, the record does not reflect that the 2nd respondent has taken any steps to assert such a position. Notably, there is no affidavit from the 2nd respondent denying that instructions were given or alleging that the attorney acted improperly without instructions. In the absence of such material, I am of view that no genuine objection was raised regarding the attorney's authority. Rather, this appears to be an attempt to reopen or renegotiate the settlement terms on the grounds of lack of consent from the 2nd respondent.

17. Further, the respondents took the position that, the provisions of Section 408, read with Section 91 of the Civil Procedure Code, had not been properly complied with in the District Court. The learned Judges of the High Court appear to have relied on this contention in holding in favour of the respondents, noting that the registered instructing attorney for the Defendant-Petitioners was not present at the relevant time.

18. **Section 408 of the Civil Procedure Code** read as follows;

If an action be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintif in respect to the whole or any part of the matter of the action, such agreement, compromise, or satisfaction shall be notified to the court by motion made in presence of, or on notice to all the parties concerned, and the court shall pass a decree in accordance there with, so far as it relates to the action, and such decree shall be final, so far as relates to so much of the subject-matter of the action as is dealt with by the agreement, compromise, or satisfaction.

Also Section **91 of the Civil Procedure Code** read as follows;

Every application made to the court in the course of action, incidental thereto, and not a step in the regular procedure, shall be made by motion by the applicant in person or his counsel or registered attorney, and a memorandum in writing of such motion shall be at the same time delivered to the Court.

19. As per the proxy filed in the District Court (page 220 of the brief), both the 1st and 2nd respondents have accepted their Attorney as the proxy holder and it is clear that the Counsel who appeared for the respondents on 19.09.2012, appeared on the instructions of the instructing Attorney. As I said before, there is no complaint against the Counsel stating that he appeared without the instructions from the registered Attorney. Hence, it is clear that the registered Attorney-at-Law of the 1st and 2d Respondents is the same and the registered Attorney had retained the services of the same Counsel for both the respondents. Further as discussed in the case of ***Sinna Veloo and Messrs Lipton Ltd (1963) 66 NLR 214,*** the physical presence of the parties before the Court is not mandatory, provided that they are duly represented by Counsel authorized to act on their behalf.

20. In the case of ***Sinna Veloo and Messrs Lipton Ltd (supra)*** it was held,

> *Section 408 of the Civil Procedure Code, when it speaks of the settlement being filed in the presence of parties, does not mean the presence of parties personally, for the Code provides that the parties are represented by their Proctors unless the Code expressly requires personal appearance.*

21. The revision application was preferred mainly on the ground that, the alleged settlement dated 19.09.2012, is not in compliance with Section 408 of the Civil procedure Code and thus on the contention that the settlement, judgement and decree based on that are liable to be set aside.

22. In the case of ***Caderamanpulle us. Ceylon Paper Sacks Ltd. [2001] 3 SLR 116***, it was held that,

> *"The existence of exceptional circumstances is a precondition for the exercise of the powers of revision"*

In ***Dharmaratne and another us. Palm Paradise Cabanas Ltd and others. [2003] 3 SLR 24*** it was held by Amaratunga J. that,

> *"The practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed. The words used by the legislature do not indicate that it ever intended to interfere with this 'rule of Practice'."'Thus the existence of exceptional circumstances is the process by which the Court selects the cases in respect of which this extra-ordinary method of rectification should be adopted."*

23. Although the learned Counsel for the respondents argued that the irreparable and irrevocable damages that could result if the order of the District Court is not set aside amounts to an exceptional circumstance, such a consequence is an ordinary and foreseeable result for any party who fails in litigation and cannot be characterised as exceptional.

24. It is pertinent to note that, in the judgment given in the Civil Appellate High Court, there is no mention of the existence of exceptional circumstances. Accordingly, it can be deduced that the requisite for the exercise of revisionary powers has not been met and yet it in the absence of such exceptional circumstances the learned Judges of the Civil Appellate High Court proceeded to allow the revision application, which amounts to an error in the exercise of revisionary jurisdiction.

25. Further, in their submissions the learned Counsel for the respondents have stated that, the basis for the rationale for insisting on the requirements of exceptional circumstances as a condition precedent to the exercise of revisionary jurisdiction had disappeared as a consequence of the amendment to section 753 by Act No.79 of 1988. However, it is pertinent to note that, there is no such disappearance recorded.

26. In the present matter, no such exceptional circumstance has been identified or discussed by the learned Judges of the Civil Appellate High Court. Nevertheless, they have proceeded with the application for revision, thereby arriving at a decision that appears to be erroneous.

27. Following the District Court's refusal to set aside the settlement, the petitioners proceeded to file two separate appeals before the Civil Appellate High Court, both of which were dismissed. Undeterred, and notwithstanding their knowledge of the procedural and substantive shortcomings, they then invoked the revisionary jurisdiction of the Civil Appellate High Court. Such conduct amounts to an abuse of process. This Court cannot allow such repetitive litigation. Hence, to allow this appeal would be condoning the abuse of process. This Court observes that revision should not lead to abuse of process.

28. In the above premise, I'm of the view that the learned District Judge is right in arriving at the decision made in his order dated 31.10.2012.

29. Hence, the questions of law are answered in the affirmative, the judgment of the learned Judges of the Civil Appellate High Court UVA/HCCA/BDL/RA/01/2015, dated 25.05.2016 is set aside and the judgment of the learned District Judge dated 31.10.2012 of case bearing D.C Monaragala No. L/2149 is thus affirmed.

The appeal is allowed.

JUDGE OF THE SUPREME COURT

JUSTICE KUMUDINI WICKREMASINGHE

I agree

JUDGE OF THE SUPREME COURT

JUSTICE SAMPATH B. ABEYKOON

I agree

JUDGE OF THE SUPREME COURT

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