

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

Hinguru Arambage Wimalawathie,
No. 100, Wijaya, Minuwangoda.
And presently at,
No. 149/1, Wijaya,
Minuwangoda North.
Plaintiff-Respondent-Appellant

SC/APPEAL/25/2022

WP/HCCA/COL/89/2018/LA

DC COLOMBO 20882/L

Vs.

Harischandra Wijaya Perera,
No. 14/02/P, Borella Road,
Pannipitiya.
Defendant-Respondent-Respondent

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Dr. Sobhitha Rajakaruna
Hon. Justice K.M.G.H. Kulatunga

Counsel: Niranjan De Silva with Thulith Bandara for the Plaintiff-
Respondent-Petitioner-Appellant.
Dr. Sunil Coorey for the Defendant-Petitioner-Respondent-
Respondent.

Written submissions:

By the Appellant on 22.06.2022
By the Respondent on 12.09.2022

Argued on: 23.03.2026

Decided on: 27.07.2026

Samayawardhena, J.

The Plaintiff instituted this action against the Defendant in the District Court of Colombo seeking, *inter alia*, a declaration of title to the two allotments of land described in the First and Second Schedules to the plaint, ejectment of the Defendant therefrom, and damages. The Defendant filed answer seeking dismissal of the Plaintiff's action. In addition, the Defendant made a claim in reconvention seeking a declaration that Deed No. 1330 dated 22.02.1988 referred to in the plaint be declared null and void.

After trial, the learned District Judge, by judgment dated 06.02.2014, dismissed the Plaintiff's action as well as the Defendant's claim in reconvention.

Being dissatisfied with that judgment, the Defendant preferred an appeal to the High Court of Civil Appeal of Colombo. Subsequently, the Defendant withdrew that appeal.

Following the withdrawal of the appeal, the Plaintiff tendered a draft decree to the District Court on the footing that the judgment had declared the Plaintiff to be the owner of the land described in the First Schedule to the plaint and entitled to the ejectment of the Defendant therefrom. The decree was signed by a succeeding District Judge on the assumption that it accurately reflected the judgment delivered by his predecessor.

Thereafter, the Plaintiff obtained a writ of execution and sought to eject the Defendant from the land described in the First Schedule to the plaint. The Defendant resisted the execution of the writ and made an application to the District Court under section 839 of the Civil Procedure Code seeking its recall. After inquiry, the succeeding District Judge, by order dated 22.06.2018, recalled the writ of execution.

Aggrieved by that order, the Plaintiff appealed to the High Court of Civil Appeal of Colombo with leave obtained and the High Court by judgment dated 10.06.2020, affirmed the order of the District Court and dismissed the appeal.

The present appeal is from the said judgment of the High Court dated 10.06.2020, with leave obtained from a previous Bench of this Court.

The central issue in this appeal arises from an obvious error contained in the judgment of the District Court dated 06.02.2014. Although the learned District Judge expressly dismissed the Plaintiff's action, he nevertheless proceeded to state that, in view of the fourth admission recorded at the commencement of the trial, the Plaintiff was the owner of the land described in the First Schedule to the plaint.

The succeeding District Judge, in the order dated 22.06.2018, correctly observed that this finding was plainly erroneous on mistake of fact. A perusal of the proceedings dated 15.10.2009 leaves no room for doubt in that regard.

The fourth admission initially recorded was that the Plaintiff is the owner of the land described in the First Schedule to the plaint. That admission was recorded on the basis of paragraph 14(a) of the answer, whereby the Defendant had pleaded that, by virtue of Deed No. 2605 dated 27.09.1967 attested by Ben Samarasinghe, Notary Public, the Plaintiff was the owner of the land described in the First Schedule to the plaint. However, the very deed mentioned in paragraph 14(a) shows that the transferee thereunder was the Defendant and not the Plaintiff. The reference to the "Plaintiff" in paragraph 14(a) was therefore plainly a clerical error. The Defendant had obviously intended to plead that he himself was the owner of the land described in the First Schedule to the plaint by virtue of that Deed.

The proceedings dated 15.10.2009 reveal that, immediately after the admission was recorded and the mistake was noticed, with the consent

of the Attorneys-at-Law of both parties, paragraph 14(a) of the answer was amended in open court by deleting the word “Plaintiff” and substituting the word “Defendant”. The amendment was duly initialled by the Attorney-at-Law for the Defendant and remains visible on the face of the answer. Following the amendment, paragraph 14(a) of the answer stated that, by virtue of Deed No. 2605 dated 27.09.1967 attested by Ben Samarasinghe, Notary Public, the Defendant was the owner of the land described in the First Schedule to the plaint.

The proceedings of the same day further disclose that, immediately thereafter, the Attorney-at-Law for the Plaintiff amended paragraph 16 of the replication. Prior to the amendment made to paragraph 14(a) of the answer, paragraph 16 of the replication accepted paragraph 14(a) of the answer. Following the amendment to paragraph 14(a), paragraph 16 of the replication was correspondingly amended to state that the Plaintiff denies the contents of paragraph 14(a) of the answer. After the said amendment was made in open court on the original case record, the Attorney-at-Law of the Plaintiff initialled the original replication. Thus, the pleadings were brought into conformity with the position that the Defendant, and not the Plaintiff, claimed title to the land described in the First Schedule to the plaint.

What happened was that, although paragraph 14(a) of the answer and paragraph 16 of the replication were amended in open court, the fourth admission previously recorded was not correspondingly amended. Through oversight, that omission escaped the attention of both parties and the Court.

It is therefore abundantly clear that, at the conclusion of the amendments effected in open court, there was no admission by the Defendant that the Plaintiff was the owner of the land described in the First Schedule to the plaint. The learned District Judge, when writing the judgment, has overlooked the amendments duly effected to the pleadings and proceeded on the mistaken assumption that the Defendant had

admitted the Plaintiff's title to the land described in the First Schedule to the plaint.

The Defendant cannot be made to suffer by reason of an inadvertent failure on the part of the trial Judge to take into account amendments duly made and recorded in the proceedings. The succeeding District Judge appreciated the true position and recalled the writ of execution on the basis that the permission granted to execute the writ was *per incuriam*. The High Court of Civil Appeal, in turn, affirmed that order stating *inter alia* that “*I am unable to think of any better situation where the court should invoke its inherent powers to correct an injustice that would have otherwise occasioned to the Defendant.*”

The next question is whether the order of the learned District Judge dated 22.06.2018 and the judgment of the High Court of Civil Appeal dated 10.06.2020 affirming that order are correct in law and whether those courts possessed jurisdiction to make such orders.

The general principle is that, once a judgment or final order has been delivered, the Court becomes *functus officio* in respect of that matter and cannot revisit the merits of its own decision merely because it subsequently takes the view that the decision was wrong. Were it otherwise, there would be no finality to litigation and no certainty in judicial determinations, thereby undermining the due administration of justice. Errors of law or fact are ordinarily corrected by a superior court exercising appellate or revisionary jurisdiction.

However, there are exceptions to this general principle.

One such exception is the *per incuriam* rule relied upon by the learned District Judge. Traditionally, following the dicta of Lord Goddard C.J. in *Huddersfield Police Authority v. Watson* [1947] 2 All ER 193 at 196, the expression *per incuriam* denotes a decision rendered in ignorance of a statutory provision or a binding judicial precedent which, had it been considered, would have led to a different conclusion. It is important to

bear in mind that a decision reached after consideration of the relevant statutory provisions and binding authorities cannot be characterised as *per incuriam* merely because a later court disagrees with the interpretation of the law or the reasoning by which the conclusion was reached.

In addition to the traditional categories of ignorance of a statutory provision and ignorance of a binding judicial precedent, courts have recognised that the *per incuriam* rule may also extend to cases where a decision is founded upon a manifest and obvious mistake of fact arising from oversight, inadvertence or want of care, as opposed to an error in the evaluation of evidence.

As an illustration, in *Gunasena v. Bandaratilleke* [2000] 1 Sri L.R. 292, the Court of Appeal mistakenly treated the plaintiff-appellant as the defendant-respondent and, as a consequence, dismissed the appeal although the reasoning of the judgment clearly supported allowing it. After the error was brought to its attention, the Court of Appeal recalled the record, set aside the judgment on the ground that it had been delivered *per incuriam*, reheard the matter and delivered a fresh judgment allowing the appeal. The Supreme Court affirmed that course of action, holding that a court possesses an inherent power to repair an injury caused to a litigant by its own mistake, notwithstanding that judgment and decree had already been entered. The Court further recognised that the concept of *per incuriam* is not confined to decisions rendered in ignorance of a statute or binding precedent, but may extend to decisions resulting from an obvious mistake caused by oversight, inadvertence or want of care. In that context, Wijetunga J., with whom Mark Fernando J. and Gunasekera J. agreed, observed at page 302:

Having regard to the above definitions and the many instances where the Court has held that it has acted per incuriam in situations which do not come within Lord Goddard's definition, I think the facts and circumstances of the instant case may well be regarded as

coming within the broader parameters of the concept of per incuriam. Even otherwise, as the earlier judgment contained a manifest error, the Court of Appeal had inherent power to correct the same, in order that a party did not suffer by reason of a lapse on the part of the Court. The procedure adopted by the Court of Appeal was what it considered most appropriate in the circumstances.

In *Kariyawasam v. Priyadharshani* [2004] 1 Sri L.R. 189, the Court of Appeal was called upon, more than one and a half years after its judgment had been delivered, to correct a crucial finding contained in that judgment. The earlier judgment had proceeded on the basis that the predecessor in title of the plaintiff had not been allotted any share under a partition decree and therefore could not have conveyed any title to the plaintiff's predecessors in title. Subsequently, it was brought to the attention of the Court that, whilst the first page of the final decree appeared to support that conclusion, the second page of the very same decree disclosed that an application made by the said predecessor in title to have certain shares allotted to him had in fact been allowed. Thus, the earlier finding had resulted from the Court's attention not having been drawn to a material part of the decree which was already before Court.

A differently constituted bench of the Court of Appeal held that the finding in the earlier judgment had been made "by an oversight and/or by inadvertence" and that "the error in the judgment has been made *per incuriam*". Accordingly, the Court vacated the earlier judgment and decree and directed that the appeal be heard afresh.

The principle emerging from the above decisions is that where a court has reached a decision on the basis of a mistaken understanding of the facts arising from oversight or inadvertence, particularly where the material giving rise to the mistake was already part of the record, and where the error is manifest and would occasion injustice if left uncorrected, the court is not powerless to remedy the situation.

The present case is a striking example. The learned District Judge who delivered the judgment dated 06.02.2014 overlooked amendments duly effected to the answer and the replication and proceeded on the mistaken assumption that the Defendant had admitted the Plaintiff's title to the land described in the First Schedule to the plaint. The finding regarding the Plaintiff's title was therefore founded upon a factual premise which had ceased to exist by reason of the amendments made in open court. The order permitting execution, having been founded upon that erroneous premise, could have been corrected on the basis that it had been made *per incuriam*.

However, I must emphasise that there are clearer and more appropriate legal avenues for correcting errors of this nature than relying on *per incuriam* rule.

Section 189 of the Civil Procedure Code expressly provides that the Court may, at any time, either of its own motion or on the application of a party, correct any clerical or arithmetical mistake in any judgment or order, any error arising from an accidental slip or omission, or make any amendment necessary to bring a decree into conformity with the judgment. The section reflects the broader principle that clerical mistakes and accidental omissions should not be permitted to defeat justice. The present case demonstrates the importance of that principle, for the decree entered by the Plaintiff was inconsistent with the true effect of the judgment.

The matter may also be viewed through the well-known maxim *actus curiae neminem gravabit* — an act of the Court shall prejudice no person. The underlying objective of that principle is to ensure that a litigant does not suffer, or secure an unjust advantage, solely because of a mistake committed by the Court. The process of the Court exists to administer justice, not to perpetuate obvious errors. Where a manifest mistake of the Court has the potential to occasion injustice, the Court possesses both the power and the duty to correct it.

The Court may also exercise its inherent jurisdiction preserved by section 839 of the Civil Procedure Code to prevent an abuse of its process, avert a serious injustice, and remedy an obvious wrong where no other adequate remedy is available. This principle was explained with considerable clarity in *Seneviratne v. Abeykoon* [1986] 1 Sri LR 1. In that case, the Plaintiff landlord whose action for ejectment of the Defendant tenant had failed and whose appeal was pending forcibly dispossessed the Defendant tenant and installed another person in possession. Although the Civil Procedure Code contained no express provision enabling the Court to restore possession in those circumstances, as there was no executable decree to issue writ restoring the Defendant to possession, the Court invoked its inherent jurisdiction under section 839 and restored the tenant to possession. Upholding that course of action, the Supreme Court held that where an extraordinary situation has arisen for which no express provision has been made in the Code, the Court is entitled to exercise its inherent powers to restore the *status quo ante*, prevent abuse of its process, and meet the ends of justice. The principle underlying that decision is that a Court is not powerless in the face of an obvious injustice merely because the precise situation confronting it has not been expressly provided for by statute. In these circumstances, the District Court was fully entitled to invoke its inherent jurisdiction under section 839 of the Civil Procedure Code to prevent an abuse of its process and avert a serious injustice.

The principle of finality in litigation is important. However, finality cannot be achieved by perpetuating a manifest error apparent on the face of the record. A court should not permit a litigant to suffer by reason of its own mistake and, as a general rule, should correct such obvious errors by itself. Whether the correction of such an error falls within the jurisdiction of the court that committed it or is a matter for an appellate court depends upon the nature of the error and the circumstances of the particular case.

For all these reasons, I am of the view that the learned District Judge acted within jurisdiction in recalling the writ of execution and that the High Court correctly affirmed that order.

Leave to appeal has been granted by a previous bench on the following questions of law:

- (1) Whether the High Court and the District Court erred in law by failing to understand the judgment of the District Court as a whole?
- (2) Whether the Plaintiff could have had a decree entered in his favour without making an application to the District Court in terms of section 189 of the Civil Procedure Code when the judgment had expressly stated that the Plaintiff's action was dismissed?

I answer both questions in the negative. On the facts and circumstances of this case, the Plaintiff could not have had a decree entered in his favour and execute the writ to eject the Defendant from any land described in the schedule to the plaint.

For all the aforesaid reasons, I affirm the order of the District Judge dated 22.06.2018, the judgment of the High Court of Civil Appeal of Colombo dated 10.06.2020 and dismiss this appeal with costs in all three courts.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court

K.M.G.H. Kulatunga, J.

I agree.

Judge of the Supreme Court