SIVAPATHALINGAM
v.
SIVASUBRAMANIAM

SUPREME COURT.
FERNANDO, J., DHEERARATNE, J. AND GOONEWARDENE, A. J.
S. C. APPEAL No. 31/89 - S. C. SPECIAL L. A. No. 75/89 - C. A. APPLICATION No. 376/89
JANUARY 23, 24 AND 25, 1990.

Injunction under Article 143 of the Constitution - Wrongful dispossession under injunction - Suspension of injunction - Inherent power of Court to correct its errors resulting in wrongs to a suitor.

On the application of the petitioner-appellant Sivapathalingam, the Court of Appeal on 26.5.88 issued an injunction under Article 143 of the Constitution valid until the petitioner is able to file an action in the D. C. Jaffna or for six months in the first instance whichever is earlier, restraining the respondents from preventing the petitioner from entering the land described in the Schedule. On 29.6.1989 the Court of Appeal stayed the operation of the injunction granted by it upon an *ex parte* application by the respondent. The respondent claimed he was in lawful possession of the land on an indenture of lease but the petitioner had him ejected upon obtaining the injunction and on entering into possession demolished the parapet wall and gate on the East which had been in existence prior to August, 1988. Upon the suspension of the injunction, the petitioner-appellant filed papers complaining against the suspension without notice to him. On 25 July, 1989 the Court of Appeal heard argument and on 5th September, 1989 dissolved and discharged the injunction. It was the injunction issued by the Court of Appeal that brought about the dispossession of the respondent and placing in possession of the appellant.

Held :

(1) A Superior Court has jurisdiction in the exercise of its inherent power to direct a Court inferior to it to remedy an injury done by its act.

(2) Therefore when the injunction issued by the Court of Appeal on 26.5.1989 was dissolved it was competent for the Court to direct that the appellant who had obtained

possession of the property on the strength of the injunction by displacing the respondent, be in turn displaced and possession handed back to the respondent.

(3) This power, an aspect of the Court's inherent power, could have been exercised on the day on which judgment was delivered on 5th September, 1989 or as was done in this case on 27th October, 1989.

(4) A Court whose act has caused injury to a suitor has an inherent power to make restitution. This power is exercisable by a Court of original jurisdiction as well as by a Superior Court.

Cases referred to :

(1) *Mohamado v. Ibrahim 2 NLR 36.*
(2) *Buddhadasa v. Nadarajah 56 NLR 537.*
(3) *Sundaralingam v. Attorney-General and Others 75 NLR 318.*
(4) *Asiriwathan v. Mudalihamy 35 NLR 28.*
(5) *Roger and Others v. The Comptoir D'Escompte de Paris (1871) LR 3 PC 465.*
(6) *Sirinivasa Thero v. Sudassi Thero 63 NLR 31, 34.*
(7) *Salim v. Santhiya 69 NLR 490.*
(8) *Wickremanayake v. Simon Appu 76 NLR 166.*
(9) *Perera v. The Commissioner of National Housing 77 NLR 361*
(10) *Silva v. Amerasinghe 78 NLR 537*
(11) *Mowjood v. Pussedeniya [1987] 2 Sri LR 287, 298*
(12) *Moosajees Ltd. v. Fernando 68 NLR 414, 419*
(13) *Batuwatta Piyaratane Tissa Thero v. Liyanage Noris Jayasinghe SC 39/73 - Supreme Court Minutes of 6.2.1976*
(14) *Petman v. Inspector of Police, Dodangoda 74 NLR 115*
(15) *Ehambaram and Another v. Rajasuriya 34 CLW 65*
(16) *Ganeshanathan v. Vivienne Goonawardene [1984] 2 Sri LR 319*
(17) *Dorasami Ayyar v. Annasamy Ayyar and Others (1899) ILR 23 Madras 306*

APPEAL from judgment of the Court of Appeal.

H. L. de Silva , P. C. with *S. Mahenthiran* for appellant.
Eric Amerasinghe , P. C. with *Tilak W. Goonewardene* and *A. Vinayagamoorthy* for respondent.

Cur. adv. vult.

February 21, 1990.

S. B. GOONAWARDENE, A. J.

This is an appeal, with special leave granted by this Court, against an order of the Court of Appeal made on the 27th October, 1989, subsequent to proceedings had after an invocation of the jurisdiction conferred upon it by Article 143 of the Constitution, the material part of which reads thus :-

> "143. The Court of Appeal shall have the power to grant and issue injunctions to prevent any irremediable mischief which may ensue

before a party making an application for such injunction could prevent the same by bringing an action in any Court of First Instance.....".

The present appellant it was who as petitioner invoked such jurisdiction with papers filed by him on 18th May, 1989, which contained averments to the following effect :- that one S. Parameshwaran was the original owner of the land called Puliyadi Uppukulam Thalaimadam situated in Jaffna in extent 7 lms. V. C. and 8.7/10 kls. and depicted as Lot 2 in survey plan No. 170 of 12.12.61 prepared by S. Ehamparam, Licensed Surveyor (Document marked A) : that the said Parameshwaran by deed of gift No. 12603 of 19.6.1978 donated this property to his daughters Bavani, Ramani and Shamini and his son Kiritharan (Document marked B with translation B1) : that subsequent to such deed of gift the said Parameshwaran and his daughter Bavani by an indenture of lease No. 2917 dated 20.9.81 (Document marked C)purported to lease to the 1st respondent (that is the respondent in this appeal who will hereinafter be referred to as 'the respondent') and to one S. Naguleswaran subject to the covenants and conditions therein contained a divided extent of 2 lms. V. C. on the North of the land shown as Lot 2 in the said Plan marked A; that the said Parameshwaran and Bavani however were not able to place the respondent and the said Naguleswaran in possession of the said land inasmuch as the extent purported to be leased was an undivided extent out of a larger land and as the 2nd respondent in the appellant's application to the Court of Appeal and another person obstructed and prevented the respondent and the said Naguleswaran from entering the land; that since the respondent and the said Naguleswaran were not placed in possession of any portion of the said land they failed and refused to pay the monthly lease rent payable under the indenture of lease marked C and thereafter Parameshwaran and Bavani terminated the lease in terms of clause 12 contained in such indenture of lease; that by Plan No. 835A dated 21.8.88 made by T. Mahenthiran, Licensed Surveyor (Document marked D) Lot 2 in the Plan marked A was subdivided and an extent of 2 lms. V. C. was carved out from the northern side of Lot 2 in Plan No. 1967 (this apparently is an erroneous reference to Plan No. 835A marked D); that the said Bavani and Ramani with their respective husbands and the said Shamini by deed No. 3105 of 16.3.1989 (Document marked E) sold and transferred to three persons, P.

Parameshwaran, P. Yogeswaran and P. Rajeswaran an extent of 3/4th lm. V. C. on the southern side of Lot 2 in the said Plan 835A marked B ; that another portion in extent one half lacham V. C. was sold by the same vendors on deed No. 3125 dated 2.4.1989 (Document marked F) to the appellant with title to the balance 3/4 lm. remaining in the hands of such vendors and that the respondent acting jointly and in concert with the 2nd respondent the occupier of Lot 1 in the said Plan No. 170 marked A forcibly and wrongfully erected a wall along the Eastern boundary of Lot 2 in the said plan 835A marked D and installed a gate thereon and with the assistance of security guards was wrongfully preventing the appellant and the purchasers of the remaining portion of the land and the other co-owners from entering the said Lot 2 in plan No. 835A marked D.

Upon the basis that such conduct was wrongful and unlawful and amounted to a violation of the appellant's rights as an owner of a portion of the said land, that a cause of action had therefore accrued to him to obtain a declaration of his rights, the appellant sought from the Court of Appeal an injunction in the following terms :-

> " That Your Lordship's Court be pleased to grant and issue an injunction in terms of Article 143 of the Constitution, valid until the petitioner is able to bring an action in the District Court of Jaffna, or for six months in the first instance, whichever is earlier, restraining the respondents from preventing the petitioner from entering the said land described in the schedule hereto and from ejecting the petitioner therefrom and from constructing any buildings thereon or damaging the premises".

The jurisdiction of the Court of Appeal given to it by Article 143 of the Constitution was invoked on the basis that for about two years the District Court of Jaffna, being the Court of competent jurisdiction had not been functioning, thus preventing the appellant from filing an action and obtaining his relief by way of an injunction from that Court.

Since the relief asked for from the Court of Appeal was with respect to the property described in the schedule to the petition of the petitioner the appellant, it is convenient at this point to make reference to the description of such property as contained in such schedule but before doing that the observation must be made that the description adopted while being

materially different from that in the appellant's title deed marked F is far from helpful in making a clear and precise identification of the area of property in respect of which this injunction was sought. The schedule, adopting as far as possible the words used, reads roughly thus :

> "The land situated at ..... in extent 7 lms. V. C. and 8.7 kls. depicted as lot 2 in Plan No. 179 dated 12.12.71 made by S. Ehamparam Licensed Surveyor.....Out of this a divided and defined extent of 2 lms. V. C. on the north which divided and defined portion is bounded on the east by..... north by .....west by .....and south by .....out of the whole land herein contained within these boundaries an undivided extent of 3/4th lm. V. C. or 13 1/2 kls. On the southern side .....The said extent of 2 lms. V. C. is now depicted as Lot 2 in plan No. 835A dated 21.8.88 made by T. Mahendiran Licensed Surveyor".

Upon these papers filed by the petitioner the Court of Appeal having heard Counsel on 26.5.88 issued an injunction in the terms prayed for as set out above.

I would pause in the narrative of events to say at this point that there is good ground for saying as was strongly contended before us by Counsel for the respondent that this injunction should not have issued in the first place. Apart from the fact that the attendant circumstances as shown on the papers filed did not indicate any "irremediable mischief" there was another matter which I see at a glance which the Court of Appeal perhaps missed which should have made it hesitate to grant such injunction.

Upon my understanding of the schedule to the petition which I have already referred to as not being consistent with the appellant's title deed 'F' the injunction issued was with respect to an extent of 3/4 lm, V. C. or 13 1/2 kls., whereas the appellant-petitioner's title as claimed by him on such document F was with respect to one half lacham V. C. only.

To resume the narrative of events, on 29th June, 1989 the Court of Appeal had stayed the operation of the injunction granted by it upon an *ex parte* application made by the respondent. The papers for that purpose, or more correctly for the purpose of securing a discharge of the

injunction issued, had been filed on 19th June, 1989. Such papers contained averments to the following effect : that the respondent upon the authority of the subsisting indenture of lease in his favour was in lawful possession of the property until he was ejected soon after 26th May, 1989 by the appellant on the strength of the Interim Injunction issued by the Court of Appeal; that the appellant entered the entire land described in the schedule to his petition after demolishing the parapet wall and gate on the East which had been in existence prior to August 1988 the effect of which was that he had been subjected to an execution process by which he was physically dispossessed of 3/4 Im. V. C. ; that the lessors to him were the plaintiffs in the District Court of Jaffna in case No. L/1792 wherein he was made a necessary party the plaint in which demonstrates that he had been put in possession of what was leased to him (Document marked Y) ; that he the respondent himself as plaintiff filed case No. L/1765 in the District Court of Jaffna in respect of the same property against the same defendant as in the earlier case L/1792 and obtained an enjoining order from Court (Document P4) ; that both cases were settled in or about 1987 by the respondent subleasing to the defendant in these cases a portion of the property leased to him (the respondent) exercising an authority to sublease granted to him by the indenture to issue in his favour marked C; that Plan No. 835A produced by the petitioner-appellant marked D was a fabricated document as evidenced by an affidavit (Document marked P6) affirmed to by Surveyor J. Mahendiram who purportedly was the one who prepared such plan to the effect that he never did so and that the true plan prepared by him bearing No. 835 and bearing the date 21st August, 1988 was as reflected on a copy thereof produced marked K and that in propounding plan No. 835A before the Court as a genuine document upon which the injunction was granted a fraud was practised on the Court which had the effect of vitiating all proceedings.

The respondent in the result asked that the injunction issued by the Court be dissolved and discharged. Of importance to note here is that the respondent sought the additional relief of a declaration of his right to resume and remain in possession of the property from which he had been evicted by the injunction issued by the Court of Appeal till such time as he might be evicted therefrom on an order of the District Court of Jaffna in the action proposed to be filed by the petitioner-appellant; and for that

purpose he asked the Court to cause eviction of all persons who had taken possession of the property on or after the 26th May, 1989 including the petitioner-appellant, his servants, agents, dependants and all persons claiming rights under him.

Upon the suspension of the injunction the appellant filed a statement of objections dated 21st July, 1989 complaining of such suspension upon an order made without notice to him.

On the 25th July, 1989 the matter had been considered by the Court of Appeal subsequent to which judgment was delivered dissolving and discharging the injunction which the Court had issued. As I understand the judgment of the Court of Appeal it seems that it came to the conclusion that the issue of the injunction was based upon the assertion of the appellant that the respondent was not in possession lawfully upon the lease in his favour and that acting upon such assertion as the Court did, resulted, as the papers filed by the respondent showed, in a premature and not accurate pre judgment that enabled the appellant to take possession of the property even before there was a proper adjudication upon the issues between the parties. There was no appeal taken against this judgment by either party. Whatever the reasons were that commended themselves to the Court of Appeal discharging the interim injunction there was I think at least one valid reason justifying that order and that was the reason I referred to earlier as supporting the view that the injunction should not perhaps have been issued in the first place.

On the 22nd September, 1989 the Attorney-at-law for the respondent moved the Court of Appeal by way of motion to have possession of the property restored to the respondent and drew attention to the reliefs claimed in his petition dated 19th June, 1969. In consequence, the Court of Appeal made order on 27th October, 1989 that the respondent be restored to possession of the land and that the appellant and all persons who came into possession on or after 26th May, 1989 by reason of the injunction should give up possession. The basis upon which that relief was granted was that with the discharge of the injunction the *status quo ante* had to be restored. It is that order which constitutes the subject matter of the present appeal.

Learned Counsel for the appellant did not as I understood him submit that the Court of Appeal had no jurisdiction to suspend the injunction

issued by it as was done on 29th June, 1989 although he appeared to criticise the propriety of it having been done behind the back of the appellant as it was without notice to him. Counsel also if I understood him correctly did not contend that the Court of Appeal could not in law set aside the injunction as it did on 5th September, 1989. While making the comment that in principle it seems right to say that a Court issuing an injunction (in the instant case a superior Court) must also have the authority to suspend or revoke it, the question for present purposes is only of academic interest in as much as both sides chose to accept the correctness of these orders, not having appealed against them.

The content of the present appeal therefore is whether the Court of Appeal acted within jurisdiction in making its order of 27th October, 1989, to put the respondent back in possession.

It is convenient to first get out of the way the question whether the result of the issue of the injunction was in fact to dispossess the respondent and put the appellant into possession. It would suffice I think, without referring here to all the evidence available to support such a view, to point to the minimum material as would demonstrate with reasonable certainty that this was so. The clearest evidence that the appellant took possession on the strength of the injunction is contained in his admission given in paragraph 4 of his statement of objections of 21st July, 1989 which states thus :- ....."The petitioner-respondent states that he obtained an injunction and took possession as he lawfully might of the extent of land that he purchased.....". The next question is whether in thus taking possession he dispossessed the respondent and it would in that regard suffice to say that the same statement of objections indicates (in paragraph 2 *(a)*) that the respondent had been in occupation of the premises (though said to be illegally) since March 1989. On this question it could also well be said that the implied finding by the Court of Appeal that the lease in favour of the respondent was subsisting and its further finding to the effect that the respondent who was in possession had been dispossessed of the property with the appellant taking possession of the same, findings upon which the order of the Court of Appeal discharging the injunction was based, cannot now be challenged since there was no appeal taken against the relevant order.

The position then being that there is no gainsaying the fact that it was the injunction issued by the Court of Appeal that brought about the dispossession of the respondent and the placing in possession of the appellant I will now proceed to consider the submissions of Counsel for the appellant who vigorously challenged the jurisdiction of the Court of Appeal to reverse that position.

Counsel's primary contention was that the Court of Appeal lacked any jurisdiction whatsoever to displace the appellant and restore possession of the property to the respondent. Counsel's alternative submission was that even if the Court of Appeal did possess some jurisdiction in this respect, whatever jurisdiction it did possess was exhausted with the order it made on the 5th of September, 1989, discharging the injunction and dismissing the petitioner's application thus rendering the Court *functus officio* and incapable of making any further orders thereafter. Counsel was not prepared to concede that there was an inherent power in the Court to act as it did, because to concede that, in my thinking, would have been to concede the correctness of the impugned order. Counsel's argument was that Article 143 of the Constitution gave the Court of Appeal a limited jurisdiction the extent of which must necessarily be confined to what one understands upon a plain reading of this Article. In this connection he referred to a provision in the Courts Ordinance of 1889 namely section 22, which he claimed should be treated as a legislative predecessor of Article 143 and to certain cases decided with respect to such provision the principles stated in which he submitted had application to Article 143 of the Constitution. The first of such cases was that of *Mahamado v. Ibrahim* (1) where Bonser, C.J. said that power of granting injunctions under section 22 of the Courts Ordinance of 1889 was a strictly limited one, to be exercised only on special grounds and in special circumstances where *(a)* irremediable mischief would ensue from the act sought to be restrained; *(b)* an action would lie for an injunction in some Court of original jurisdiction and *(c)* the plaintiff is prevented by some substantial cause from applying to such Court. While commenting that this was a limited power Bonser, C. J. rejected a submission that the Supreme Court had an inherent power to grant injunctions. I find myself unable to agree with Counsel for the appellant that this case is of any assistance in supporting any of the propositions contended for by him. It does not in my view touch the question whether the Supreme Court had an inherent power to restore the *status quo ante* where its act of issuing

an injunction had wrongfully dispossessed the party in possession and put another in his place, Two other cases Counsel referred to in this connection namely *Buddhadasa v. Nadarajah (2)* and *Sundaralingam v. Attorney-General and two Others (3)* did not decide this question either and as I see, can be of no use here. Indeed it seems to me that these cases tend to show that the Court of Appeal should have been cautious in exercising its jurisdiction under Article 143 having regard to the fact that the injunction issued in the instant case had the effect of giving the appellant substantially a good part if not the greater part of the relief which he could have expected to get from the District Court based upon the decision in a properly constituted action.

The other case Counsel referred to was that of *Asiriwathan v. Mudalihamy (4)* which deals with application of the provision of section 777 of the Civil Procedure Code and is once again in my view unhelpful here.

The decision of the Privy Council in the case of *Roger & Others v The Comptoir D'Escompte de Paris (5)* is I think of considerable help in arriving at a decision in the instant case. By the Order in Council made on an appeal to the Privy Council it was ordered that judgment of the Supreme Court of Hongkong of the 3rd June, 1867, should be set aside and that a judgment of non suit should be entered in lieu of the judgment granted for the plaintiff. Before the decision of the Privy Council however the amount of the judgment had been paid at the plaintiffs' demand by the defendants-appellants. After the decision of the Privy Council reached the Supreme Court of Hongkong a motion was made by the defendants in the Supreme Court for a rule for repayment of the amount of the judgment paid by them to the plaintiffs-respondents on their demand to be made, with interest on the sum so paid. The Chief Justice of the Supreme Court of Hongkong however while making order for the repayment of the amount actually paid refused to order interest as asked for, expressing his opinion that no powers vested in the Supreme Court to give interest in this manner. The appellants applied to the Supreme Court for leave to appeal against the order refusing to make a rule for payment of interest and such leave was granted. The appellants however afterwards presented a petition to Her Majesty in Council setting out the facts and praying that Her Majesty in Council refer the appellants-petitioners to the Judical Committee to hear and determine the matter and to order the payment of interest. The Privy Council thereafter taking the

view that there was a miscarriage of justice committed by the Supreme Court of Hongkong in carrying out the Order in Council took up the petition in the form of a supplementary appeal. Lord Cairns in disposing of the appeal expressed the view of the Privy Council that it was in the power and it became the duty of the Court at Hongkong to do everything and to make every order which was fairly and properly consequential upon the reversal of the original judgment by the Privy Council. Whilst stating that the question which the Privy Council had to consider was whether the court at Hongkong had or had not that power to order payment of interest and if so whether in the particular case it was or was not proper to exercise that power, Lord Cairns said thus :-

> "Now their Lordships are of opinion, that one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors, and when the expression "the act of the Court" is used, it does not mean merely the act of the Primary Court, of any intermediate Court of Appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdicton over the matter to the highest Court which finally disposes of the case. It is the duty of the aggregate of these tribunals, if I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court".

The Privy Council held that the Supreme Court of Hongkong in addition to ordering the payment of principal should have on the principle set out above ordered the payment of interest and directed the payment of such interest. This case is authority as I understand it for the proposition that there is an inherent power in the Court not referable to a particular jurisdiction specially given by written law to correct its errors which result in injury to a suitor. I say so for the reason that, as Lord Cairns said, it becomes the duty of the aggregate of all tribunals from the lowest to the highest to take care that an act of the Court does not do injury to a suitor in the course of the whole of the proceedings, the authority wherever redress is made must needs be referable to an inherent power. The Supreme Court of Hongkong could have ordered interest as the Privy Cuncil said it could have, after its jurisdiction had been exhausted and when the case came back from the Privy Council only upon the basis of an inherent power to do so residing in it. This case is also an authority for the proposition that a superior Court has jurisdiction to direct a Court inferior to it to remedy an injury done by its act in the exercise of inherent power and in so far as the instant case is concerned I would say that this Court therefore would have jurisdiction to direct the Court of Appeal to take steps in restitution had it not done that already.

The principle set out in this case was followed by Sansoni, J. (with H. N. G. Fernando J. agreeing) in the case of *Sirinivasa Thero v. Sudassi Thero* (6). The Court there stated that where the Court of first instance acted without jurisdiction in issuing a writ which dispossessed a person of property the person dispossessed was entitled to be restored to possession by that court which has an inherent power and the duty to repair the injury done by this act.

The same thinking was adopted by T. S. Fernando, J. (with Sriskandarajah, J. agreeing) in the case of *Salim v. Santhiya* (7) where the proposition was stated in the form that it is a rule that a Court of Justice will not permit a suitor to suffer by reason of its own wrongful act and that it is under a duty to use its inherent power to repair theinjury done by such act.

In the case of *Wickremanayake v. Simon Appu (8)* H. N. G. Fernando, C. J. (with Deheragoda, J. aggreeing) expressed agreement with this principle in the following words: "Justice therefore requires that the plaintiff, who had been placed in possession in execution of a decree which had turned out to be invalid, should no longer be allowed to continue in possession of the land". The facts pertaining to this case were briefly thus : This court had on 21st November, 1967, set aside the judgment of the District Judge based upon which the plaintiff had taken possession of the property in question. This court however did not direct that possession of such property should be restored to the defendants when it allowed the appeal. Upon the case going back to the District Court the District Judge refused to restore possession to the defendants who had been dispossessed upon the decree set aside. On an interlocutory appeal taken against such refusal this court on 19th July, 1972 (over four years later) allowed such appeal and entered an order for the delivery of possession of the property to the defendants and for the ejectment of the plaintiff.

The case of *Perera v. The Commissioner of National Housing (9)* was one which came up for consideration before three Judges. It was established there that a writ of possession issued by the Court of Requests was based upon a judgment entered against the defendant without service of summons upon her, where that had happened due to the fraud of the Court's own official namely the Fiscal's officer. Tennekoon, C. J., (with Tittawela, J. and Walpita, J. agreeing) at page 363 said "It seems to me that the inherent powers of the court are wide enough to have enabled the Court (The Court of Requests) to order the plaintiff in

that case to vacate the premises and to restore possession to the 3rd respondent (the defendent in that case in the Court of Requests) so that the *status quo ante* the institution of the action in the Court of Requests might have been restored and the action which had now been reinstated might proceed meaningfully. See in this connection the case of *Sirinivasa Thero v. Sudassi Thero (6)*. Tennekoon, C. J. was of the view that the Court of Requests had jurisdiction to enable it to order the plaintiff to vacate the premises and to restore possession to the defendant so that the *status quo ante* the institution of the action in the Court of Requests might have been restored. By a parity of reasoning and using some of Tennekoon, C. J.'s words in the instant case it seems to me that the Court of Appeal when it discharged the injunction had an inherent power to enable it to order the appellant to vacate the premises and restore possession thereof to the respondent so that the *status quo ante* the institution of proceedings in the Court of Appeal under Article 143 might be restored after which an action could be instituted in the District Court which could thereafter proceed meaningfully.

The case of *Silva v. Amerasinghe (10)* was again one which came up before three Judges. Vythialingam, J. (with Malcolm Perera, J. and Ismail, J. agreeing) dealt with a situation where a writ had been issued wrongly on the strength of a decree entered, based upon a settlement effected before a Conciliation Board. It was held that the writ had been wrongly issued and the question then was whether the court had the power to restore the judgment debtor to possession pending a fresh inquiry into an application to execute as a decree of court the agreement reached before the Conciliation Board. In holding that the judgment debtor should be so restored Vythialingam, J. cited with approval the judgment in *Sirinivasa Thero v. Sudassi Thero* (supra) and *Wickramanayake v. Simon Appu* (supra).

Coming to more recent times Sharvananda, C. J. in the case of *Mowjood v. Pussadeniya (11)* said thus :-

> "In as much as the court acted without jurisdiction in issuing the writ, the appellant who was dispossesssed of the premises in suit in consequence of the execution of the writ is entitled to be restored to possession *(Sirinivasa Thero v. Sudassi Thero)*. Hence I direct the District Court to restore the appellant to vacant possession of the premises .....".

It is interesting to note that the Superior Courts have sometimes taken the view that they have an inherent power even to correct errors in their

judgments. If these courts have that jurisdiction I find it difficult to say that they have no jurisdiction to set things right where their acts have caused injury to suitors.

In the case of *Moosajees Ltd. v. Fernando (12)* H. N. G. Fernando, S. P. J. at page 419 stated thus :-

> "This court has also exercised an inherent power to correct error in a judgment which has occurred *per incuriam.* I doubt whether this power is exercisable only by the Judge who had pronounced the judgment ; for if so, there would be no means of correcting even a manifest clerical error discovered in a judgment after the death or retirement of the judge who pronounced it".

The case of *Batuwatta Piyaratane TissaThero v. Liyanage Noris Jayasinghe (13)* was decided in appeal by Pathirana, J. and Ratwatte, J . on the 6th of February, 1976 with the appeal being allowed. On 6th April, 1976, the respondent filed a motion inviting the court to rectify an error that had arisen in the judgment. Upon that application Pathirana, J. held thus :-

> "It is not always that this court is confronted with a situation like in the present case where there is a manifest error committed by this court which had been brought to its notice in respect of a judgment of this Court.....Weeramantry, J. in *Petman v. Inspector of Police , Dodangoda (14)* has observed that :-
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> "This court would no doubt be extremely hesitant and cautious before it makes any order in revision which is contrary to an order which this court itself has made upon appeal, but there would appear to be precedent for orders of this court where the original order is based upon a manifest error".

He took the view that where there is a manifest and obvious error of fact based on an important item of evidence not having been brought to the notice of court at the hearing of the appeal relief would be granted in such a case. In *Ehambaram and Another v. Rajasuriya (15)* Nagalingam, A. J. although in the particular case he refused to interfere by way of revision, made the following observations : It is true that this court has, acting in revision, modified or even vacated judgments pronounced by it on appeal when appraised of the circumstances that the court had erred in regard to an obvious

question of fact or of law; and one may go so far as to say that those are cases where, an error being pointed out the court without wanting to hear arguments would *ex mero motu* proceed to set the error right".

On the basis that there was a manifest or obvious error of fact in its judgment, acting in revision the court quashed its earlier judgment of 6th February, 1978, and dismissed the appeal.

However a somewhat narrower view appears to have been taken by this court in the case of *Ganeshanadan v. Vivienne Goonewardene (16)* where the majority held that this court has no jurisdiction to act in revision of cases decided by itself. Nevertheless the court went on to hold that as a superior court of record it has inherent powers "to make corrections to meet the ends of justice" and that those powers have been used "to correct errors which were demonstrably and manifestly wrong and where it was necessary in the interests of Justice to put matters right" (at p.329).

The authorities undoubtedly make clear that a court whose act has caused injury to a suitor has an inherent power to make restitution. That power I am of the view is exercisable by a court of original jurisdiction as the cases show and in the case of a superior court such as the Court of Appeal there can be no doubt whatever that that power is exercisable in that way. Therefore when the injunction issued by the Court of Appeal on the 26th of May, 1989, was dissolved on 5th September, 1989, it was competent for the court to direct that the appellant who had obtained possession of the property on the strength of the injunction by displacing the respondent, be in turn displaced and possession handed back to the respondent and there can be no doubt that that power, an aspect of the court's inherent power, could have been exercised on the day on which judgment was delivered on the 5th September, 1989, or as was done in this case on the 27th October, 1989, which was subsequently. It is the duty of the courts and it is in their interests to ensure that public confidence in them and in the orders and judgment made by them is maintained and remains undamaged. If an order of the Court, which ultimately has standing behind it the coercive power of the State, causes damage without justification, it becomes the duty of the Court itself to undo that damage if for no other reason, at least in the interest of the credibility of the courts as an institution. I would therefore affirm that the Court of Appeal acted within jurisdiction in making the order it did on 27th October, 1989, to restore the respondent to possession of the property as being an order made within jurisdiction and also a correct order following upon its earlier order of 5th September, 1989, discharging the injunction issued by it.

Another question requires to be referred to and in that connection it is apposite to mention the principle set down in the case of *Doraisami Ayyar v. Annasamy Ayyar and Others (17)*. It was held there that the principle of the doctrine of restitution is that on the reversal of a judgment the law raises an obligation on the part of the party to the record who received the benefit of the erroneous judgment to make restitution to the other party for what he has lost and that it is the duty of the Court to enforce that obligation unless it could be shown that restitution would clearly be contrary to the real justice of the case. Subramaniam Ayyar, J, said in this connection : "On the contrary he is out of possession only because the court has wrongfully put him out and whosoever is in, is there only because the Court has wrongfully made room for him to get in". Counsel for the respondent used this passage in support of his contention that the appellant and all others who entered the premises consequent upon the injunction issued by the Court which made room for them to get in, must be made to get out, I am of the view that the order of the Court of Appeal secures this result which I myself think must necessarily follow the discharge of the injunction. The Court of Appeal has stated that the petitioner (the present appellant) must give up possession of the property which he has obtained by reason of the injunction and that therefore he and all other persons who have taken possession of it on or after the 26th May, 1989, by reason of the injunction must be removed and that the respondents must be restored to possession and remain in possession until the District Court of Jaffna adjudicate upon the matter in an action proposed to be filed by the Appellant. While affirming that order I would direct that the Court of Appeal take steps to give effect to it and to restore the respondent to possession of all that he was dispossessed of by the injunction issued by the Court of Appeal.

One further matter requires attention. As I have already pointed out the petitioner produced with his papers a copy of a plan bearing No. 835A purportedly prepared by T. Mahendiran Licensed Surveyor marked "D". The surveyor in his affidavit marked P6 has stated that he had not prepared a plan bearing No. 835A dated 21st August, 1988, and that what had been produced by the appellant marked "D" was a fabricated document. Upon an examination of the papers filed however I observe that the vendors to the appellant by deed No. 3125 of 2.4.1989 (Document F) had purported to transfer certain interests in this property by reference to the impugned Plan No. 835 A of 21.8.88 which is

specifically referred to in the schedule to that deed. They are also said to have transferred to three persons upon deed No.3105 dated 16.3.1989 (Document E) an undivided extent of 3/4 lm. on the southern side of Lot 2 in the impugned plan No. 835A, but inasmuch as the full document A has not been briefed it is not possible to verify whether there is a reference to that plan in the schedule to that deed. One of such vendors had also by deed No. 4312 of 15.2.89 (document P7 and translation P7 T) purported to convey another portion of this property by reference to plan No. 835 made by T. Mahendiran, Licensed Surveyor which the latter in his affidavit refers to as the authentic plan made by him a copy of which he has produced marked P6. It would appear therefore that these seemingly incompatible documents suggest an attempt to mislead the Court and to practice a fraud on it.

The appeal is dismissed with costs.

FERNANDO, J. - I agree.

DHEERARATNE, J. - I agree.

Appeal dismissed.