

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

In the matter of an application for Restitution,
in the nature of *Restitutio-In-Integrum* under
and in terms of Article 138 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.

Court of Appeal

Case No: RII/0011/2020

DC Balapitiya

Case No: 3811/P

Wickrama Padma De Soysa, Kalupe,
Medagoda, Hikkaduwa.

Plaintiff

VS

01. Wickrama Samara De Soysa,
“Mahinda”
Egoda duwa,
Hikkaduwa.
02. Lalani Jayasuriya,
B35, Muwangala, Jagurana.
03. Wickrama Banduwathie De Soysa,
Kalupe, Hikkaduwa.
04. Wickrama Chitra De Soysa,
Kandalama, Meerigama.
05. Wickrama Rathnasiri De Soysa,
“Wasana” Medagoda, Kalupe,
Hikkaduwa.
06. Duglas Chandrasiri De Soysa,
B12G8, Zoysapura Flats,
Zoysapura, Moratuwa.
07. Wickrama Nandanasiri De Soysa,
Iron Works, Near the Police Station,
Padiyathalawa.

At present: “Madura” Near Sarwodaya,
Padiyathalawa.

08. Wickrama Anusha Iroshanee Soysa,
Seewali Road,
Malwaththa, Nittambuwa.
09. Wickrama Anuthhara Maheshani,
Hingurana, Ampara.
10. Wickrama Iroshan Lakpriya
Soysa, Pananwila, Delgoda.
11. Kankani Sunil Gunawardane,
Kalupe, Hikkaduwa

Defendants

AND BETWEEN

Saaru Karunawathie,
No. 115/18/1, Makewita, Ja-Ela.

Petitioner

VS

Wickrema Padma De Soysa, Kalupe,
Medagoda, Hikkaduwa.

Plaintiff-Respondent

VS

01. Wickrama Samara De Soysa
“Wasana” Medagoda, Kalupe,
Hikkaduwa.
02. Lalani Jayasuriya,
B35, Muwangala, Jagurana.
03. Wickrama Banduwathie De Soysa,
Kalupe, Hikkaduwa.
04. Wickrama Chitra De Soysa,

Kandalama, Meerigama.

05. Wickrama Rathnasiri De Soysa,
“Wasana” Medagoda, Kalupe,
Hikkaduwa.

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B12G8, Zoysapura Flats,
Zoysapura, Moratuwa.

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Iron Works, Near the Police Station,
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At present: “Madura” Near
Sarwodaya, Padiyathalawa.

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Seewali Road,
Malwaththa, Nittambuwa.

09. Wickrama Anuthhara Maheshani,
Hingurana, Ampara.

10. Wickrama Iroshan Lakpriya Soysa,
Panawila, Delgoda.

11. Kankani Sunil Gunawardane,
Kalupe, Hikkaduwa

Defendant-Respondents

Before : R. Gurusinghe J
 &
 M.C.B.S. Morais J

Counsel : M.D.J. Bandara
for the Petitioner

M.C.K. Perera with M.D.R.P. Maddumage
For the 11th Defendant-Respondent

Supported on : 04-03-2025

Decided on : 29-05-2025

Judgment

R. Gurusinghe

The petitioner by an amended petition dated 09-02-2021 seeks *inter alia* to vary and/or set aside the judgment and interlocutory decree dated 15-02-2010 and the order dated 23-05-2014 and all the proceedings of the District Court of Balapitiya Case No. 3811/P, permit the petitioner to intervene in the above case, make an appropriate order allotting the undivided 1/4th and 1/24th shares to the legal heirs of late Saaru Piyasena.

The basis of the petitioner's application is that the undivided 1/4th and the undivided 1/24th shares of the land sought to be partitioned in the partition action no. 3811/P, in the District Court of Balapitiya were owned by her father, Saaru Piyasena. That action was proceeded without making Saaru Piyasena's heirs, parties to the action. Learned District Judge allocated the rights of Saaru Piyasena to the 11th defendant respondent.

The documents and the evidence revealed that one Wickrama Martin De Soysa sold a 1/4th share of the land called Moonamalgahawaththa to Saaru Piyasena by deed no. 4301 dated 30-08-1962 attested by Hewamana Gilbert Hewawitharana, Notary Public. That deed was registered at Division 3, Volume 372, and folio 194 at the Balapitiya Lands Registry.

Saaru Piyasena transferred the undivided 1/4th and 1/24th share to the 11th defendant by deed No. 512 dated 12-12-1988, attested by Ranjani Ekanayake Kalupahana, Notary Public. When this action was taken up for trial, the 11th defendant did not have the deed number. 4301 dated 30-08-1962 attested by Hewamana Gilbert Hewawitharana, Notary Public. However, in his statement, the 11th defendant stated that Saaru Piyasena was the owner of the undivided 1/4th share and 1/24th share of the land. In paragraph 11 of the statement of claim of the 11th defendant, he said that the undivided 1/4th and 1/24th share owned by Saaru Piyasena was transferred to him by deed no. 512 dated 12-12-1988. The parties did not challenge the two deeds referred to above. The petitioner has not challenged Deed No. 512 referred to above.

As described above, Saaru Piyasena had transferred all his rights to the 11th defendant by deed no. 512 dated 12-12-1988. Saaru Piyasena did not have any rights to the land at the time of his death. As a result, the children of Saaru Piyasena will get no rights, and therefore, they are not considered as necessary parties to the action. Even if the petitioner had been made a party to the action, she would not have received any share of the land.

The petitioner was not a party to the partition action. 3811/P. A relief under *Restitutio-in-Integrum* can be sought only by the parties to the action. Even if this application is treated as an application for revision, the petitioner has filed this application to set aside the judgment entered in 2010, after 10 years. The petitioner, has not satisfactorily explained the delay.

The parties have taken up several other objections to the petitioner's application. However, I will not deal with all those objections because the petitioner's application cannot succeed on the merits.

For the reasons stated above, the application of the petitioner is dismissed.

Judge of the Court of Appeal.

M.C.B.S. Morais J.

I agree.

Judge of the Court of Appeal.