

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

In the matter of an application for Revision and/or Restitutio-in-Integrum in terms of Article 138 of the Constitution of the Republic of Sri Lanka.

Banduwadura Chandra Jayanthi Silva
(Deceased)
“ThilanSevana”
Maha Waskaduwa,
Waskaduwa.

PLAINTIFF

CA/RII/59/2023

Yon Mereghghe Siemon Hewage,
Anoma Jayanthi Silva,
No.169/A,
Maha Waskaduwa,
Waskaduwa.

SUBSTITUTED-PLAINTIFF

Vs.

1. Asurumuni Matilda Evelyn Perera,
720, Meshid Road,
Kotahena,
Colombo 13.
2. W. Sarath Premalal – P. Sunil Ananda Lal
De Silva,
No.188/8, Galle Road,
Kuda Waskaduwa,
Waskaduwa.
3. W. Piaysena Silva
4. W. Piyarathna Silva
5. K. Milton Silva
All three together in
Managala, Wallabada
Kuda Waskaduwa,
Waskaduwa.
6. Peththadura Piyasena De Silva,
(Deceased)
Subhuthi Mawatha,
Kuda Waskaduwa,
Waskaduwa.

- 6a. Peththadura Manjula Jinadari De Silva,

No. 18/14, 1st Lane,
Nagoda Road,
Katukurunda,
Kalutara.
7. Angampodi Emalin Nona De Silva
8. Angampodi Evelyn De Silva Jayarathna
9. Angampodi Eugene De Silva Jayarathna
10. Laksmi Gunasena
11. Pathmini Gunarathna
7 to 11 Defendant Residing at:
Swasthika,
Kuda Waskaduwa,
Waskaduwa.
12. Santhaan Devage Silinona,
Waskaduwa,
Kuda Waskaduwa.
13. H. Sunil U. Silva,
Waskaduwa,
Kuda Waskaduwa.
14. Munasingha Nancy Nona,
Shri Ratnajothi Mawatha,
Kuda Waskaduwa,
Waskaduwa.
15. Amaduruwa Lionel Silva (Deceased),
Shri Pragathi Viharaya,
Kuda Waskaduwa,
Waskaduwa.
- 15A. Sikku Arachchilage Misilin Nona,
Kuda Waskaduwa,
Waskaduwa.
16. Angampodi Sasilin Nona,
Waskaduwa,
Kuda Waskaduwa.
17. Angampodi Liondel De Silva,
Wele Pansala Road,
Waskaduwa,
Kuda Waskaduwa.

18. Santhana Devage Bodhin Silva,
Wallabada,
Kuda Waskaduwa,
Waskaduwa.
19. Arumadura Gnanwathi Silva,
Wallabada,
Kuda Waskaduwa,
Waskaduwa.
20. Arumadura Gunawathi Silva,
Wallabada,
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Waskaduwa.
21. Santhana Devagw Bedin Silva,
Shri Subhudi Mawatha,
Kuda Waskaduwa,
Waskaduwa.
22. Nishshanka Mallika De Silva,
No.499/4,
Mahaiyawaththa,
Aggona,
Angoda.
23. Ranmuni Nandadasa,
Jayanthi Mawatha,
Maha Waskaduwa,
Waskaduwa.
24. R. Sirisena,
Kuda Waskaduwa,
Waskaduwa.
25. Asurumuni Matilda Evelyn Perera,
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26. Pilomin Wimala Anthony Kumarihamy,
No.720,
Quarters Surveyor Office,
Diyathalawa.

27. Sandra Iresha De Soysa,
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Badulla Road,
Bandarawela.
28. Indira Kumari De Soysa,
No.250/2,
Badulla Road,
Bandarawela.
29. Malan Conrad De Soysa,
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Bandarawela.
30. Ashok Osmand Cloroid De Soysa,
No.250/2,
Badulla Road,
Bandarawela.

DEFENDANTS

AND NOW

Hewa Fonsekage Prabodhini Jeewika
Fonseka,
No.95A,
Moronthoduwa Road,
Wadduwa.

PETITIONER

Vs.

Banduwadura Chandra Jayanthi Silva
(Deceased),
“Thilan Sevana”,
Maha Waskaduwa,
Waskaduwa.

PLAINTIFF – RESPONDENT

Yon Mereghghe Siemon Hewage Anoma
Jayathi Silva,
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Waskaduwa.

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Shri Ratnajothi Mawatha,
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30.Ashok Osmand Cloroid De Soysa,
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DEFENDANT-RESPONDENTS

AND NOW BETWEEN

Hewa Fonsekage Prabodhini Jeewika
Fonseka,
No.95A,
Moronthoduwa Road,
Wadduwa.

PETITIONER-PETITIONER

Vs.

Banduwadura Chandra Jayanthi Silva
(Deceased),
“Thilan Sevana”,
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Waskaduwa.

**PLAINTIFF-RESPONDENT-
RESPONDENT**

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**DEFENDANT-RESPONDENTS-
RESPONDENTS**

Before: R. Gurusinghe J.

&

Dr. S. Premachandra J.

Counsel: J. M. Wijebandara with Dimithri Pandiwita instructed by Nadeeja Dias for the Petitioner.

Shaminda Wickramasinghe instructed by Uthpala Senarathna for the Substituted-Plaintiff-Respondent.

Written Submissions: 18/07/2025

Argued On: 04/07/2025.

Judgment On: 05/08/2025.

Dr. Sumudu Premachandra J.

1] The Petitioner seeks that this Court decides important matters relating to Case No. 6888/P of the District Court of Kalutara, restore her title and possession to the land, acting under the revisionary jurisdiction and/or restitutio-in-integrum and setting aside of the judgment dated 28.09.2017, interlocutory decree of 11.05.2018, and final decree of 10.03.2021. Alternatively, the Petitioner requests the exclusion of Lot 6 (Lot F in the final plan) from the partition corpus.

2] The Petitioner states that she purchased the subject land in 2014 from David Andrew Foster and Debra May Foster via Deed No. 6416, supported by relevant plans and extracts confirming clear title. No *lis pendens* was found during the registry search, and she has since maintained peaceful possession, evidenced by photographs and a Grama Niladhari letter. In July 2019, she was alerted to a final decree in a partition case that included her land—a matter she had no prior knowledge of. Her seller, Ranmuni Nandadasa De Silva, was later added as the 23rd Defendant in the partition case.

3] The Petitioner, in her petition, highlights several substantive and procedural irregularities in Case No. 6888/P, including misidentification of the corpus, discrepancies in land extent, failure to conduct a proper investigation of tile, and failure to superimpose.

4] The Petitioner has drawn that the deeds submitted in the case did not support the existence of a 4-acre undivided land, and therefore, in the final decree, left portions unallotted, including Lot F, the land that encompasses the Petitioner's property. She said that despite her application to assert rights to Lot F, the learned trial judge rejected her claim. She further asserts that the Learned District Judge failed to exercise inherent powers under Section 839 of the Civil Procedure Code to rectify these errors.

5] The record shows that this case pertains to a partition action initiated in 1999 concerning a land known as 'Kottambagahawatta', originally claimed to be 4 acres, but after the preliminary plan, it was identified as 3 acres and 32 perches. On careful perusal, it is seen that the trial proceeded without proper identification of the corpus, in contravention of Section 18 of the Partition Law. This Court sees that the Court Commissioner who conducted the preliminary survey was not called to testify to clarify the identification of the corpus, nor was it referred to the Surveyor General under section 18 of the Partition Law.

6] In the argument, the learned Senior Counsel for the Petitioner, says that the Petitioner's land was wrongly included in the partition corpus and ultimately left unallotted. He said that the Plaintiff-Respondent, during proceedings at the lower Court, agreed to exclude Lot 6 (Lot F) from the partition corpus.

7] The learned Counsel for the substituted Plaintiff Respondent also confirmed this stance of the Petitioner at the argument. It is seen that all other Respondents were duly served with notices and did not come forward and make any objection to this application. Thus, it is seen that this exclusion was not objected to by any other party, and all parties confirmed that such exclusion would not affect their respective rights or entitlements in the partition action.

8] At the argument, the Counsel for the Petitioner said that he would withdraw the main relief, if the alternative relief, to exclude Lot 6 of the final plan, be allowed. This was not objected to by any party.

9] We consider the merits of this application. It is to be noted that this is an action for partition, an action in rem, which binds the entire world. Thus, the paramount consideration of the trial judge is to act on sections 18 and 25 of the Partition Law, whether land sought to be partitioned has been properly identified and thereafter, investigation of each title. There is a vast difference in the extent, where in the plaint, the extent was 4 acres, after preliminary survey, it was 2 acres 32.37 perches (vide X, marked as P10 at page 65 of the brief). The original action was filed in 1999, and it is over 25 years old now. Since there is an adjustment between the parties, we do not intend to set aside the interlocutory decree. In the said preliminary plan bearing No 2000/100 dated 04/09/2000 of Lakshman Serasinghe, Licensed Surveyor, the impugned portion was highlighted as Lot 6. In the final survey report bearing No. 5275 dated 28/02/2019 of Lakshman Serasinghe, Licensed Surveyor (Vide page 75, P9(a), the surveyor made the following remarks with regard to impugned lot 6;

“අංක 2000/100 දරන මූලික පිඹුරේ P අක්ෂරයෙන් පෙන්වා ඇති ඉදිකිරීම ඇතුළුව එම පිඹුරේ අංක 6 කැබැල්ලට අයිතවාසිකම් කියමින් පාෂර්වකරුවකු නොවන වාද්ද්ව ශාන්ත මාරියා පටුමගේ අංක 20 හි පදිංචි එච්. ප්‍රබෝධනී ජීවිකා ෆොන්සේකා නැමති අය මෙම මැනීම සඳහා විරෝධතාවයක් දක්වන ලද අතර , ඇයගේ ලිඛිත විරෝධතාවය මේ සමග ගොනුකර ඇත. ”

10] Thus, it is clear that the Petitioner had objected at the time of the final survey. This matter was filed after 4 years on 19/12/2023. Thus, the Petitioner was aware of the ground situation of the case. However, since parties are not at variance that said Lot 06 does not form a part of the corpus and is agreed to be excluded from the corpus. In light of Sri Lankan legal precedents such as

Somawathie v. Madawela [1983] 2 SLR 15¹ and **Piyasena Perera v. Margret Perera** [1984] 01 SLR 57², We grant relief (h) of the Petition dated 13.12.2023 and Lot 6 (Preliminary Plan) and Lot F (Final Plan) be excluded from the corpus. This judgment does not decide or give vindicatory rights to Lot 6 (Lot F) to anyone, nor does it consider the rights of the Petitioner with regard to the said Lot. We emphasize that only exclusion had been made from the subject matter of the partition, in the final plan Lot F. Subject to the above exclusion, the interlocutory decree is affirmed.

11] Thus, the application is partly allowed. Lot F of the final Plan (Lot 6 (Preliminary Plan)) is excluded from the corpus. The learned District Judge is directed to amend the interlocutory decree and the final decree accordingly. The parties will bear their own costs.

Dr. Sumudu Premachandra J.

JUDGE OF THE COURT OF APPEAL

I agree

R. GURUSINGHE J.

JUDGE OF THE COURT OF APPEAL

¹ Held; where the Supreme Court held that the legality of an interlocutory decree can be challenged by way of revision to prevent a miscarriage of justice.

² Held; The finality attached to an interlocutory decree of partition under section 48 (1) of the Partition Law, No. 21 of 1977, does not preclude an appeal court from interfering with such decree by way of revision or restitutio in integrum where a miscarriage of justice has occurred. In this case the corpus to be partitioned had not been sufficiently identified either by means of the stated boundaries or by extent and the land of the petitioner appeared to be included in the corpus. Therefore, there has been a miscarriage of justice.