

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/0061/2023 Nainangala Widanelage Jayasena,
Ambagahawatta,
SP/HCCA/RAT/01/2022(RA) Kalawana. (Deceased)

DC Ratnapura 01(අ). Nainangala Widanelage Shashika
Case No: 19736/p Dulmini Jayasena

Ambagahawatta, Ihalawatta,
Kalawana

Plaintiff

VS

1. Dayawathi Jayawardhane,
Ambagahawatta, Kalawana.
2. N.V Lalith Ananda Kumara Senevirathna,
Ambagahawatta, Ihalawatta,
Kalawana.
3. N.V. Upula Indika Kumara Senevirathna,
Ambagahawatta, Ihalawatta,
Kalawana.
4. N.V Premasiri Gunawardhane,
Rideewita, Ambagahawatta,
Kalawana
5. N.V. Karunasena,
Ambagahawatta, Kalawana.
6. N.V. Gunasena,

Ambagahawatta, Kalawana.

7. M.K. Jayarathne,
Addaragoda, Gurulubedda,
Kalugala.

8. N.V. Nandawathie

9. Soma Gunawardhane

10. GnanalathaGunawardhane,

Three of them at
Ambagahawatta, Kalawanna.

Defendants

AND BETWEEN

NainangalaVidanelagePremasiri
Gunawardhane,
Rideewita, Ambagahawatta,
Kalwana

4thDefendant-Petitioner

Vs.

N.V. Jayasena,
Ambagahawatta,
Kalawana. (Deceased)

01(අ). NainangalaWidanelage Shashika
DulminiJayasena,
Ambagahawatta, Ihalawatta,
Kalawana

01(අ).Plaintiff-Respondent

2. DayawathiJayawardhane,
Ambagahawatta, Kalawana.

3. N.V Lalith Ananda Kumara Senevirathna,
Amabagahawatta, Ihalawatta,

Kalawana.

5. N.V. Upula Indika Kumara Senevirathna,
Ambagahawatta, Ihalawatta,
Kalwana.

6. N.V. Karunasena,
Ambagahawatta, Kalawana.

7. N.V. Gunasena,
Ambagahawatta, Kalawana.

8. N.V. Nandawathie

9. Soma Gunawardhane

10. GnanalathaGunawardhane,

Three of them at
Ambagahawatta, Kalawana.

2nd – 10th Defendant-Respondents

AND BETWEEN

NainangalaVidanelagePremasiri
Gunawardhane,
Rideewita, Ambagahawatta,
Kalwana

4thDefendant-Petitioner-Petitioner

Vs

N.V. Jayasena,
Ambagahawatta,
Kalawana. (Deceased)

01(අ). NainangalaWidanelage Shashika
DulminiJayasena,
Ambagahawatta, Ihalawatta,
Kalawana

01(අ).Plaintiff-Respondent-Respondent

2. Dayawathi Jayawardhane,
Ambagahawatta, Kalawana.

3. N.V Lalith Ananda Kumara Senevirathna,
Amabagahawatta, Ihalawatta,
Kalawana.

5. N.V. Upula Indika Kumara Senevirathna,
Ambagahawatta, Ihalawatta,
Kalwana.

6. N.V. Karunasena,
Ambagahawatta, Kalawana.

7. N.V. Gunasena,
Ambagahawatta, Kalawana.

8. N.V. Nandawathie

9. Soma Gunawardhane

10. Gnanalatha Gunawardhane,

Three of them at
Ambagahawatta, Kalawana.

2nd – 10th Defendant Respondent Respondents

AND NOW BETWEEN

Nainangala Vidanelage Premasiri
Gunawardhane,
Rideewita, Ambagahawatta,
Kalwana

4th Defendant-Petitioner-Petitioner-Petitioner

Vs

N.V. Jayasena,

Ambagahawatta,
Kalawana. (Deceased)

01(අ). NainangalaWidanelage Shashika
DulminiJayasena,
Ambagahawatta, Ihalawatta,
Kalawana

**01(අ).Plaintiff-Respondent-
Respondent-Respondent**

2. DayawathiJayawardhane,
Ambagahawatta, Kalawana.

3. N.V Lalith Ananda Kumara Senevirathna,
Amabagahawatta, Ihalawatta,
Kalawana.

5. N.V. Upula Indika Kumara Senevirathna,
Ambagahawatta, Ihalawatta,
Kalwana.

6. N.V. Karunasena,
Ambagahawatta, Kalawana.

7. N.V. Gunasena,
Ambagahawatta, Kalawana.

8. N.V. Nandawathie

9. Soma Gunawardhane

10. GnanalathaGunawardhane,

Three of them at
Ambagahawatta, Kalawana.

**2nd – 10th Defendant-Respondent-
Respondent-Respondents**

Before : R. Gurusinghe J
&

M.C.B.S. Morais J

Counsel : Rohan Sahabandu, PC with P. Weerasinghe
for the 4th Defendant-Petitioner

Prasangi Abeygunawardana
**For the 9th and 10th Defendant-Respondent-
Respondent-Respondents**

Argued on : 04-03-2025

Decided on : 27-05-2025

R. Gurusinghe

The 4th defendant-petitioner-petitioner-petitioner (hereinafter referred to as the 4th defendant) filed this application seeking the relief sought in the prayer to the petition. The original plaintiff instituted an action naming six defendants and sought to partition the land called Malgaha Pellessa, which was about three acres, among him and the 1st to 6th defendants. Later, the 7th to 10th defendants were also added to the action. The 4th, 9th and 10th defendants are children of Kirimudiyanse.

At the beginning of the trial, the parties have recorded eight admissions. Those admissions are reproduced below.

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01. බෙදීමට අපේක්ෂිතමෙම නඩුවට අදාළ ඉඩමගාමීන් ප්‍රධාන මිනින්දොරු තැන විසින් සම්පාදනය කළ අංක: 720 හා 2007.06.03 දින දරණ පිඹුරේ මනාව දිස් වන බව පිළිගනී.

02. බෙදීමට අපේක්ෂිතදේපලේ මුල් අයිතිකරු වූයේ නයිනන්ගල විදානලාගේ බිම්බරහාමි බව පිළිගනී.

03. එම බිම්බරහාමිවීට බොහෝ කලකට පෙර මුදල් කිරීමට තරම් දේපලක් නොතබා නයිනන්ගල විදානලාගේඩිංගිරි මහත්මයා හා එමගේ කිරිමුදියන්සේ තබා මිය ගියෙන් ඔවුන් එක් අයෙකුට නොබෙදූ 1/2 බැගින් අයිති වූ බවත් පිළිගනී.

04. ඉහතකීඩිංගිරි මහත්මයාදමිය ගියෙන්ඔහුටඑන්. ඩී. පොඩ් මහත්මයා, එම මැණික්හාමි, එම රන්එතනා, සෝමාවතී, කලිගුහාමි හේවත්සෙනෙවිරත්න, රම්මැණිකේ, ගුණරත්න යන දරුවන් සිටි බවත්, එයින්ගුණරත්නපැවැත්මකින් තොරව මිය ගිය බවත් පිළිගනී.
05. පොඩ් මහත්මයාගේඅයිතියදමැනික්හාමිගේසහසෝමාවතීගේඅයිතියදපැමිණිල්ලේ සඳහන් ප්‍රකාරව අංක: 2119, 1541 සහ 1827, 2106 දරණ ඔප්පුවලින් පැමිණිලිකරුට හිමි වූ බව පිළිගනී.
06. කලිගුහාමිගේ අයිතිය තම වැන්දඹුව වන දයාවතීගේ ජීවිත බුක්තියටයටත්ව 2 වන විත්තිකාර ලලිත් ආනන්ද ද, 3 වන විත්තිකාර උපුල් ඉන්දික සෙනෙවිරත්න යන අයට උරුම වූ බව පාර්ශවකරුවන් පිළිගනී.
07. කිරි මුදියන්සේගේ අයිතිය එන්. ඩී. ගුණවර්ධන, කරුණාසේන,එමකුලසේනයන අපට නොබෙදූ 1/6 බැගින් හිමිවූබවපිළිගනී.
08. නොබෙදූ 1/6ක් හිමිගුණවර්ධනගේඅයිතිය 4, 9, 10 විත්තිකරුවන්ට හින් මැණිකේගේ ජීවිත බුක්තියට යටත්ව නොබෙදූ 1/18 පංගුවය බැගින් හිමිවූබවපිළිගනී.

All the parties have admitted that the original owner of the land sought to be partitioned was Nainangala Widanelage Bimbarahamy, and he had two children, namely, Dingiri Mahathmaya and Kirimudiyanse. Parties have also admitted that the said Kirimudiyanse died, leaving three children, namely Gunawardena, Karunasena and Gunasena. Admission no. 8 is that one of Kirimudiyanse's children, Gunawardena's undivided 1/6th shares were devolved on the 4th, 9th, and 10th defendants, undivided 1/18th shares each. No party raised any dispute to the devolution of the half share of Kirimudiyanse. The only dispute raised as points of contest was whether Dingiri Mahathmaya had seven children or eight children.

The plaintiff in his plaint stated that 1/6th share of Gunawardena was devolved on N.V. Premasiri Gunawardena, the 4th defendant. Later, the plaintiff admitted that the 9th and 10th defendants are also children of Gunawardena. Plaintiff gave evidence and, in his evidence, *inter alia* stated that Bimbarahamy was the original owner and he died, leaving two children, Dingiri Mahathmaya and Kirimudiyanse. Kirimudiyanse died, leaving three

children: Gunawardena, Karunasena and Gunasena. Gunawardena's rights were devolved on the 4th defendant, Soma Gunawardena (the 9th defendant) and Gnanawathie Gunawardena (the 10th defendant). Accordingly, they are entitled to a 1/18th share each. In the later part of the evidence, the plaintiff reiterated that the 4th, 9th and 10th defendants are entitled to an undivided 1/18th share each. No party disputed the fact that the 4th defendant is entitled to a 1/18th undivided share of the land sought to be partitioned.

No evidence was led before the Additional District Judge, who wrote the judgment dated 02-12-2015. All the evidence was presented before his predecessors. In the course of the judgment on page 14, it has been stated as follows:

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නොබෙදූ 1/2 පංගුවක් හිමිව සිටි කිරිමුදියන්සේගේ අයිතිය ඇවෑමෙන් දරුවන් වූ ගුණවර්ධන, 05 වන විත්තිකාර කරුණාරත්න සහ 08 වෙනි විත්තිකාර ගුණසේන යන අයට හිමි වූ බව පාර්ශවකරුවන් පිළිගෙන ඇති අතර, පැ.8, පැ.9 සහ පැ. 10 ලේඛන මගින් ද එම කරුණ තහවුරු වේ.

ගුණවර්ධනගේ ඇවෑමෙන් එම අයිතිය, වැන්දඹුව වූ හීන්මැණිකේගේ ජීවිත බුක්තියට යටත්ව, දරුවන් වූ 04 වන විත්තිකාර ප්‍රේමසිරි, 09 වන විත්තිකාර සෝමලතා සහ 10 වන විත්තිකාර ඥාණලතාට හිමි වී ඇති අතර, ප්‍රේමසිරි සහ හීන්මැණිකේගේ අයිතිය ද, 09 සහ 10 විත්තිකරුවන්ට හිමි වී ඇත.

නන්දාවතී යන අය පිළිබඳව ඇති හඬයට අමතරව පෙළපත පිළිබඳව පාර්ශවකරුවන් අතර හඬයක් නොමැති අතර ඉදිරිපත් වූ ඔප්පු සහ අනෙකුත් ලේඛණ අනුව ද එම පෙළපත තහවුරු වේ. ඒ අනුව ඉහත සඳහන් කළ පරිදි බෙදීමට අපේක්ෂිත ඉඩමේ අයිතිවාසිකම් පාර්ශවකරුවන්ට හිමිවිය යුතු බවට තීරණය කරමි.

ඒ අනුව බෙදීමට අපේක්ෂිත ඉඩමේ අයිතිවාසිකම් පහත පරිදි පාර්ශවකරුවන්ට හිමිවිය යුතුය.

In his judgment, the Learned Additional District Judge also observed that, except for the dispute raised regarding Nandawathie, there was no other dispute regarding the devolution of title or the pedigree. However, at the end of the judgment, the Learned District Judge had not given any share to the 4th defendant. 1/6th share of Gunawardena was given only to 9th and 10th defendants 2/24th share each.

There was an appeal against the judgment by the 2nd and 3rd defendants to the Civil Appellate Court of Ratnapura. After that, the 4th defendant made an application to the Learned District Judge under section 189 of the Civil Procedure Code to correct the shares of the 4th, 9th and 10th defendants. The Learned District Judge refused this application. Thereafter, the 4th defendant filed a Revision application before the Civil Appellate High Court of Ratnapura. The Civil Appellate High Court of Ratnapura dismissed that

application. Thereafter, the 4th defendant petitioner made this application to this court.

This application of the 4th Defendant affects only to his two siblings, the 9th and 10th defendants. The 9th and 10th defendants filed objections to the petitioner's application and took up several preliminary objections and technical objections. But they have not disputed the facts pleaded by the 4th defendant-petitioner. There is a glaring error and a clear miscarriage of justice caused to the petitioner for no fault of his own. Therefore, I would not hold with the objections of the 9th and 10th defendants.

In the joint statement of claim of the 1st to 6th defendants stated that the 4th defendant and his mother had transferred their rights to the 9th and 10th defendants by deed no. 11233 dated 31-03-1993. However, the 9th and 10th defendants never filed a statement of claim or gave evidence before the court. In the evidence led before the District Court, there was no evidence to the effect that the rights of the 4th defendant were transferred to the 9th and 10th defendants. The deed referred to in the statement of claim was never produced. Such a title deed was not produced in the District Court, the Civil Appellate High Court, or in this Court. The Learned Counsel for the petitioner referred to it as a fictitious deed. Since such a title deed was never forthcoming, it is reasonable to conclude that there was no such deed. The Learned Additional District Judge would have relied on the statement of claim of a party without perusing the title deeds.

The Learned Additional District Judge failed to notice the fact that by admission no. 8, all parties have admitted that 1/6th undivided share of Gunawardena was devolved on 4th, 9th and 10th defendants an undivided 1/18th share each. Section 58 of the Evidence Ordinance provides as follows:

58. *No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:*

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

No party has made any application to withdraw the admission no. 8. Further, no issue has been raised to the effect that the rights of the 4th defendant were transferred to the 9th and 10th defendants. The 9th and 10th defendants did not even participate in the trial. Sections 61 and 62 of the Evidence Ordinance provide that “the contents of documents may be

proved either by primary evidence or secondary evidence. Primary evidence means the document itself produced for inspection of the court.” As mentioned above, no such title deed was produced in court, nor was any application made to lead secondary evidence regarding a deed purported to transfer the rights of the 4th defendant to the 9th and 10th defendants.

In the above circumstances, if the Learned District Judge chose to disregard the admitted facts of the parties, it should have been clearly justified, giving reasons in the judgment. A mistake or inadvertence on the part of the District Judge should not prejudice the rights of the parties.

In the case of Sri Lanka Insurance Corporation Limited vs Shanmugam and Another [1995] 1 Sri LR 55, it was held that, *“relief by way of Restitutio-In-Integrum in respect of judgments of original courts may be sought:*

- A) Where judgments have been obtained by fraud, by production of false evidence, non-disclosure of material facts, or by force; or*
- B) Where fresh evidence has cropped up since judgment which was unknown earlier to the parties relying on it or which no diligence would have helped to disclose earlier, or*
- C) Where judgments have been pronounced by mistake and decrees entered thereon, provided, of course, it is an error which connotes a reasonable and excusable error.”*

In the present case, there is a clear mistake made by the Learned Additional District Judge. It is a settled principle of law that “an act of court shall prejudice no man.” (*Actus curiae neminem gravabit*).

A mistake on the part of the Learned Additional District Judge resulted in wiping out the petitioner's entitlement to the land and thereby causing prejudice to the petitioner's substantial rights. This is a fit case to use the discretionary powers of this court to remedy the error. For the reasons stated above, I allow the 4th defendant's application. The judgment of the Additional District Judge dated 02-12-2016 is varied to the effect that the 4th, 9th and 10th defendants are entitled to 1/18th share each.

The Learned District Judge of Ratnapura is directed to amend the interlocutory decree to the effect that the 4th defendant is entitled to 1/18th share and the 9th and 10th defendants are entitled only to 1/18th share each, in the lands sought to be partitioned. If the final decree has already been entered, it is to be amended accordingly after a commission, which would, as far as practicable, without disturbing the allotments of land given to the other parties. No costs.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.