

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

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

Wavlagala Kusumsiri De Silva,  
Wimalasevana,  
Brahmanawatte,  
Balapitiya.

**PLAINTIFF**

**CA Application No:  
CA RII 07/2025**

**Vs.**

**Civil Appellate High Court  
of Galle No: SP/HCCA/CA  
073/2015 (F)**

**District Court of Galle Case  
No.P12663**

1. Mahadura Salin Jayasekera (Dead),  
Brahmanawatte, Balapitiya.
- 1A. Wavlagala Padmasiri De Silva,  
Dadalla, Galle.
2. Mahadura Robis Jayasekera (Dead).
- 2A. Mahadura Rotin Jayasekera,  
No.18, Mahamudali Mawatha,  
Dadalla, Galle.
3. Mahadura Lambet Jayasekera (Dead).
- 3A. Degambadage Gunawathi,  
Mahamudali Mawatha,  
Dadalla, Galle.
4. Mahadura Veebat (Dead).
- 4A. Wasalage Nandawathi,  
Mahamudali Mawatha,  
Dadalla, Galle.
5. Uragala Sirisena,  
Mahamudaliramaya,  
Dadalla, Galle.
6. Venerable Viharadhipathi Mapalane,  
Ananda Thero (Dead).

7. Buddhadasa Jayasekara (Dead),  
No.20, Mahamudali Mawatha,  
Dadalla, Galle.
8. Wilbert Arachchige (Dead)  
Kusumawathi,  
  
5/8A, Urugala Sirisena,  
Sri Mahindarama Mawatha,  
Mahindarama Viharaya,  
Colombo 10.
9. Venerable Mapalana Dhammaloka Thero  
(Dead).

**DEFENDANTS**

**AND NOW**

Wavlagala Kusumsiri De Silva,  
Wimalasevana,  
Brahmanawaththa,  
Balapitiya.

**PLAINTIFF – APPELLANT**

**Vs.**

1. Mahadura Salin Jayasekera,  
Brahmanawaththa, Balapitiya. (Dead)
- 1A. Wavlagala Padmasiri De Silva,  
Dadalla, Galle.
2. Mahadura Robis Jayasekera (Dead).
- 2A. Mahadura Rotin Jayasekera,  
No.18, Mahamudali Mawatha,  
Dadalla, Galle.
3. Mahadura Lambet Jayasekera (Dead).
- 3A. Degambadage Gunawathi,  
Mahamudali Mawatha,  
Dadalla, Galle.

4. Mahadura Veebat (Dead).
- 4A. Wasalage Nandawathi,  
Mahamudali Mawatha,  
Dadalla, Galle.
5. Urugala Sirisena,  
Mahamudaliramaya,  
Dadalla, Galle.
6. Venerable Viharadhipathi Mapalane,  
Ananda Thero (Dead).
7. Buddhadasa Jayasekara (Dead),  
No.20, Mahamuali Mawatha,  
Dadalla, Galle.
8. Wilbert Arachchige (Dead)  
Kusumawathi,  
  
5/8A, Urugala Sirisena,  
Sri Mahindarama Mawatha,  
Mahindarama Viharaya,  
Colombo 10.
9. Venerable Mapalana Dhammaloka Thero  
(Dead).

#### **DEFENDANT-RESPONDENTS**

#### **AND NOW BETWEEN**

1. Venerable Viharadhipathi Mapalane  
Ananda Thero

**(Deceased 1<sup>st</sup> DEFENDANT)**

- 1A. Venerable Mapalane Dhammika Thero

**(Deceased 2<sup>nd</sup> DEFENDANT)**

Venerable Thumbe Upananda Thero,  
Mahamudalindharamaya,  
Mahamudali Mawatha,  
Dadalla, Galle.

**PETITIONER**

**Vs.**

1. Wavlagala Kusumsiri De Silva,  
Wimalasevana,  
Brahmana Mawatha,  
Balapitiya.

**PLAINTIFF-APPELLANT-RESPONDENT**

- 1 Mahadura Salin Jayasekera (Dead)  
Brahmanawatte, Balapitiya.

1(A) Wavlagala Padmasiri De Silva,  
Dadalla, Galle.

2. Mahadura Robis Jayasekera, (Dead).

2(A). Mahadura Rotin Jayasekera  
No.18, Mahamudali Mawatha,  
Dadalla, Galle.

3. Mahadura Lambet Jayasekera (Dead).

3(A). Degambadage Gunawathi,  
Mahamudali Mawatha,  
Dadalla, Galle.

4. Mahadura Veebat (Dead).

4(A). Wasalage Nandawathi,  
Mahamudali Mawatha,  
Dadalla, Galle.

5. Uragala Sirisena,  
Mahamudaliramaya,  
Dadalla, Galle.

6. Venerable Viharadhipathi Mapalane,  
Ananda Thero (Dead).

7. Buddhadasa Jayasekara (Dead),  
No.20, Mahamuali Mawatha,  
Dadella, Galle.

8. Wilbert Arachchige  
Kusumawathi, (Dead)

5/8A, Uragala Sirisena,  
Sri Mahindarama Mawatha,  
Mahindarama Viharaya,  
Colombo 10.

9. Venerable Mapalana Dhammaloka Thero  
(Dead).

**DEFENDANT-RESPONDENT-RESPONDENTS**

**Before:** R. Gurusinghe J.

&

Dr. S. Premachandra J.

**Counsel:** Dr. Wijedasa Rajapakse PC with Dasun Nagashena,  
Rakitha Rajapakse and Shihara Ekanayaka for the  
Petitioner, instructed by K. Danuka Lakmal.

Manoja Gunawardena, instructed by Dilini  
Chamindika Pathirage for the 3A, 4A, 5th and 8A  
Defendant-Respondent.

Sanjaya Kodithuwakku for the Plaintiff-Appellant-  
Respondent, instructed by Niroshana Perera.

**Written Submissions:** Written Submission on behalf of the Petitioner filed on  
4<sup>th</sup> June 2025.

Written Submissions of the Plaintiff-Appellant-  
Respondent filed on 3<sup>rd</sup> June 2025.

Written Submissions of the 3A, 4A, and 5<sup>th</sup> and 8A  
Respondent-Respondent-Respondents filed on 29<sup>th</sup>  
May 2025.

Argued On: 21/05/2025.

**Judgment On: 16/07/2025.**

**Dr. Sumudu Premachandra J.**

1] The original action is a partition action. On 18/09/2015, the learned Additional District Judge of Galle, on careful consideration of the evidence led in the trial, dismissed the action on the footing that the pedigree of all parties had not been proved. Thereafter, the Plaintiff filed an appeal to the said judgment in the Civil Appellate High Court of Galle in Appeal bearing No. SP/HCCA/GA/073/2015 (F). On 17/02/2020, upon settlement reached between the 3A, 4A, and 5<sup>th</sup> and 8 A Defendant-Respondents at the Civil Appellate High Court in Galle, the said judgment was pro forma set aside, and the learned District Judge was directed to allow the parties to lead evidence on the consolidated pedigree. Thereafter, upon the direction of the learned judges of the Civil Appellate High Court of Galle, the learned District Judge of Galle has made the judgment on 12/12/2023 in compliance with the direction of the Civil Appellate High Court. Being aggrieved by the said judgment, the Petitioner now seek to set aside the purported settlement dated 17/02/2020 entered in the Civil Appellate High Court of Galle in Appeal No. SP/HCCA/GA/073/2015 (F), as well as the judgment of the District Court of Galle dated 12/12/2023 in Case No. P/12663.

2] The Plaintiff-Appellant-Respondent instituted this partition action in the District Court of Galle regarding a land called *Pabalinawatta* in Dadalla, Galle, against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. During the proceedings, intervening Defendants were added, including the late Venerable Mapalane Ananda Thero (6<sup>th</sup> Defendant), succeeded by Venerable Dhammaloka Thero (9<sup>th</sup> Defendant), as part of the temple land had been included in the corpus. The 9<sup>th</sup> Defendant sought the exclusion of the temple land. The grievance of the Petitioner is that without notifying Venerable Dhammaloka Thero (9<sup>th</sup> Defendant), a settlement was reached among some parties, and the District Court was directed to enter the judgment accordingly, which is palpably wrong under the law of partition.

3] At the argument, the learned President Counsel for the Petitioner challenges the legality of the settlement and judgment on several grounds: lack of jurisdiction, failure to serve notice on all parties, absence of evidence to support title, and failure to substitute for the deceased 9th defendant who passed away on 18/01/2022 (death certificate annexed as X4). The petitioner also asserts that the corpus includes *Sangika* property belonging to the temple, as specified under the Buddhist Temporalities Ordinance. As the current Chief Incumbent of the temple from 17/06/2023 (document annexed as X5), therefore, the Petitioner seeks revision and/or restitution in integrum under Article 138 of the Constitution to set aside the impugned judgments.

4] The Plaintiff-Appellant Respondent resists the application for restitution in integrum, stating that the Petitioner has failed to establish exceptional circumstances justifying the invocation of the extraordinary jurisdiction of *restitutio in integrum*. The Petitioner is alleged to be guilty of undue delay, has not pursued available legal remedies under Section 48(4) of the Partition Law No. 21 of 1977 or Section 772 of the Civil Procedure Code, and has suppressed material facts from the Court.

5] The 3A, 4A, 5th, and 8A Defendant-Respondent-Respondents state that the application is misconceived in law, constitutes an abuse of court process, and it should be dismissed in limine. They deny the Petitioner's claim that notices were not served on Venerable Dhammaloka Thero, stating that several notices were issued and referenced in Document X2. They say that the Petitioner and his predecessor failed to present their case and clearly demonstrate the negligence.

6] I Now, consider the merits of this case. The Respondents have contended that the Petitioner is not a party to the partition case; thus, there is no availability of *restitutio in integrum*. In **Punchinona Habakkalahewa and other vs Uduagama Koralalage Dayasena and other**, CA/RI: OS/2018, Decided on:25/02/2021, His Lordship Justice C.P. Kirtisinghe has dealt with the same question and considering several previous judgments noted as below;

*"Citing the judgment of Paulis Vs. Joseph and Others reported in 2005 (3) SLR 162 the learned counsel for the plaintiff respondent submitted that as the petitioners were not parties to the partition action the remedy of Restitutio - in - integrum is not available to the petitioners. The ratio decidendi in that case will not apply to this case. In that case the petitioner was a party to the action although she did not participate in the trial and following the judgement of Kusumawathi Vs. Wijesinghe 2001 (1) SLR 238 the Court of Appeal held that it had power to grant the relief of Restitutio - In - Integrum. However, it is settled law that an application for Restitutio - In - Integrum can only be filed by a party to a case (Perera Vs. Wijewickrama 15 NLR 411, Dissanayake Vs. Elisinahami 1978/79 - (2) SLR 118, Ranasinghe Vs. Gunasekara 2006 - (2) SLR 393, Sri Lanka Insurance Corporation Ltd Vs. Shanmugam 1995 - (1) SLR SS). But this is not only an application for Restitutio - In - Integrum it is also an application for revision. In the caption of the application, it is stated thus "In the matter of an Application for Revision or Restitutio integrum in terms of Article 138 and 145 of the Constitution of Sri Lanka ..... "*

7] In the case in hand, the application is sought as a revision or *Restitutio integrum*. Thus, we are of the view that the application is well within our jurisdiction and should be considered.

8] I now consider the other facts of the case. According to the plaint, the land sought to be partitioned is known as Pabalinawatta, said to be 2 acres (8 roods). The Preliminary Plan No. 699 depicted the land as only 3 roods and 38.84 perches. Thus, there is vast discrepancy in the extent of the land although,

initially the learned trial judge was satisfied with the identity. On that footing, the action should be dismissed.

9] It is seen that the learned Judges of the Civil Appellate High Court allowed merely on a settlement to set aside the impugned judgement under SP-HCCA-GA-073-2015 F. In **KUMARIHAMY v. WEERAGAMA et al.** 43 NLR 265, the court held that;

*“An agreement, which is entered into a partition action, affecting only the rights of parties inter se, and which is expressly made subject to the Court being satisfied that all parties entitled to interests in the land are before it and are solely entitled to it, is binding on the parties and is not obnoxious to the Partition Ordinance.”*

10] In **Richard and Another v. Siebel Nona and Others** [2001] 2 Sri L.R. 01 Jayawickrema, J. clearly held, though parties have settled, the court should investigate the title as;

*“Court has completely acted in violation of the provisions of the Partition Law and has accepted by way of a settlement, the evidence of the 1st Defendant, without investigating into the title of all the parties as required by the Partition Law. A partition decree cannot be entered by settlement, it is the duty of the Judge to fully investigate into the title to the land and shares.”*

11] In **Angela Fernando v. Devadeepthi Fernando and Others** [2006] 2 SLR 188, the court considered the imperative duty of the trial judge as;

*“It is imperative that the investigation of the title must be preceded by a careful examination of the preliminary issue whether the land sought to be partitioned is commonly owned as required by section 2 (1) of the Partition Law. Learned District Judge having carefully examined this question had correctly held that the land was dividedly possessed as from 1938 and proceeded to dismiss the action without resorting to a full and exhaustive investigation as to the rights of the parties, which in the circumstances was lawful and justified.”*

12] It should be noteworthy to mention section 25 (1) of the Partition Law No.21 of 1977 (as amended) at this juncture. It reads as follows:

*“on the date fixed for the trial of a partition action or on any other date to which the trial may be postponed or adjourned, the Court shall examine the title of each party and shall hear and receive evidence in support thereof and shall try and determine all questions of law and fact arising in that action in regard to the right share or interest of each party to, of, or in the land to which action relates, and shall consider and decide which of the orders mentioned in section 26 should be made.”*



13] This bounden duty of investigation title has been decided in the long list of apex court cases, which the principle is considered as below. In **Peiris Vs. Perera** 1 NLR 362, it was held;

*“The Court should not regard a partition suit as one of to be decided merely on issues raised by and between the parties and it ought not to make a decree unless it is perfectly satisfied that the persons in whose favour the decree is asked for are entitled to the property sought to be partitioned.”*

14] In **Silva Vs. Paulu** 4 NLR 177, the court held;

*“In partition suits the Court ought not to proceed on admissions but must require evidence in support of the title of all the parties and allot to no one a share except on good proof.”*

15] In **Golagoda Vs. Mohideen** 40 NLR 92, Court stressed;

*“The Court should not enter a decree in a partition action unless it is perfectly satisfied that the persons in whose favour it makes the decree are entitled to the property.”*

16] In **Juliana Hamine Vs. Don Thomas** 55 NLR at 546, court considered the decree of partition cannot be entered on private arrangements as;

*“We are of the opinion that a partition decree cannot be subject of a private arrangement between parties of matters of title which the courts is bound by law to examine.”*

17] In **Cooray Vs. Wijesuriya** 62 NLR 158, the court noted that;

*“Section 25 of the Partition Act imposes on the Court the obligation to examine the title of each party to the action”*

18] In **Cynthia De Alwis Vs. Marjorie D’Alwis and Two others** [1997] 3 SLR 113, again the court stressed that right even to call for evidence in searching for true owners as;

*“A District Judge trying a partition action is under a sacred duty to investigate into title on all material that is forthcoming at the commencement of the trial. In the exercise of this sacred duty to investigate title a trial Judge cannot be found fault with for being too careful in his investigation. He has every right even to call for evidence after the parties have closed their cases”*

19] In **Piyaseeli Vs. Mendis and Others** [2003] 3 SLR 273 , the court held;

*“(i) Main-function of the trial Judge in a partition action is to investigate title, it is a necessary pre-requisite to every partition action.*

*(ii) Partition decrees cannot be the subject of a private agreement between parties on matters of title which the Court is bound by law to examine. There is a greater need for the exercise of judicial caution before a decree is entered.”*

20] Further, in **Faleel Vs. Argeen and others** [2004] 1 SLR 48. The Court held that although parties can settle partition action, the court should title each party as;

*“It is possible for the parties to a partition action to compromise their disputes provided that the Court has investigated the title of each party and satisfied itself as to their respective rights.”*

21] In **Somasiri Vs. Faleela and others** [2005] 2 SLR 121, court held;

*“(i) The error had arisen owing to the failure of the trial Judge to investigate title.*

*(ii) The trial Judge must satisfy himself by personal Inquiry that the plaintiff made out a title to the land sought to be partitioned and that the parties before Court are solely entitled to the land.”*

22] Moreover, in **Karunarathna Banda Vs. Dassanayake** [2006] 2 SLR 87, court held;

*“1. ....*

*2. A partition suit is not a mere proceeding inter-parties to be settled of consent or by the opinion of the Court upon such points as they choose to submit to it in the shape of issues.*

*3. The Court has to safeguard the interests of others who are not parties to the suit who will be bound by the decree.”*

23] Therefore, the Court should safeguard that the Plaintiff has made out his title to the share claimed by him and other co-owners. In **Sopinona vs. Pitipanaarachchi And two others**, [2010] 1 SR1L.R 87, the same principle was stressed as;

*“In a partition action, it would be the prime duty of the Trial Judge to carefully examine and investigate the actual rights and title to the land, sought to be partitioned. In that process, it would be essential for the Trial*

*Judge to consider the evidence led on points of contest and answer all of them, stating as to why they are accepted or rejected.*

*A basic principle in all the enactments on Partition Law is that **where there has been no investigation of title, any resulting partition decree necessarily has to be set aside*** [Emphasis is added]

24] In **Sopinona Vs. Cornelis and others** 2010 BLR 109, it was held that;

*“(a) It is necessary to conduct a thorough investigation in a partition action as it is instituted to determine the questions of title and investigation devolves on the Court.*

*(b) In a partition suit which is considered to be proceeding taken for prevention or redress of a wrong it would be the prime duty of the judge to carefully examine and investigate the actual rights and to the land sought to be partitioned.”*

25] The Respondents have contended the application of section 48(4) of the Partition Law. However, the court held finality of a partition decree subject to the jurisdiction of Revision or Restitutio integrum in terms of Article 138 and 145 of the Constitution of Sri Lanka. (Vide **Somawathie Vs. Madawala** [1983] 2 SLR 15 and **Mariam BeeBee vs. Seyed Mohamed** 68 NLR 36.)

26] Further, **Umma v. Zubair and Another,** [2002] 3 Sri L.R 169, UDALAGAMA, J held that;

*“Section 48 (4) could not bar a court from holding that in the event summons had not been even issued from coming to a finding that such non-issue was improper or that the court had no jurisdiction to proceed. Section 48 (4) could not suppress the rights of parties to claim their due rights in partition actions which are decrees in rem.*

*The finality of the interlocutory decree as contemplated in section 48(3) of the Partition Act in my view could not prevent or preclude a District Judge even to act under inherent powers to make right a miscarriage of justice occasioned”.*

27] It should be noted that the learned Judges of the Civil Appellate High Court have set aside the judgment on a “Proforma” basis without going to the merits. The rights of the Petitioner were not thereby considered. It should be emphasised that when arriving at settlements in partition actions, the court should exercise extra care to ensure that there has been no collusive action between the parties and that the rights of all parties are considered and respected. Judges should not be mere rubber stamps of the parties, allowing all their applications,

especially under partition law, as it becomes a judgment in rem. In the case in hand, there is a vast difference between the extent of land sought to be partitioned and the land which was surveyed according to the preliminary survey. Thus, the investigation of the title and identity of the land sought to be portioned has not been properly considered and proved in this case. The judgment entered in connection with the settlement becomes illegal and must therefore be set aside.

28] In view of the above reasoning, we set aside the judgment dated 17/02/2020, case bearing No SP/HCCA/GA/073/2015 (F) of the Civil Appellate High Court-Galle, and judgment of the learned District Judge of Galle dated 12/12/2023. The original judgment of dismissal of the action dated 18/09/2015 is to prevail. Consequently, the application of Restitutio in integrum is allowed. No Costs.

**Dr. Sumudu Premachandra J.**

JUDGE OF THE COURT OF APPEAL

I agree

**R. GURUSINGHE J.**

JUDGE OF THE COURT OF APPEAL