

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* under Article 138 of the Constitution read together with Section 753 of the Code of Civil Procedure as amended.

1. Hewa Maddumage Girigoris,
Paluparanawatte, Parawahera.

CA Case No: CA (RII) 11/2022

CA Case No. 125/95 (F)

DC Matara Case No. 13865/P

1A.Hewa Maddumage Premasiri,
Paluparanawatte, Parawahera.

Substituted 1A Plaintiffs

2. Hewa Maddumage Piyadasa,
Paluparanawatte, Parawahera.

3. Hewa Maddumage Henry,
Paluparanawatte, Parawahera.

Plaintiffs

Vs.

1. Indurawage Dharmadasa,
Kiriwadugoda, Parawahera.

2. Don Juwanis Hewavitharana,
Paluparanawatte, Parawahera.

3. Indurawage Francis,
Paluparanawatte, Parawahera.

3A. Charloet Indurawage

Substituted Defendants

4. Kottawa Liyanage Sirisena

Pieris Watta, Parawahera.

4A. Sarath Gunasekara of Parawahera.

Substituted Defendants

5. Makawita Liyanage Sarath Gunasekara,
Miriswatta, Parawahera.

6. Hellie Hewawitharana,
Palliyagewatta, Parawahera.

7. Indurawage Premadasa,
Kurunduwatta, Parawahera.

8. Hewa Maddumage Mili,
Ungiammawatta, Parawahera.

9. Hewa Maddumage Sarath,
Ungiammawatta, Parawahera.

10. Hewa Maddumage Amarasiri

11. Maddumage Piyadasa

12. Kusumawathi Hewa Maddumage

13. Premawathi Hewa Maddumage

13A. Hewa Maddumage Amarasiri

Substituted Defendants

14. Maddumage Saman

15. Maddumage Sirisena

16. Kalkiriya Withanage Emalinahami

Above all at Parawahera.

17. Hewa Maddumage Samy

No. 26/18, Kohombana, Udana.

18. Hewa Maddumage Amarasiri,

“Priyanthi”, Parawahera, Kekunadura.

19. Induruwage Abeywickrama Nandawathi,

“Presanna”, Parawahera, Kekunadura.

NOW BETWEEN

8. Hewa Maddumage Mili,

Ungiammawatta, Parawahera.

8th Defendant Appellant

Vs.

1. Hewa Maddumage Girigoris,

Paluparanawatte, Parawahera.

1A. Hewa Maddumage Premasiri,

Paluparanawatte, Parawahera.

Substituted 1A Plaintiffs

2. Hewa Maddumage Piyadasa,

Paluparanawatte, Parawahera.

3. Hewa Maddumage Henry,
Paluparanawatte, Parawahera.

Plaintiff- Respondents

Vs.

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Kiriwadugoda, Parawahera.

2. Don Juwanis Hewavitharana,
Paluparanawatte, Parawahera.

3. Indurawage Francis,
Paluparanawatte, Parawahera.

3A. Charloet Indurawage

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Kiriwadugoda, Parawahera.

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Hewa Maddumage Sarath,
Ungiammawatta, Parawahera.

10. Hewa Maddumage Amarasiri

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“Priyanthi”, Parawahera, Kekunadura.

19. Induruwage Abeywickrama Nandawathi,

“Presanna”, Parawahera, Kekunadura.

Defendant-Respondents

AND NOW IN BETWEEN

8. Hewa Maddumage Mili,

Ungiammawatta, Parawahera.

8thDefendant-Appellant-Petitioner

Vs.

1. Hewa Maddumage Girigoris,

Paluparanawatte, Parawahera.

1A. Hewa Maddumage Premasiri,

Paluparanawatte, Parawahera.

Substituted 1A Plaintiffs

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Paluparanawatte, Parawahera.

3. Hewa Maddumage Henry,
Paluparanawatte, Parawahera.

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Kurunduwatta, Parawahera.

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“Presanna”, Parawahera, Kekunadura.

Defendant- Respondents- Respondents

Before:

D. Ganepola J.

&

M.C.B.S. Morais J.

Counsel:

Hemantha Situge with N.A. Gunawardene for the

8th Defendant-Appellant-Petitioner.

Harshana Ananda for the 23rd Respondent instructed by Sunanda Randeniya.

Argued on:

10.11.2025

Decided On:

22.01.2026

JUDGMENT

M.C.B.S. Morais J.

This is an application for revision and/or *restitution in integrum* in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with section 753 of the code of Civil Procedure.

The Petition dated 18th of March 2022, was filed by the 8th Defendant-Appellant-Petitioner (hereinafter will be referred to as the Petitioner) to set aside the judgment dated 28th of February 1995 by the learned District Court of Matara and the interlocutory decree dated 28th of February 1995 and the Final Decree dated 21st of February 2000. However, the application was dismissed by the judgment dated 13th of December 2022 without issuing notice, on the basis that there was a previous application for appeal preferred with regard to the same matter, which was subsequently dismissed due to an undue delay of nearly twenty years. By the initial Petition, the Petitioner has prayed for the following,

“ Issue notices on the Respondents;

Call and examine the record of District Court Matara case No:13865/P;

Grant interim relief restraining the 20 Respondent constructing and using the land allotted to him until termination of the case;

Grant interim relief restraining DC Matara case13865/P and any allotment allotted to any Respondent until the termination of this case;

Order trial de Novo;

Act in Revision and or Restitutio in integrum, setting aside the impugned judgement dated 28/02/1995 the inerlocutory decree dated 21/02/2000 final decree dated 21/02/2000;

Make order that the purported transfer of the allotments by the 24th to 26th Respondents are void ab initio,

Among other reliefs.

Subsequently the Petitioner has filed another Petition dated 3rd of February 2023, for revision and/or *restitution in integrum* in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with section 753 of the code of Civil Procedure, to set aside the judgment dated 13th December 2022 of the Court of Appeal. Accordingly, the Petitioner has prayed for the following,

*“ To set aside the judgment dated 13.12.2022 revising Your Lordships decision and may this application be relisted:
fix this matter for objections from the Respondents and counter affidavits of the 8th Defendant-Appellant-Petitioner and thereafter fix this matter for argument,
Among other reliefs.”*

Having heard the application, this court has revoked the dismissal of the Petitioner's application dated 18th of March 2022 and issued notices to the Respondents by the order dated 27th of June 2023.

Now I will venture into the merits of this application.

The remedy of *Restitutio-in-Integrum* is an extraordinary remedy granted by the Appellate Courts under exceptional circumstances when prejudice has been caused to the requesting party or when a failure of justice has occurred.

The Article 138 of the Constitution by which the jurisdiction for the reliefs of *Restitutio in Integrum* and revision reads as follows;

“(1) The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be [committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance], tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitution in integrum, of all causes, suits, actions, prosecutions, matters and things [of which such High Court, Court of First Instance], tribunal or other institution may have taken cognizance:

Provided that no judgment, decree or order of any court shall be reversed or varied on account of any error, defect or irregularity, which has not prejudiced the substantial rights of the parties or occasioned a failure of justice.(emphasis added)”

N S Bindra, in '*Interpretation of Statutes*' page 306, explains that,

“A proviso to a section is not independent of the section calling for independent consideration or construction detached from the construction to be placed on the

main section as it is merely subsidiary to the main section and is to be construed in the light of the section itself.”

Accordingly, to invoke this extraordinary jurisdiction, it is a *sine qua non* that either **the rights of a party be prejudiced or there being a failure of justice**. As in our law, the extraordinary circumstances under which the Restitutio application can be entertained is clearly established in the case of *Sri Lanka Insurance Corporation Ltd V. Shanmugam and Others [1995]* 1 Sri LR 55;

“Superior courts of this country have held that relief by way of Restitutio in Integrum in respect of judgments of original courts may be sought where

(a) the judgments have been obtained by fraud, by the production of false evidence, or nondisclosure of material facts, or where judgment has been obtained by force or fraud,

(b) Where fresh evidence has cropped up since judgment which was unknown earlier to the parties relying on it, and fresh evidence which no reasonable diligence could have helped to disclose earlier,

(c) Where judgments have been pronounced by mistake and decrees entered thereon, provided of course that it is an error which connotes a reasonable or excusable error. The remedy could therefore be availed of where an Attorney-at-Law has by mistake consented to judgment contrary to express instructions of his client, for in such cases it could be said that there was in reality no consent, but not where the Attorney-at-Law has been given a general authority to settle or compromise a case.”

Therefore, it is evident that Article 138 can be exercised in the above circumstances or similar circumstances, where it has caused prejudice to the party seeking the relief or occasioned a failure of justice. Furthermore, an application in terms of *Restitutio in integrum* under Article 138 of the Constitution, can only be addressed in exceptional circumstances where no other alternative remedy is available to seek justice.

In *Sri Lanka Insurance Corporation Ltd. V. Shanmugam and Another (1994)* 1 SLR 55, Ranaraja J. held as follows:

“Restitutio in integrum being an extraordinary remedy, it is not to be given for the mere asking or where there is some other remedy available. It is a remedy which is

granted under exceptional circumstances and the power of court should be most cautiously and sparingly exercised.”

Hence, it needs to be noted that the remedy of revision and *restitutio in integrum* can only be granted in considering the circumstances of the case. With the above in mind, let us look at the facts and circumstances of the present case.

The plaint dated 14th of July 1987 was filed by the Plaintiffs against the Respondents with respect to the land described in the plaint named “Ungiammawatta”. The Plaintiffs have named Petitioner as the 8th Defendant. Therein, the 8th and 9th Defendant together with 1st-7th Intervening Petitioners have filed their statement of claim dated 10th of September 1989, by which the 8th and 9th Defendants together with 1st-6th intervening Petitioners claim a share of 2/9 of the entire corpus.

Looking into the statement of claim of the 8th Defendant, it does not move for a dismissal of the action but rather to partition the land according to their pedigree. Where by, the 8th and 9th Defendants together with the 1st to 6th intervening Petitioner’s claim 2/9 of the entire Corpus. Furthermore, there is no dispute over the title or the corpus. As for the pedigree submitted along with the said statement of claim, there seems to be a dispute on whether the original owner is “Dionis” or his father. However, it is apparent that the evidence of the Substituted-Plaintiff was led before the trial Judge on 28th of February 1995 and the 8th Defendant, presently the Petitioner has not raised any dispute or contest. Therefore, having taken up for trial without any issues, the trial was concluded.

Consequently, the learned District Court Judge of Matara has pronounced his judgment dated 28th of February 1995, to partition the land amongst the parties, as for the proved pedigree. Being aggrieved by the said judgment, the 8th Defendant has made an appeal dated 10th of August 2001, after a lapse of more than 6 years to the Court of Appeal. However, the appeal was dismissed in 2005.

It is the limited contentions of the Petitioner that the matter has proceeded without the issues being properly framed, and that the judgment does not contain findings on the dispute they raised in their Statement of Claim. It must be observed, even though the Petitioner was not in agreement with the Plaintiffs on certain matters, at the hearing none of those matters were contested or framed as issues to be determined by the Court. Therefore, it is evident that a judgment delivered under such circumstances is not required to contain determinations on

issues that were never raised. Accordingly, the contentions of the Petitioner cannot be sustained.

Furthermore, the section 48(1) of the Partition Act No. 21 of 1977 (as amended) reads as follows;

"48.(1) Save as provided in subsection (5) of this section, the interlocutory decree entered under section 26 and the final decree of partition entered under section 36 shall, subject to the decision on any appeal which may be preferred therefrom, and in the case of an interlocutory decree, subject also to the provisions of subsection (4) of this section, be good and sufficient evidence of the title of any person as to any right, share or interest awarded therein to him and be final and conclusive for all purposes against all persons whomsoever, whatever right, title or interest they have, or claim to have, to or in the land to which such decree relates and notwithstanding any omission or defect of procedure or in the proof of title adduced before the court or the fact that all persons concerned are not parties to the partition action; and the right, share or interest awarded by any such decree shall be free from all encumbrances whatsoever other than those specified in that decree. "

Therefore, even as for the Partition Act, the Interlocutory decrees should stand final notwithstanding any omission or any defects in the procedure.

However, when considering the facts of the case, while the Petitioner's personal claim amounts to 2/72, the 8th (Petitioner's) and the 9th Defendant together with 1st-6th intervening Petitioners, collectively claim shares amounting to 2/9 of the corpus.

According to the Final Decree dated 28th of February 1995, entered by the learned District Court Judge of Matara, the corpus has been partitioned in the following manner and the 1st to 6th Intervening Petitioners who are added as 10th to 15th Defendants subsequently.

- 8th Defendant (Petitioner) – 1/24
- 9th Defendant – 1/24
- 10th Defendant (1st Intervening Petitioner) – 1/24
- 11th Defendant (2nd Intervening Petitioner) – 1/24

- 12th Defendant (3rd Intervening Petitioner) – 1/24
- 13th Defendant (4th Intervening Petitioner) – 1/24
- 14th Defendant (5th Intervening Petitioner) – 3/24
- 15th Defendant (6th Intervening Petitioner) – 1/24

Pursuant to the Interlocutory Decree, which was subsequently confirmed by the Final Decree on 21st of February 2000, the Petitioner has been allotted a one-twenty-fourth (3/72) share of the entire corpus, while the 8th and 9th Petitioners with 1st-6th intervening Petitioners together given a share of 30/72. It is clearly evident that the Petitioner has been granted a share exceeding her claim. Therefore, I do not see that the rights of the 8th Defendant Petitioner is prejudiced or it has occasioned a failure of justice to her.

After a careful and thorough consideration of all relevant facts presented by the parties, it is amply evident that the Petitioner has not suffered any prejudice as a result of the partition process or the subsequent decree.

Moreover, the Petitioner has chosen to pursue this extraordinary legal remedy only after an undue delay of approximately 29 years from the date of the Judgement. Such a significant lapse of time undermines the validity of the claim for relief, as it is contrary to principles of *Restitutio in integrum* and Revision under Article 138. Therefore, I see no reason to exercise the extraordinary remedy provided under Article 138 of the Constitution.

Hence, the interim order dated 22nd of September 2023 is vacated and this application for *Restitutio in Integrum* is dismissed with a cost of Rs. 25,000 to the 23rd Respondent and Rs. 25,000 to the original Plaintiff payable by the Petitioner.

Judge of the Court of Appeal

D. Ganepola J.

I agree

Judge of the Court of Appeal