

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

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

Court of Appeal

Case No: RII/0079/2024

Amarasinghe Arachchi's Dona Premawathi
34/09, 5th Lane, Dharmaratna Road
Rawathawatta, Moratuwa

District Court of Moratuwa
Case No: 0163/P

Plaintiff

Vs.

01. Amarasingha Arachchige Dona Silawathi
Amarasingha,
16/11, Bishop Terrece,
Lakshapathi, Moratuwa

02. Amarasingha Arachchige Dona Malani
Amarasinghe of Amarasingha (Deceased)

02A. Kulakulasuriyage Sasanta Janaka
Fernando
34/08, 5th Lane, Dharmaratne Road,
Rawathawatta, Moratuwa

03. Amarasingha Arachchige Dona
Vasanthi Amarasingha
34/09, 6, 5th Lane, Dharmaratne Road
Rawathawatta, Moratuwa

04. Amarasingha Arachchige Dona Indrani
Amarasinghe (Deceased)

04A. Wannakuwatta Waduge Paul Patrick
Fernando
34/09B, 5th Lane, Dharmaratne Road,
Rawathawatta, Moratuwa

5. Amarasingha Arachchige Irangani
Amarasinghe
26/02, Alvitigala Mawatha,
Borella
6. Amarasingha Arachchige Dona Malkanthi
Amarasingha
404/03, Galle Road
Moratuwa
7. Amarasingha Arachchige Dona
Chandravathi Amarasinghe (Deceased)
- 7a. Polpitiyage Shashika Purnami
404/03, Galle Road, Rawatawatta,
Moratuwa
8. ManikkuThuppahige Jayathri
Chandrika Fernando
408/06, Galle Road Rawatawatta,
Moratuwa
9. Don Sasika Dinesh Amarasinghe
408/06, Galle Road Rawatawatta,
Moratuwa
10. Don Chaminda Amarasinghe
408/06, Galle Road Rawatawatta,
Moratuwa
11. Don Buddhika Thilanga Amarasinghe
408/06, Galle Road Rawatawatta,
Moratuwa
12. Don Sanjeeva Amarasinghe
408/06, Galle Road Rawatawatta,
Moratuwa
13. Don Dhanushka Sampath
408/06, Rawatawatta,
Moratuwa

14. AmarasinghaMudalige Dona Nilani
Pushpa Amarasinghe
404, Galle Road Rawatawatta,
Moratuwa
15. Amarasingha Arachchige Don Ruwan
Pradeep Amarasingha
404, Galle Road Rawatawatta,
Moratuwa
16. Amarasingha Arachchige Don Rajiwa
Sanjay Amarasinghe
404, Galle Road Rawatawatta,
Moratuwa
17. Amarasingha Arachchige Don Nilan
Padmini Amarasinghe
404, Galle Road Rawatawatta,
Moratuwa

Defendants

AND

Amarasinghe Arachchi's Dona Premawathi
34/09, 5th Lane, Dharmaratna Road,
Rawathawatta, Moratuwa

Plaintiff-Petitioner

Vs.

01. Amarasingha Arachchige Dona Silawathi
Amarasingha,
16/11, Bishop Terrece,
Lakshapathi, Moratuwa
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Amarasingha
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Moratuwa
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Chandravathi Amarasinghe (Deceased)
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408/06, Galle Road Rawatawatta,
Moratuwa
9. Don Sasika Dinesh Amarasinghe
408/06, Galle Road Rawatawatta,
Moratuwa

10. Don Chaminda Amarasinghe
408/06, Galle Road Rawatawatta,
Moratuwa
11. Don Buddhika Thilanga Amarasinghe
408/06, Galle Road Rawatawatta,
Moratuwa
12. Don Sanjeeva Amarasinghe
408/06, Galle Road Rawatawatta,
Moratuwa
13. Don Dhanushka Sampath
408/06, Rawatawatta,
Moratuwa
14. Amarasingha Mudalige Dona Nilani
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Sanjay Amarasinghe
404, Galle Road Rawatawatta,
Moratuwa
17. Amarasingha Arachchige Don Nilan
Padmini Amarasinghe
404, Galle Road Rawatawatta,
Moratuwa

Defendant-Respondents

AND NOW

Amarasingha Arachchige Irangani
Amarasingha,
26/02, Alvitigala Mawatha
Borella.

Presently at
No. 82, Kandawatta Road
Nugegoda

5thDefendant-Respondent-Petitioner

Vs

Amarasinghe Arachchige Dona Premawathi
34/09, 5th Lane, Dharmaratna Road,
Rawathawatta, Moratuwa.

Plaintiff-Petitioner-Respondent

Before : R. Gurusinghe J
&
Dr. S. Premachandra, J.

Counsel : Rasika Dissanayake with Shabeer Hussain
instructed by K. Danuka Lakmal
for the 05th Defendant-Respondent-Petitioner.

Plaintiff-Respondent Absent and Unrepresented

Argued on : 07-10-2025

Decided on : 31-10-2025

JUDGMENT

R. Gurusinghe

5th Defendant-respondent-petitioner (hereinafter referred to as the petitioner) filed this application seeking *inter alia* to revise and/or set aside the order of the Learned District Judge of Moratuwa dated 12-07-2024, and order dated 20-11-2019 made in the case bearing no. 163/P of the District Court of Moratuwa and an interim order staying the operation of the impugned interim injunction issued against the petitioner by the said order.

This court granted an interim order staying the operation of interim injunction issued against the petitioner.

The facts of this case are briefly as follows:

The plaintiff-petitioner-respondent (hereinafter referred to as the respondent) is the sister of the petitioner. The respondent filed a partition action bearing no. 163/P on 30-04-2012 in the District Court of Moratuwa, seeking to partition the land described in the schedule to the plaint. The respondent had failed to tender *lis pendens* until 14-07-2014. After that, the respondent failed to take the steps required under section 12(2) of the Partition Law No. 21 of 1977, as amended. After several days, the Attorney-at-law for the respondent, on 31-03-2015, informed the court that he had no instruction from the plaintiff. The Learned District Judge then ordered the case to be laid by (නඩුව බහාතබමි).

The Learned District Judge should have dismissed the respondent's action at that stage. District Judges should bear in mind that a partition action cannot be laid by or abated for non-prosecution of the case.

Section 70 of the Partition Law is as follows:

70. No partition action shall abate by reason of the non-prosecution thereof, but, if a partition action is not prosecuted with reasonable diligence after the court has endeavoured to compel the parties to bring the action to a termination, the court may dismiss the action.

Provided, however, that in a case where a plaintiff fails or neglects to prosecute a partition action, the court may, by order, permit any defendant to prosecute that action and may substitute him as a plaintiff for the purpose and may make such order as to costs as the court may deem fit.

On 28-05-2018, a motion was filed on behalf of the respondent seeking to make submissions. The Learned District Judge ordered the case to be called on 19-06-2018. On the same day, Counsel for the respondent made an application for the case to be called for the plaintiff to take the other steps. The Journal entries do not show that the Learned District Judge had made any order to revive the case. However, the case was called several days thereafter to take steps under section 12 (2) of the Partition Law. Since the case was not prosecuted with due diligence, on 11-02-2019 the Learned District Judge ordered to issue notice on the registered Attorney and the plaintiff-respondent, as the plaintiff-respondent and her Attorney-at-law

both were absent on that day. After several days, the fiscal of the court reported to the court that notices had been served on the plaintiff and her registered Attorney. On 15-07-2019 court was informed that there was no instruction from the plaintiff-respondent. Thereafter, the Learned District Judge inquired from the defendants whether any of them were willing to prosecute the action. The Attorneys-at-law for the defendants sought time to inform the court whether they would prosecute the action. Thereafter, on 02-09-2019, the Attorney-at-law for the defendants informed the court that they were not willing to prosecute the case. The Learned District Judge ordered the proceedings to be terminated. “ඒ අනුව නඩුව අවසන් කරයි ”.

This amounts to the dismissal of the action on 02-09-2019. However, in terms of the provisions under section 70 of the Partition Law, the Learned District Judge should have made it clear by ordering that the action be dismissed and also to cancel the *lis pendens* and inform the relevant land registry to register the cancellation of the *lis pendens*.

On 20-11-2019, the Attorney-at-Law for the plaintiff filed a motion seeking that the case be called on 26-11-2019. On 26-11-2019, it was recorded that the case had been terminated for non-prosecution by the plaintiff and the defendant. The Attorney-at-law for the plaintiff moved for time to make a formal application.

Once the proceedings were terminated on 02-09-2019, the case could not be revived by any application. After that, the case was called on several dates, and no application was made. However, any step taken after the dismissal of the action becomes null and void. Even assuming that the action is still active, the respondent has not taken steps to survey the land or to deposit survey fees. The Plaintiff-respondent has not been prosecuting the case with due diligence.

In the above circumstances, the plaintiff-petitioner-respondent has no *prima facie* case against the petitioner.

In *Felix Dias Bandaranayake Vs. The State Film Corporation* (1981 (2) S.L.R. 287), Soza J., held as follows:

In deciding whether or not to grant an interim injunction the following sequential test should be applied.

1. Has the plaintiff made out a strong prima facie case of infringement or imminent infringement of a legal right to which he has title, that is,

that there is a serious question to be tried in relation to his legal rights and that the probabilities are that he will win.

2. In whose favour is the balance of convenience- the main factor being the uncompensatable disadvantage or irreparable damage to either party?

3. As the injunction is an equitable relief granted in the discretion of the Court do the conduct and dealings of the parties justify grant of the injunction.

The petitioner pointed out that the land was originally owned by the mother of the petitioner, the respondent, and some of the defendants. The original owner, G.H. Charlet Nona, had partitioned the land into several blocks by plan bearing no. 2767 dated 29-11-1990, prepared by Peter Fernando, Licensed Surveyor. Petitioner states that the said Charlet Nona had amalgamated Lot No. 1 and 2 of Plan No. 2767 and subdivided the same into three lots as depicted in Plan No. 3020 prepared by M.D.N. Fernando, Licensed Surveyor. The petitioner further states that the said Charlet Nona gifted Lot 3 of the said sub-division plan No. 3020 to one of her daughters, Amarasinghe Arachchige Dona Iranganie Amarasinghe, and to the petitioner. Accordingly, the petitioner became the owner of the divided and defined portion of the said larger land. Petitioner further stated that the petitioner's mother initially gifted three other allotments bearing no. 3, 5 and 6 of the plan no. 2767 to the petitioners' sisters, namely Malini Amarasinghe, Wasanthi Amarasinghe and Indrani Amarasinghe, by way of deeds of gift-bearing no. 2304, 2306 and 2307 attested by P H Jinapriya, Notary Public.

Petitioner further states that the petitioner's mother had gifted another divided portion of the said larger land, namely Lot 4 of plan 2767, to the plaintiff-petitioner-respondent by way of the deed of gift bearing no. 2305 attested by P H Jinapriya, Notary Public. The petitioner has tendered copies of the abovementioned deeds and two plans.

Prima facie, the plaintiff-petitioner-respondent has suppressed several material facts from the court and obtained an injunction against the petitioner. The respondent has not filed the complete copy of deed no. 2305. She has filed the first page and the last page of that deed. The schedule was not available to the Judge. If the Judge had looked at the schedule of deed no. 2305, she would have found that the schedule was referred to as a divided and defined portion of land and not undivided land. This is really a misrepresentation.

Furthermore, the aforesaid Charlet Nona gifted a divided and defined 25 perches to the 2nd defendant by deed no. 2304 attested by P. Jinapriya Notary Public on 20-08-1992. The said Charlet Nona gifted another divided and defined 25 perches of land to the 3rd defendant by deed no. 2306 on the same day attested by the same Notary. The said Charlet Nona gifted another divided and defined 25 perches of land to the 18th defendant who was not a party to the original plaint, later added herself as 18th defendant by deed no. 2307 on the same day attested by the same Notary. In the circumstances, it is obvious that the land sought to be partitioned by the respondent is not a co-owned land.

Since the plaintiff-petitioner-respondent's partition action was dismissed on 02-09-2019, the Learned District Judge cannot revive the case back. The land sought to be partitioned has already been partitioned by the original owner, and several lots have been disposed of. If there were any blocks of land which were not disposed of during the lifetime of the original owner, Charlet Nona, only such blocks would become co-owned land.

In the above circumstances, the order of the Learned District Judge dated 12-07-2024 was obtained by the plaintiff-petitioner-respondent, suppressing several material facts.

In Alphonso Appuhamy v Hettiarachchi 77 NLR 131 the Supreme Court held as follows;

The necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ or injunction is made and the process of the Court is invoked is laid down in the case of The King v. The General Commissioners for the Purpose of the Income Tax Acts for the District of Kensington—Ex-parte Princess Edmond de Poignac — (1917)1 Kings Bench Division 486. Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit, and therefore, it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination.

As the Plaintiff-respondent has not made out a *prima-facie* case, and the injunction against the petitioner was obtained by suppressing material facts, this court decides to set aside the order of the Learned District Judge dated 12-07-2024. By the order dated 02-09-2019, the District Judge stated as follows: “ඒ අනුව නඩුව අවසන් කරයි ”. After such dismissal of the partition action, the District Judge could not have revived the action. Furthermore, the petitioner has submitted relevant documents and has proved that the subject matter of the action is not co-owned land. Therefore, the order of the District Judge dated 20-11-2019 is set aside.

In the above circumstances, the application of the petitioner is allowed. The Learned District Judge of Moratuwa is directed to dismiss the partition action 163/බෙදුම් and to cancel the *lis pendens*.

The Registrar of this Court is directed to forward a copy of this judgment to the District Court of Moratuwa.

Judge of the Court of Appeal.

Dr. S. Premachandra J.
I agree.

Judge of the Court of Appeal.