

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

[In the matter of an Application for Revision and Restitutio-in-Integrum from the Judgment of the District Court of Kalutara dated 07/02/2011 in the D.C. Kalutara Case No. P 7265 in terms of Article 138 (1) and of the Constitution of the Democratic Socialist Republic of Sri Lanka Democratic Socialist Republic of Sri Lanka]

CA Case No. RII 08/2021
DC Case No. P 7265

Pakeer Mohamed Siththi Ayiza Umma,
No. 83/12, Samad Mawatha,
Beruwala.

PLAINTIFF

Vs.

01.Pakeer Mohamad Asisa Umma,
No. 83/12, Samad Mawatha,
Beruwala.

02.Pakeer Mohomad Mohedeen Hasan,
No.25, Samad Mawatha,
Beruwala.

03.Mohomad Sakaf,
No.25, Samad Mawatha,
Beruwala.

04.Mohomed Haneefa Maimunooth Umma,
No.25, Samad Mawatha,
Beruwala.

- 05.Mohomad Lafeer Abdul Razan,
No. 9/3, Moors Road,
Totawatta,
Panadura.
- 06.Mohomad Lafeer Hamsiya Umma,
No.41, Samad Mawatha,
Beruwala.
- 07.Mohomad Lafir Rumeiya,
No.220/39, Thakkiya Lane,
Thalapitiya,
Galle.
- 08.Mohomad Lafeer Sajahan,
No.220/39, Thakkiya Lane,
Thalapitiya,
Galle.
- 09.Mohomad Lafeer Hibishiya,
No.220/39, Thakkiya Lane,
Thalapitiya,
Galle.
- 10.Mohomad Haneefa Mohamed Sawahir,
No.41, Samad Mawatha,
Beruwala.
- 11.Mohomad Sawahir Mohomad Sally,
No.41, Samad Mawatha,
Beruwala.
- 12.Mohomad Sawahir Mohomad Mubaraq,
No.41, Samad Mawatha,
Beruwala.

DEFENDANTS

AND NOW BETWEEN

Mohomad Lafeer Hamsiya Umma
Alias Mohomad Lafeer Siththi Hamsiya,
No.41, Samad Mawatha,
Beruwala.

(Deceased) – 6th DEFENDANT-PETITIONER

Mohamed Sawahir Hadija Aathika,
No.41, Samad Mawatha,
Beruwala.

**6th A SUBSTITUTED-DEFENDANT-
PETITIONER**

Vs.

Pakeer Mohamed Siththi Ayesha Umma,
No. 83/12, Samad Mawatha,
Beruwala.

PLAINTIFF-RESPONDENT

1. Pakeer Mohomad Asisa Umma,
No. 83/12, Samad Mawatha,
Beruwela.
2. Pakeer Mohomad Mohedeen Hasan,
No. 25, Samad Mawatha,
Beruwala.

**(Deceased) 2nd DEFENDANT-
RESPONDENT**

Mohedeen Hasan Mohomed Fairroos,
No.25, Samad Mawatha,
Beruwala.

**2 A SUBSTITUTED – DEFENDANT
RESPONDENT**

3. Mohomad Sakaf,
No.25, Samad Mawatha,
Beruwala.

(Deceased) 3rd DEFENDANT-RESPONDENT

1. Mohamed Sakaf Mohamed Abubakkar
2. Mohamed Sakaf Fathima Janoofa
3. Mohamed Sakaf Noorul Shifa
4. Mohamed Sakaf Noorul Aya
5. Mohamed Sakaf Mohamed Thawfik
6. Mohamed Sakaf Fathima Janoosiya
7. Mohamed Sakaf Fathima Jaseela

All of No.25, Samad Mawatha,
Beruwala.

3 A SUBSTITUTED – DEFENDANT-RESPONDENTS

4. Mohomad Haneefa Maimunooth Umma,
No.25, Samad Mawatha,
Beruwala.

(Deceased) 4th DEFENDANT-RESPONDENT

Mohamed Niyas Noorul Nasmiya,
No.25, Samad Mawatha,
Beruwala.

**4 A SUBSTITUTED – DEFENDANT –
RESPONDENT**

5. Mohomad Lafeer Abdul Razan,
No. 9/3, Moors Road,
Totawatta,
Panadura.

**(Deceased) 5th DEFENDANT –
RESPONDENT**

- 01.Abdul Razzak Mohamed Ramees

02.Abdul Razzak Mohamed Rawashan

03.Abdul Razzak Mohamed Razan

All of No.9/3, Moors Road,
Totawatta, Panadura.

RESPONDENTS

06. Mohomad Lafeer Hamsiya Umma,
No.41, Samad Mawatha,
Beruwala.

07. Mohomad Lafir Rumeiyza,
No. 220/39, Thakkiya Lane,
Thalapitiya,
Galle.

**(Deceased) 7th DEFENDANT -
RESPONDENT**

Zainul Abdeen Mohamed Fazlun,
No.220/39,
Takkiya Lane,
Galle.

**7 A SUBSTITUTED – DEFENDANT –
RESPONDENTS**

08. Mohomad Lafeer Sajaham,
No.220/39,
Thakkiya Lane,
Thalapitiya,
Galle.
09. Mohomad Lafeer Hibishiya,
No.220/39, Thakkiya Lane,
Thalapitiya,
Galle.
10. Mohomad Haneefa Mohamed
Sawahir,
No.41, Samad Mawatha,
Beruwala.

**(Deceased) 10th DEFENDANT –
RESPONDENT**

- 01.Mohomad Sawahir
Mohomad Najbdeen
- 02.Mohomad Sawahir
Mohomad Sally
- 03.Mohomad Sawahir
Fathima Raleena
- 04.Mohomad Sawahir
Mohomad Mubarak
- 05.Mohomad Sawahir
Mohomad Riswan
- 06.Mohomad Sawahir

Fathima Aira

07.Mohomad Sawahir
Mohomad Rilwan

All of No.41, Samad Mawatha,
Beruwala.

**10 A SUBSTITUTED – DEFENDANT
– RESPONDENTS**

11.Mohomad Sawahir Mohomad Sally
No. 41,
Samad Mawatha
Beruwala.

12.Mohomad Sawahir Mohomad
Mubaraq,
No.41, Samad Mawatha,
Beruwala.

DEFENDANT-RESPONDENTS

**The Parties sought to be added as
the new Respondents**

13.Pakeer Mohamed Mohamed Saali
Marikkar Abdul Ahad of
No.83/12 Samad Mawatha,
Beruwela – 13th Respondent.

14.Mohamed Shusein Noor Rifza,

(NIC No.707081953V) of
No.132/9A,
Old Road,
Henewaththa,
Beruwela.
Beruwela – 14th Respondent.

15.Pakeer Mohamed Mohedeen Hasan
(NIC No.520883738V) of
No. 24,
Samad Mawatha,
Beruwela – 15th Respondent.

16.Mohamed Husain Noor Sahaana,
(NIC No.816144558V) of
No.35/1,
Heenawaththa,
Beruwela, - 16th Respondent.

17.Mohamed Uwais Unais
(NIC No.910684019V) of
No.37/6,
Hanaffi Mawatha,
Maradana,
Beruwela.

13th to 17th RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel

Prabath de Silva for the 6th A Substituted-Defendant-Petitioner instructed by Niroshi Paranagama.

Sanjeewa Dasanayake with Nomiq Nafath, Nithil Fernandopulle and Akash Rafeek for the Plaintiff-Respondent and 1st Defendant-Respondent instructed by Dhammika Jiminige.

Written Submissions : Synopsis on behalf of the Plaintiff-

Respondent and 1st Defendant-Respondent filed on
13/11/2025

Written submissions on behalf of the 6th – A

Substituted-Defendant-Petitioner filed on 11/11/2025

Argued On : 21/10/2025

Judgment On: 27/11/2025

Dr. Sumudu Premachandra J.

1] The 6th Defendant Petitioner by her amended petition prays for the following reliefs;

- a. Grant permission to add parties referred to and disclosed in Paragraph No.27 respectively as the 13th to 17th Respondents
- b. Issue notices on the Plaintiff Respondent and the 1st to the 5th and the 7th to the 12th Defendants Respondents
- c. Issue notices on the added 13th to 17th Respondents
- d. Set aside the judgement of the Learned District Judge dated 07/02/2011
- e. Set aside the Interlocutory Decree dated 05/08/2011
- f. Set aside the Final Decree dated 29/11/2012

- g. Declare the proceedings of District Court of Kalutara case No. P. 7265 null and void ab initio
- h. Declare all deeds of transfer, gifts or any instrument executed and registered in the Land Registry of Kalutara in respect of the corpus including the deeds referred to in paragraph No.26 hereof, after the institution of the District Court of Kalutara Case No. P 7265 null and void
- i. Restore the status of the corpus to the status that existed prior to the institution of District Court of Kalutara Case No. P 7265
- j. Dismiss the plaint
- k. Grant costs and any further reliefs as the court shall seem fit and proper.

2] The petition concerns an application for Restitutio in Integrum regarding Partition Case No. P 7265 in the District Court of Kalutara. The Petitioner (6th Defendant) challenges the interlocutory judgment delivered on 05/08/2011, and the subsequent Interlocutory and Final Decrees (marked X8, X9, and X10), arguing that a grave injustice occurred due to the suppression of material facts by the Plaintiff-Respondent.

3] The original action sought to partition a specific portion of land called "*Sapugahawatta*" (Lot No. 03A, approx. 1 Rood), but the Petitioner contends the true corpus is a larger 4-acre land originally owned by Shegumeeran Lebbe Ahmed Lebbe Packeer Bawawa. The Petitioner asserts she never received summons, was not represented at the trial, and was unaware of the proceedings until November 2020. Several documents, including the Preliminary Plan No. 3779 (X4, X5), previous survey plans (X1, X2, X3), and the joint statement of claim by other defendants (X6), are annexed to highlight the discrepancies regarding the land's extent and boundaries.

4] The core of the legal argument rests on the District Judge's alleged failure to adhere to the mandatory provisions of the Partition Law, specifically Section 25 and Section 187 of the Civil Procedure Code. The Petitioner states that the Judge failed to investigate the title properly and did not answer 20 specific issues framed during the trial (Issues VIII through XXVII), which covered critical

matters such as prescription, possession, and the exclusion of land blocks. A certified copy of the trial proceedings (X7) is pleaded to show that the Judge simply accepted the Plaintiff's evidence without the required scrutiny. The Petitioner argues this constitutes a fatal error. Furthermore, the Petitioner submits birth and marriage certificates (X11 to X19) to establish the Petitioner's relationship to the original owners, proving she has a rightful claim that was completely ignored by the court due to the Plaintiff's suppression of the correct pedigree.

5] The 6th Defendant Petitioner asserts a claim to an undivided share of 117/3600 of the subject property, tracing her title through a complex genealogy descending from Packeer Lebbe Abubacker Lebbe Marikkar and specifically through her father, the 20th Defendant Mohamed Hanifa Abdul Aziz. The Petitioner alleges that the Plaintiff-Respondent suppressed material facts regarding this pedigree, thereby misleading the District Judge to secure a judgment.

6] This suppression was discovered by the Petitioner in November 2020 when she sought to be added as a party to a separate Partition Action (D.C. Kalutara Case No: P 7781) regarding the "*Sapugahawatta*" land. Consequently, the Petitioner invokes the jurisdiction of the Court for Restitutio in Integrum to overturn the previous findings, supporting her position with annexed documents marked X22 through X28, which include her Statement of Claim (dated 10/03/2021), Affidavit (dated 20/10/2020), and Deed Nos. 908 and 9907.

7] The Respondents vehemently urge this Court to dismiss the application in limine (at the threshold) and refuse any interim relief. They argue that the application is misconceived in law, specifically failing to meet the strict criteria required to invoke the Court's Restitutio in Integrum jurisdiction (a remedy to restore a party to their original position). They cite numerous preliminary objections, including the Petitioner's lack of locus standi (legal standing), "unclean hands," abuse of court process, and failure to establish exceptional circumstances to disturb a finalized judgment.

8] The Respondents detail the history of the case, noting that the original judgment and final decree regarding the land partition were entered in 2011 and 2012, respectively, with no appeals filed at that time. They accuse the Petitioner of being guilty of laches (unreasonable delay) for waiting nearly ten years to challenge the outcome under the guise of a new application. Furthermore, the Respondents challenge the legitimacy of the 6A Defendant-Petitioner, stating

that the original 6th Defendant passed away in September 2021, and proper substitution papers were never served on the Respondents.

9] It is seen that the land in question (the corpus) has been subdivided in the final scheme of partition and final decree was also entered. It is further seen after the final decree registered, several parties have transferred their rights to third parties through various deeds executed between 2019 and 2021.

10] The Respondents say that the Petitioner is guilty of "material suppression and misrepresentation" for failing to disclose these subsequent transactions and for failing to name the current owners as necessary parties to the lawsuit. The Respondents argue that granting the Petitioner's request to nullify these deeds would destroy the finality of the 2012 decree and cause irreparable damage to innocent purchasers.

11] The Petitioner reply for laches that the original Petitioner (her deceased mother) did not contest earlier stages of the action due to advanced age and a lack of awareness regarding material facts. The Petitioner asserts that she only discovered critical irregularities, specifically the suppression of the correct land extent ("corpus") and non-disclosure of title chains, in November 2020 and 2021. This late discovery is cited as the justification for seeking Restitutio in Integrum (restoration to original condition) and a revision to set aside Learned District Judge's findings. The central grievance of the Substituted Petitioner is a "material inconsistency" between the District Court Judgment delivered on 07/02/2011, and the subsequent Final Decree. The Petitioner contends that this inconsistency unjustly deprived the 2nd through 9th Defendants of a specific house and the land beneath it and argues that the Respondents currently have no legal right to transfer or gift ownership of this property based on the flawed decree.

12] Let me consider the merits of this application. The 6th-A Substituted-Defendant-Petitioner seeks to invoke the revisionary and restitutio in integrum jurisdiction of the Court to set aside the Judgment dated 05/08/2011, along with the subsequent Interlocutory and Final Decrees in D.C. Kalutara Case No: P 7265. The interlocutory judgement was entered on 05/08/2011. This application was filed on 06/09/2021. Thus, it is apparent that this case was filed after 10 years. It is submitted that the Petitioner only became aware of the Plaintiff-Respondent's suppression of material facts regarding the true extent of the land ("*Sapugahawatta*") in November 2020 during a separate partition action (DC Kalutara P 7781). She relied on the quote, "**Finality is good but justice is**

better," said by Lord **Atkin** in the English case of **Ras Behari Lal v. King Emperor**, reported as AIR (1933) PC 208.

13] In this case, the Privy Council observed that while the above principle aims for finality, this objective should not override the fundamental requirement of achieving substantive justice in certain exceptional circumstances. In this matter, the Petitioner's mother was the original 6th Defendant in the lower court case and as admitted that she had not contested the pedigree of the Plaintiff Respondent. Until the death of the original 6th Defendant, the interlocutory decree and final decree was never challenged.

14] On careful perusal, this court sees that (X1), that 10, 11, 12 Defendants have fled notices of appeal to the interlocutory judgment. It is unclear what would happen to this appeal. Whatever, if the 10, 11, 12 Defendants could file an appeal in a timely manner, this court cannot see why the 6th Original Defendant cannot file an appeal to the said judgment. The main principle is that Law assists the wakeful, not the sleepy (Latin legal maxim ***Vigilantibus non dormientibus jura subveniunt***).

15] In **Gunasekara and another v Abdul Lathief** [1995] 1SLR 225, at p235, Ranaraja J, states that laches itself means slackness or negligence or neglect to do something which by law a man is obliged to do. It also means that there is an unreasonable delay in pursuing a legal remedy there by a party forfeits the benefit upon the principle *vigilantibus non dormientibus jura subveniunt*.

"The word "laches" is a derivative of the French verb Lacher, which means to loosen. Laches itself means slackness or negligence or neglect to do something which by law a man is obliged to do. (Stroud's Judicial Dictionary 5th Ed Pg 1403.) It also means unreasonable delay in pursuing a legal remedy whereby a party forfeits the benefit upon the principle vigilantibus non dormientibus jura subveniunt. The neglect to assert one's rights or the acquiescence in the assertion or adverse rights will have the effect of barring a person from the remedy which he might have had if he resorted to it in proper time. (Mozley & Whiteley's Law Dictionary 10th Ed pg 260). When it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equal to waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were to be afterwards asserted, in either of these cases lapse of time and delay are most material."

16] Further, In **Seneviratne v. Tissa Dias Bandaranayake and Another** [1999] 2 Sri LR 341 at 351, Amerasinghe, J. decided that, if a person were negligent for a long and unreasonable time, the law refuses afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect, *nam leges vigilantibus, non dormientibus, subveniunt*, and for other reasons refuses to assist those who sleep over their rights and are not vigilant. His Lordship notes Dhammapada and stressed;

"Indeed, the Dhammapada, Appamada Vagga, 26, says:

*"Pamadamanuyunjanti
bala dummedhinho jana
Appamadam ca medhavii
dhananam settham'va rakkhati."*

(Fools, men of little intelligence, give themselves over to negligence, but the wise man protects his diligence as a supreme treasure. . .)

It was also said :

*"Appamatto pamattesu
suttesu bahujaagaro
Abalassm'va sighasso
hitra yati sumedhaso"*

(Heedful among the heedless, watchful among the sleeping, the wise man outstrips the foolish man as a racehorse outstrips an old horse.)

17] In **Paramalingam v. Sirisena and Another**[2001] 2 SLR 239, WIGNESWARAN, J. (P/CA) held that;

"Laches means negligence or unreasonable delay in asserting or enforcing a right. There are two equitable principles which come into play when a statute refers to a party being guilty of laches. The first doctrine is delay defeats equities. The second is that equity aids the vigilant and not the indolent"

18] Thus, we cannot accept the inordinate delay and the reason explained by the 6th Added Petitioner. Moreover, there was a right of appeal to the Civil Appellate High Court of Kalutara, as some Defendants agitated above, the Restitutio-in-Integrum cannot be sought.

19] In **Perera v. Wijewickreme** 15 NLR 411. His Lordship Pereira J. held;

“It was not granted unless no other remedy was available to the applicant or unless restitution was the more effectual remedy”

20] In **Menchinahamy v. Muniweera** 52 NLR 409 his Lordship Dias J. held;

“Restitutio in integrum is not available if the petitioner has another remedy open to her.”

21] As the original Petitioner being the 6th Defendant, she should have sought her statutory remedy if the corpus is identified or larger land is not showed. Further, if the learned trial judge failed to comply section 187 of the Civil Procedure Code, it also can be challenged in the appellate forum. I stressed if there is a statutory right of appeal that the Defendant ought to have exercised, and her negligence cannot be condoned by way of restitution which causes grave injustice to other parties.

22] In the above circumstances, we see no merit in this application. Thus, the application is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL