IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal from the judgment dated 27-01-2015 in CP/HCCA/Kandy/21/2009 (Rev) in terms of section 5C (1) of the Act No. 54 of 2006.

S.C. Appeal No:
94/2017

SC/HCCA/LA Application No:
91/2015

CP/HCCA/Kandy/21/2009
(Rev)

D.C. Matale Case No:
2508/P

B.R.W.M.R. Lalith Bandara
Thoradeniya,
Doratiyawa, Kurunegala.
PLAINTIFF

Vs.

1. B.R.W.M.R. Thilaka Bandara
   Thoradeniya,
   100/1, Elwatte, Wanduragala,
   Kurunegala.
2. W.B.M.R. Gamini Bandula
   Bandara,
   Doratiyawa, Kurunegala.
3. B.R.W.M.R. Anura Bandara
   Thoradeniya,
   Doratiyawa, Kurunegala.
4. B.R.W.M.R.Chintha Neelamani
   Thoradeniya,
   Doratiyawa, Kurunegala.

DEFENDANTS

AND BETWEEN

1. B.R.W.M.R. Kuda Bandara
   Thoradeniya,
   Bambaragaswewa.
2. B.R.W.M.R. Lalindri
   Thoradeniya
3. B.R.W.M.R. Kavindra
   Thoradeniya
   Both of Galewela.

PETITIONERS

Vs.

B.R.W.M.R Lalith Bandara,
Thoradeniya,
Doratiyawa, Kurunegala.

PLAINTIFF-RESPONDENT

1. B.R.W.M.R. Thilaka Bandara
   Thoradeniya,
   100/1, Elwatte, Wanduragala,
   Kurunegala.
2. W.B.M.R. Gamini Bandula
   Bandara,
   Doratiyawa, Kurunegala.
3. B.R.W.M.R. Anura Bandara
   Thoradeniya,
   Doratiyawa, Kurunegala.
4. B.R.W.M.R.Chintha Neelamani
   Thoradeniya,
   Doratiyawa, Kurunegala.

DEFENDANT-RESPONDENTS

AND NOW BETWEEN

1. B.R.W.M.R. Kuda Bandara

Thoradeniya,
Bambaragaswewa.

2. B.R.W.M.R. Lalindri
   Thoradeniya
3. B.R.W.M.R. Kavindra
   Thoradeniya
   Both of Galewela.

PETITIONER-APPELLANTS

Vs.

B.R.W.M.R Lalith Bandara,
Thoradeniya,
Doratiyawa, Kurunegala.

PLAINTIFF-RESPONDENT-RESPONDENT

1. B.R.W.M.R. Thilaka Bandara
   Thoradeniya,
   100/1, Elwatte, Wanduragala,
   Kurunegala.
2. W.B.M.R. Gamini Bandula
   Bandara,
   Doratiyawa, Kurunegala.
3. B.R.W.M.R. Anura Bandara
   Thoradeniya,
   Doratiyawa, Kurunegala.
4. B.R.W.M.R.Chintha Neelamani
   Thoradeniya,
   Doratiyawa, Kurunegala.

DEFENDANT-RESPONDENT-RESPONDENTS

Before	**:**	Kumudini Wickremasinghe, J.
	:	Sobhitha Rajakaruna, J.
	:	Sampath B. Abayakoon, J.
Counsel	**:**	H. Withanachchi with Shantha Karunadhara for Petitioner-Appellants
	:	Lakshman Perera, P.C., with Ms. Anuradha Gunawardena instructed by Ms. D.M. Niluka Sanjani Dissanayake for the Defendant-Respondent-Respondents.
Argued on	**:**	13-06-2025
Written Submissions	**:**	11-07-2025 (By the Plaintiff-Respondent-Respondent and Defendant-Respondent-Respondents)
	:	25-07-2025 (By the Petitioner-Appellants)
Decided on	**:**	24-09-2025

Sampath B. Abayakoon, J.

This is an appeal preferred by the petitioner-appellants (hereinafter referred to as the petitioner-appellants) on the basis of being aggrieved by the judgment pronounced by the Provincial High Court of the Central Province holden in Kandy while exercising its civil appellate jurisdiction (hereinafter referred to as the High Court) in the Revision Application No. CP/HCCA/21/2019 (REV). The said judgment has been pronounced on 27-01-2015, and for the reasons set out in the judgment, the learned Judges of the High Court have dismissed the said revision application.

When this matter was supported for the granting of Leave to Appeal on 16-05-2017, this Court granted Leave to Appeal on the questions of law as set out in sub-paragraphs (iv), (v), (vi), (vii) and (x) of paragraph 15 of the petition dated 27-02-2015.

In addition to the above, two additional questions of law as proposed by the learned President's Counsel who represented the defendant-defendant-respondents (hereinafter referred to as the respondents) has also been permitted.

The said questions of law that need consideration in this appeal read as follows;

1. Did the learned Civil Appellate High Court Judges err by not exercising revisionary jurisdiction conferred on the Civil Appellate High Court in order to avoid miscarriage of justice caused to the petitioners in the circumstances of this case.
2. Did the learned Judges of the High Court err in law in construing the contents of terms of settlement (X1) and the settlement order (X3) and by concluding that they were not identical.
3. Did the learned Judges of the Civil Appellate High Court err by not appreciating that the subsequent publication of the settlement order in the government gazette is only a confirmation of title already vested in the predecessor of the petitioners by X1.
4. Did the Civil Appellate High Court err in holding that the land sought to be partitioned was different from the land claimed by the petitioners, without taking into account that the land described in X1 and X2 has been referred to in P3 and P4 relied upon by the respondents and also in the settlement order published in gazette (X3) by reference to and identical lot 32 in B.S.V.P. 331.
5. Whether the provisions of section 8 of the Land Settlement Ordinance have to be construed in the light of the entry of settlement on 16-05-1956 and the publication of order (X3) after 27 years so as not to prejudice of the rights of a purchaser after the settlement.

6. Does the publication of land settlement order in gazette X3 vitiates any deeds executed prior to that date.
7. Whether the document marked X1 has any legal validity after the land settlement order in gazette notification marked X3.

At the hearing of this appeal, this Court heard the submissions of the learned Counsel who represented the petitioner-appellants and also the submissions of the learned President's Counsel who represented the respondents. This Court also had the benefit of considering the extensive written submissions tendered by the parties as to their respective stands.

The facts that led to the filing of the revision application before the Provincial High Court can be summarized in the following manner.

The plaintiff in District Court of Matale Partition Action No. P2508 has instituted proceedings in order to partition the land morefully described in the schedule of the plaint between the plaintiff and the defendants named in the action.

After following the due procedure in that regard, the Commissioner appointed for the purposes of the action, namely, Licensed Surveyor W.M.G.P. Gunathilaka, has prepared the preliminary survey plan No. 1795 dated 15-12-2005, identifying the land sought to be partitioned as lot 1 to 4 of the said plan.

According to the preliminary survey report, no one has claimed rights to the land other than the parties to the action.

At the trial, there had been no dispute as to the corpus sought to be partitioned and the title pleaded.

This is a land where the mentioned original owner Lokubanda Thoradeniya has become entitled through a Land Settlement Certificate issued by the Commissioner of Land Settlements, and published in the Extra-Ordinary Gazette No. 253/15 dated 15-07-1983.

Since there had been no contest as to the corpus and to the entitlements of the parties, the learned District Judge of Matale, having considered the evidence led before him, has pronounced his judgment dated 25-07-2007, allowing the partitioning of the corpus sought to be partitioned among the parties as stated in the judgment.

The interlocutory decree has been entered on 25-07-2007. After having considered the final partition plan and the report No. 2427 dated 3rd and 4th of January 2008, the said plan has been confirmed and the final decree has been entered on 27-02-2009, and accordingly, the partition action has been concluded.

By the petition dated 23-07-2009, the petitioner-appellants have filed the earlier mentioned revision application before the High Court, seeking to set aside the interlocutory and the final decrees and all the proceedings of the District Court of Matale Case No. P2508, and thereby, seeking a direction to the District Court to confine the said partition case after the exclusion of 18 acres from the corpus as claimed by the petitioner-appellants, and for other incidental reliefs.

It had been the position of the petitioner-appellants that the original owner of the corpus that was partitioned, namely, Lokubanda Thoradeniya, was the brother of the father of the 1st petitioner appellant, and he became entitled to the said corpus containing 36 acres as a result of a land settlement as stated in the partition action. However, the petitioner-appellants have claimed that the said Lokubanda Thoradeniya by the deed of transfer No. 18929 dated 25-11-1971, conveyed a half share of the said allotment to the father of the 1st appellant-petitioner, namely, Ciril Bandara Thoradeniya. It has been claimed that accordingly, the said allotment of land was possessed and cultivated by both the brothers, and the Settlement Officer, after the finalization of all claims under notice number 3068, proceeded to publish the Settlement Order under section 5(5) of the Ordinance in the Government Gazette No. 253/15 dated 15-07-1983 (the document marked X-3).

It has been claimed that in terms of the Settlement Order, the said Lokubanda was finally allocated an extent of 36 acres, 01 rood and 20 perches depicted as subdivided lot No. 308 in lot No. 32, which in turn assigned title plan No. S-50234.

The petitioner-appellants who were the petitioners before the High Court have averred that the brother of Lokubanda, who became the owner of half share of the land through the earlier mentioned deed, transferred his undivided rights to the 1st petitioner-appellant, and he, in turn made several transfers of the said half share as pleaded in the petition and they held and possessed the said allotment of land.

It has been stated that the 1st petitioner-appellant who is residing on a land to the West of the subject matter became aware of the partition action instituted by the plaintiff-respondent only on or about 15th and 16th of December 2005. It has been further stated that when he inquired from the plaintiff about the partition action, he was informed that the partition action was only in regard to the half share of his father, meaning the original owner Lokubanda, and hence, he had no reason to intervene in the case.

It has been the position taken before the High Court that the plaintiffs and the defendants in the partition action, by acting collusively and fraudulently, has instituted the partition action knowing the petitioner-appellants' rights very well and had obtained the partition decree, which has resulted in a miscarriage of justice and a manifest gross abuse of the process of Court.

It has been averred that the grounds set out in paragraph 21, 22, 23, 28, 30, 31 and 32 of the petition disclose exceptional circumstances warranting the exercise of the exclusive revisionary jurisdiction of the High Court.

The High Court, after having considered the contents of the petition before it, has decided to issue notice to the respondents mentioned, and after hearing all parties and allowing parties to file written submissions as well, has pronounced the impugned judgment.

Having considered the above factual matrix, it needs to be noted at the very outset of this judgment that this appeal relates to an application filed before the High Court invoking the discretionary remedy of revision, which could be granted only under exceptional circumstances.

In the case of **Thilagaratnam Vs. Edirisinghe (1982) 1 SLR 56**, it was observed that;

> *"Though the Appellate Court's powers to act in revision were wide and be exercised whether an appeal has been taken against the order of the original Court or not such powers could be exercised only in exceptional circumstances."*

In the case of **Hotel Galaxy (Pvt) Ltd Vs. Mercantile Hotels Management Ltd (1987) 1 SLR 5**, it was stated that;

> *"It is settled law that the exercise of the revisionary powers of the appellate Courts is confined to cases in which exceptional circumstances exist warranting its intervention."*

In the case of **Wijesinghe Vs. Tharmaratnam (Sriskantha Law Report Volume iv page 47)**, it was held;

> *"Revision is a discretionary remedy and will not be available unless the application discloses circumstances which shocks the conscience of the Court."*

It is quite apparent from the High Court judgment that, the learned Judges of the High Court were very much mindful as to the manner a revision application filed before the Court should be considered and determined. The learned High Court Judges were highly observant that in such a situation, the conduct of the parties and whether there was an inordinate delay in coming before the Court will also be intensely relevant when it comes to the consideration of facts and the law placed before the Court.

In **Gnanapandithan Vs. Balanayagam (1998) 1 SRL 391**, it was held;

> *"The question whether delay is fatal to an application in revision depends of the facts and circumstances of the case, having regard to the very special and exceptional circumstances of the case."*

In the case of **Perera Vs. People's Bank (Bar Journal 1995 Vol. IV Part 1 Page 12)**, it was observed that;

> *"Revision is a discretionary remedy and the conduct of the petitioner is intensely relevant to the granting of such relief."*

It is very much apparent from the petition filed before the High Court that the petitioner-appellants have filed the revision application, which led to the judgment of the High Court primarily on the basis that the 1st petitioner-appellant was misled by the plaintiff of the partition action for him to believe that the partition action was only in relation to 18 acres of land and not for 36 acres, as the balance 18 acres had already being conveyed by the father of the plaintiff of the action to the father of the 1st appellant-petitioner.

This appears to be the reason provided by the petitioner-appellants for their non-participation in the partition action and also to justify that they have exceptional grounds to invoke the revisionary jurisdiction of the High Court.

In the petition filed before the High Court itself, the appellants have admitted that the 1st petitioner-appellant became aware of the partition action in December 2005. The plaint in this partition action has been filed on 15-05-2005 and the preliminary survey has been carried out in December 2005. Admittedly, the appellants had known about the partition action at least from the time of the preliminary survey.

However, as correctly observed by the learned Judges of the High Court, after affixing notice as to the institution of the partition action at the Grama Sewaka Office as required under the Partition Law, the 1st petitioner-appellant who has claimed title to half of the land, which was the subject matter of the action, has become aware of the partition action from its very inception. The affidavit marked and produced as R-01 of the relevant Grama

Sewaka in that regard clearly establishes the said fact. The 1st petitioner-appellant should have known that the partition action was not for a land of 18 acres as he thought, but for the entire land of 36 acres when he saw and read the notice affixed at the office of the Grama Sewaka.

Even if he was misled by the plaintiff in the partition action for him to believe that the partition action was only in relation to the half share owned by the plaintiff's father Lokubanda, which amounts to an extent of around 18 acres, he should have very well come to know that it was not so when the Commissioner surveyed the entire land of 36 acres for the purpose of the partition action. The 1st petitioner-appellant is admittedly a person living on a land situated to the West of the subject matter, and if the 1st petitioner-appellant and other appellants were in possession of the 18 acres as claimed by them, there was no reason for them to understand that their rights would be affected.

Having considered the time it would take for a surveyor to survey a land of 36 acres, it is impossible to believe that the 1st petitioner-appellant could not have realized that it included the 18 acres of land claimed by him and other appellants, which they owned and possessed according to them.

The averments in the petition before the High Court, as well as the document submitted to the Court, establish that the petitioner-appellants were well aware of the partition action proceedings, the survey conducted for the preparation of the preliminary and final partition plan, and also entering of the interlocutory decree as well as the final decree of the partition action.

The final decree of the action has been entered on 27-02-2009, whereby the corpus to be partitioned which comprised of 36 acres, 1 rood and 20 perches has been divided among the plaintiff and the 4 defendants of the partition action. This means that the entire land including the 18 acres claimed by the appellants had been divided in accordance with the final decree, and the relevant parties may have taken possession of their divided portions of land. This also means the petitioner- appellants losing

possession of 18 acres of land, if they had previous possession of the same, as a result of the said final partition decree.

Under the circumstances, I am of the view that the learned Judges of the High Court were correct in considering the conduct of the petitioners as intensely relevant in deciding the revision application. I find that although the final decree has been entered in February 2009, the petitioner-appellants have gone before the High Court on 23-07-2009, around 5 months after the entering of the final decree.

It is settled law that delay in seeking a discretionary remedy is also a matter a Court would consider relevant, although the length of the delay needs to be considered depending on the facts and the circumstances unique to each case. I am of the view that a delay of around 5 months has to be considered as relevant, in view of their failure to explain such a delay before the High Court.

The facts as stated above show that the petitioner-appellants have failed to show any due diligence in asserting their rights knowing very well of the existence of the partition action if they believed that their rights were to be disturbed as they claim. I find that this aspect has also been duly considered by the learned Judges of the High Court.

The case of **Perera and Others Vs. Adline and Others (2000) 3 SLR 93** was a case where a similar situation was considered by the Court of Appeal. Upholding a preliminary objection raised as to the maintainability of a revision application challenging the interlocutory decree, it was determined that based on the facts and the circumstances, the petitioners in that case have accepted the finality of the judgment and the interlocutory decree. It was determined that hence, the petitioners are estopped from denying the validity of the interlocutory decree.

Per Jayawickrema, J.,

> *"Although in an appropriate case this court has jurisdiction to act in revision and restitutio – integrum, but where a party has deliberately not shown due diligence even after he was notified*

by the surveyor to appear in court and fails to apply to be added as a party this court will not exercise its jurisdiction in his favour…"

I find that the learned Judges of the High Court have not proceeded to dismiss the revision application only on above considerations, but have proceeded to consider the application on its merit, in order to come to a finding whether there are any other exceptional circumstances that warrant the intervention of the Court.

Towards the said objective, the High Court has considered whether the appellants have a right to claim title to the property as they claim.

The document marked X-01 is the land settlement notice issued under the provisions of the Land Settlement Ordinance in favour of Lokubanda Thoradeniya, who is the admitted original owner of the corpus to be partitioned. The land settlement notice, which has settled the land in favour of Lokubanda Thoradeniya, had a condition that the person in whose favour the land was settled must pay a particular sum before a certain date.

As correctly observed by the learned Judges of the High Court, that means the said notice marked X-01 does not confer absolute title of the property in favour of Lokubanda, for him to transfer half share of the property to his brother under whom the petitioner-appellants have come before the High Court to claim title. They have claimed title based on the deed marked X-02, namely, deed No. 18929 dated 25-11-1971. In the said deed, the said Lokubanda traces his title to a land settlement notice No. 3060 dated 27-10-1964, to an extent of 36 acres. However, the document marked X-01 is a land settlement notice issued in favour of Lokubanda Thoradeniya on 16-05-1956, which cannot be presumed in the absence of specific explanation as to the said discrepancy and that it relates to one and the same land. Accordingly, I find no reason to disagree with the conclusion of the learned Judges of the High Court that the document marked X-03 is not identical to the document marked X-01.

The effect of a final land settlement order made and duly published in the Government Gazette has been set out in section 8 of the Land Settlement Ordinance, which reads thus;

> **8. Subject to the provisions of section 5(6), every settlement order shall be published in the Gazette, and every settlement order so published shall be judicially noticed and shall be conclusive proof, so far as the State or any person is thereby declared to be entitled to any land or to any share of or interest in any land, that the State or such person is entitled to such land or to such share of or interest in the land or to such share of or interest in the land free of all encumbrances whatsoever other than those specified in such order and that subject to the encumbrance specified in such order such land or share or interest vests absolutely in the State or in such person to the exclusion of all unspecified interests of whatsoever nature and, so far as it is thereby declared that any land is not claimed by the State or that some person unascertained is entitled to a particular share of or interest in any land, that the State has no title to such land or that some person unascertained is entitled to such share of the land or that such interest in the land exists and that some person unascertained is entitled thereto, as the case maybe:**
>
> **Provided that nothing in this section contained shall affect the right of any person prejudiced by fraud or the willful suppression of facts of any claimant under the notice from proceedings against such claimant either for the recovery of damages or for the recovery of the land awarded to such claimant by the order.**

The validity of a right obtained by a person from another before the said person was declared entitled to the property by a final land settlement order was considered in the case of **Periacaruppen Chettiar Vs. Messers. Properties and Agents Ltd 47 NLR 121.**

> G, by deed 3D4 of 21st December 1928 sold to the first defendant company a land the titles of which he expected to obtain subsequently by virtue of a settlement under the Ordinance relating to claims to forests, chena, waste, and unoccupied lands.
>
> By an order made on 27th October 1933, under section 8 of the Land Settlement Ordinance (Cap.319), G was declared entitled to the property.
>
> Plaintiff became the successor in title to G on 11th April 1938 by *bona fide* purchase for value.
>
> **Held:**
>
> > The plea of *exceptio rei venditae et traditae* was not available to the first defendant as against the plaintiff and that the settlement order made in favour of G did not ensure to the benefit of the first defendant.

The case of **A.M. Karunadasa Vs. Abdul Hameed 60 NLR 352** was a case where the same issue was considered.

> **Per Sanaoni, J.,**
>
> *"The land in dispute in this action is two roods in extent. It was the subject of a settlement order dated 11th November 1939, made under the Land Settlement Ordinance. That order was published in the Gazette of 19th July 1940, and by virtue of section 8 of the Ordinance it became conclusive proof of the title of the persons in whose favour it was made…*
>
> *I am unable to agree with the learned Judge when he says that the benefit of the settlement order in favour of Ausadanaide to the extent of*

the land can be claimed by the first defendant, for it has been held that a plea of exceptio rei venditae is not available to a purchaser as against a vendor who obtained a settlement order after the purchase was made- See Periacaruppen Chettiar Vs. Messers. Properties and Agents Ltd. (1946) 47 NLR 121. The first defendant therefore has no title whatsoever to the land in dispute."

Having considered the above settled law, I am of the view that the deed X-02 under which the petitioner-appellants have claimed title to the subject matter of the partition action, even if it was a deed relating to the same corpus, has no force or avail in law as rightly determined by the learned Judges of the High Court.

The learned Judges of the High Court have observed that even the deeds executed subsequent to the final land settlement order and its publication in the Gazette X-03 by the 1st petitioner-appellant have not referred to the relevant order published in the Gazette, whereas it should have been. On the contrary, all the deeds relied upon by the plaintiffs and the defendants in the partition action have been executed after the publication of X-03, where all the said deeds correctly refer to the Gazette Notification as the source of title, which is a matter that should be considered relevant in an application in revision.

Moreover, the fact that whether there was a duty cast upon the plaintiff of the partition action to make the petitioner-appellants parties to the action had also been drawn the attention of the learned Judges of the High Court. It has been observed that the land sought to be partitioned is different from the land claimed by the petitioner-appellants, by name, extent, and the folio in which they are registered. It has been observed that the deed relied upon by the petitioner-appellants (X-02) refers to a land called Debaragala Yaya, registered in folio B.221/73 and the land sought to be partitioned by the plaintiff of the partition action is a land called Milagalayaya *alias* Millagalayaya, registered in a separate folio D.289/8. Therefore, the plaintiff of the partition action had no duty to make the appellants parties unless the petitioner-appellants on their own wanted to do so. It has also been

determined that the petitioner-appellants have no basis to claim prescriptive title as well.

I find that the above observations and determinations are matters that need consideration when an application for the exercise of the discretionary remedy of revision is before a competent Court, of which I find no reasons to disturb.

It appears that the petitioner-appellants have made an attempt to qualify themselves under the proviso of section 8 of the Land Settlement Ordinance by claiming fraud on the part of the plaintiff of the partition action on the basis that it discloses exceptional circumstances. However, I find no such fraud as claimed that has occasioned a miscarriage of justice.

For the reasons as considered above, I answer the questions of law No. 1 to 5 in the negative, while answering the question of law No. 6 in the affirmative.

I answer the question of law No. 7 that the final land settlement order published in the Gazette X-03 shall prevail over the document X-01.

Accordingly, the appeal is dismissed, as I find no merit in the appeal.

There will be no costs of the appeal.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court

Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court