

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

Special

In the matter of an Application for

Leave to Appeal to the Supreme Court of  
the Democratic Socialist Republic of Sri  
Lanka under Article 128(2) of the  
Constitution.

Corinne Marvin Therese Fernandopulle,  
“Arunagiri”, Thoppuwa, Kochchikade.

Presently at

No. 28, Ronald Street, Black Town,  
New South Wales 2148, Sydney,  
Australia.

By her Attorney Tutullo Richard Jansz,  
No. 85, Anderson Road, Kalubowila,  
Dehiwela.

Plaintiff

Vs

1. Ignatius Robin Fernandopulle,
2. Lucille Bernadette Leonie  
Fernandopulle,  
Both of  
No. 11, Railway Station Road,  
Negombo.

Defendants

AND BETWEEN

1. Ignatius Robin Fernandopulle,
2. Lucille Bernadette Leonie  
Fernandopulle,  
Both of

SC SPL LA 210/2016  
WP/HCCA/GMP/10/2013(Revision)  
27/2011(Revision)  
19/2010(Revision)  
LA/369/2006  
LA/325/2005  
D.C. Negombo 2892/P

No. 11, Railway Station Road,  
Negombo.

1<sup>ST</sup> and 2<sup>nd</sup> Defendant Petitioners

Vs

Corinne Marvin Therese  
Fernandopulle, "Arunagiri",  
Thoppuwa, Kochchikade.  
Presently at  
No. 28, Ronald Street, Black  
Town, New South Wales,  
2148, Sydney, Australia.

Plaintiff Respondent

AND THEN BETWEEN

1. Ignatius Robin Fernandopulle,
2. Lucille Bernadette Leonie  
Fernandopulle,  
Both of  
No. 11, Railway Station Road,  
Negombo.

1<sup>ST</sup> and 2<sup>nd</sup> Defendant Petitioner  
Petitioners

Vs

Corinne Marvin Therese  
Fernandopulle, "Arunagiri",  
Thoppuwa, Kochchikade.  
Presently at

No. 28, Ronald Street, Black  
Town, New South Wales,  
2148, Sydney, Australia.

Plaintiff Respondent  
Respondent

AND THEREAFTER BETWEEN

3. Ignatius Robin Fernandopulle,  
4. Lucille Bernadette Leonie  
Fernandopulle,  
Both of  
No. 11, Railway Station Road,  
Negombo.

1<sup>ST</sup> and 2<sup>nd</sup> Defendant Petitioner  
Petitioner Petitioners

Vs

Corinne Marvin Therese  
Fernandopulle, "Arunagiri",  
Thoppuwa, Kochchikade.  
Presently at  
No. 28, Ronald Street, Black  
Town, New South Wales,  
2148, Sydney, Australia.

Plaintiff Respondent  
Respondent Respondent

AND THEREAFTER AGAIN BETWEEN

5. Ignatius Robin Fernandopulle,  
6. Lucille Bernadette Leonie  
Fernandopulle,  
Both of  
No. 11, Railway Station Road,  
Negombo.

1<sup>ST</sup> and 2<sup>nd</sup> Defendant Petitioner  
Petitioner Petitioner Petitioners

Vs

Corinne Marvin Therese  
Fernandopulle, "Arunagiri",  
Thoppuwa, Kochchikade.  
Presently at  
No. 28, Ronald Street, Black  
Town, New South Wales,  
2148, Sydney, Australia.

Plaintiff Respondent  
Respondent Respondent  
Respondent

AND THEREAFTER AGAIN BETWEEN

1. Ignatius Robin Fernandopulle,  
2. Lucille Bernadette Leonie  
Fernandopulle,  
Both of  
No. 11, Railway Station Road,  
Negombo.

1<sup>ST</sup> and 2<sup>nd</sup> Defendant Petitioner  
Petitioner Petitioner Petitioner

Petitioners  
Vs

Corinne Marvin Therese  
Fernandopulle, "Arunagiri",  
Thoppuwa, Kochchikade.  
Presently at  
No. 28, Ronald Street, Black  
Town, New South Wales,  
2148, Sydney, Australia.

Plaintiff Respondent  
Respondent Respondent  
Respondent Respondent

AND NOW BETWEEN

3. Ignatius Robin Fernandopulle,
4. Lucille Bernadette Leonie  
Fernandopulle,  
Both of  
No. 11, Railway Station Road,  
Negombo.

1<sup>ST</sup> and 2<sup>nd</sup> Defendant Petitioner  
Petitioner Petitioner Petitioner  
Petitioner Petitioners

Vs

Corinne Marvin Therese  
Fernandopulle, "Arunagiri",  
Thoppuwa, Kochchikade.  
Presently at  
No. 28, Ronald Street, Black  
Town, New South Wales,

2148, Sydney, Australia.

Plaintiff Respondent  
Respondent Respondent  
Respondent Respondent  
Respondent.

1. Herath Hitimakilage Nilanga Priyangani, Minuwangoda Road, Negombo.
2. Muhandiramge Stanley Lorence Moraes, No. 265/31, St. Joseph's Lane, Negombo.
3. National Development Bank, No. 14, Nawam Mawatha, Colombo 02.

Proposed to be added as 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

BEFORE

S. EVA WANASUNDERA PCJ.  
BUWANEKA ALUWIHARE PCJ. &  
VIJITH K. MALALGODA PCJ.

COUNSEL

THE 1<sup>ST</sup> PETITIONER I.R.FERNANDOPULLE FOR  
HIMSELF AND THE 2<sup>ND</sup> PETITIONER

ERANJAN ATAPATTU WITH VARUNI CARTHELIS  
FOR THE ' PROPOSED TO BE ADDED 1<sup>ST</sup> AND 2<sup>ND</sup>  
RESPONDENTS'.

KUSHLAN SENEVIRATNE FOR THE 'PROPOSED TO BE  
ADDED 3<sup>RD</sup> RESPONDENT'.

SUPPORTED FOR LEAVE TO APPEAL ON: 19.06.2018.

**DECIDED** re LEAVE TO APPEAL ON: 05.07. 2018.

**S. EVA WANASUNDERA PCJ.**

The Bench reserved the order on whether Leave to Appeal should be granted or not in this Application, at the end of submissions made by parties.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendant Petitioner Petitioner Petitioner Petitioner Petitioner Petitioners (hereinafter referred to as Petitioners) have filed a Petition dated 20.10.2016 against the Plaintiff Respondent Respondent Respondent Respondent Respondent (hereinafter referred to as Respondents) **and against** “Proposed to be added as 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Respondents”, seeking leave to appeal from the **order** of the High Court of Civil Appeals in case number WP/HCCA/GMP/10/2013 (**Revision Application**) dated **8.9.2016**, in the first instance. This Revision Application had been filed against the judgment in the Partition Action No. 2982/P before the District Court of Negombo.

The impugned Order runs from page 18 to 22 of the Civil Appellate High Court brief before us and the matters before that Court have been gone into by the Judges of that Court with regard to the Revision Application made by the Petitioners. The said order of two judges of the High Court has gone into the merits of the application and specifically stressed on the fact that , it is only **after the final decree** in the Partition Case No. 2892/P that the Petitioners had made the application under Section 48(4) of the Partition Act for revision. The registration of the final decree in the volume/folios at the Land Registry had been entered in Partition Case No. 2892/P. The said volume/folios are filed of record as X and Y at pages 109 to 116 which clearly shows that the final decree

had been entered in the D.C.Case 2892/P and registered at the Land Registry and that therefore a revision application cannot be entertained by Court. Deeds of Transfer No. 142 dated 06.09.2006 and No 117 dated 11.04.2013 had been executed after the final decree was registered in the land registry in March/ April, 2006.

The Plaintiff Respondent before the High Court has correctly transferred her share to Nilanka Priyangani , the “ proposed to be added 2<sup>nd</sup> Respondent’ before this Court and in turn she has transferred the same to the “ proposed to be added 3<sup>rd</sup> Respondent before this Court, Mohandiramge Stanley Lorence Moraes and he has mortgaged the land to the National Development Bank, the ‘Proposed to be added 4<sup>th</sup> Respondent’ before this Court. After all these years, the Petitioners have no right to make an application under Sec. 48(4) of the Partition Act. The learned High Court Judge and the District Judge has held as such quite correctly according to the law.

The learned judges of the High Court has mentioned that the present 1<sup>st</sup> and 2<sup>nd</sup> Defendant Petitioners, who are father and daughter had made the same revision application twice over before other judges of the same High Court and had received orders refusing the application for Revision and somehow the two judges who has written the third Order which is impugned by the Petitioners has specifically come to a finding that the intention of the said Petitioners seems to be to delay and prolong litigation against the Plaintiff. The High Court also has granted costs of Rs. 25000/- against the Petitioners.

The Counsel for the National Development Bank informed this Court that the customer who had mortgaged the property to the Bank has already paid the money with interest and that the mortgage has been cancelled. The Bank made the application to be discharged from the proceedings before this Court.



I do not see any reason to interfere with the findings in the judgment of the Civil Appellate High Court. **Application for leave to appeal is refused.**

The main Application before this Court is dismissed with legal costs to be paid by the Petitioners to the Plaintiff Respondent and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> 'proposed to be added Respondents'.

Judge of the Supreme Court.

Buwaneka Aluwihare PCJ.  
I agree.

Judge of the Supreme Court.

Vijith K. Malagoda PCJ.  
I agree.

Judge of the Supreme Court.