

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

In the matter of an Application under and in  
terms of Article 127 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka

SC/Appeal/78/2014  
SC/SPL/LA 96/2012  
CA (Revision): 385/2003  
DC/Mount Lavinia  
Case No: 849/P

1. Matarage Don Lorence Appuhamy  
(deceased)  
No. 11, Huludagoda Lane,  
Mount Lavinia.

**Plaintiff**

- 01A. Matarage Dona Sudharma  
No. 142/29 Sekkuwatta,  
Dalupitiya Road, Mahara,  
Kadawatha.

**Substituted Plaintiff**

**Vs.**

01. Lucien Ivan Wilfred de Alwis  
(deceased)
- 1A. John de Alwis,  
No. 10, Quarry Road,  
Ratmalana.
02. Gerald Clerk Wilfred de Alwis,  
No. 22, Huludagoda Road,  
Mount Lavinia.
03. Wilfred Letman Eustus de Alwis,

Zoological Gardens,  
Dehiwela.

04. Wilfred Michael Neville de Alwis,  
No. 22, Huludagoda Road,  
Mount Lavinia.

05. Joyce Gladys Christobel Gunathilake  
nee de Alwis, (deceased)  
No. 30, Huludagoda Road,  
Mount Lavinia.

05A. E.P.T. Gunathilake

05B. Sriyani Gunathilake  
both of No. 30, Huludagoda Road,  
Mount Lavinia.

06. Sheila Constance Milred  
Gunathilake nee De Alwis,  
No. 20, Huludagoda Road,  
Mount Lavinia.

07. Gunawathie Liyanage nee Wijeratne,  
“Manel Niwasa”, Padikara, Waluwatta,  
Veyangoda.

08. Kuda Liyanage Leslie

09. Kuda Liyanage Kusum kanthi

10. Kuda Liyanage Iranganie

11. Kuda Liyanage Doreen

12. Kuda Liyanage Sandhya,

All of “Manel Niwasa”,

Padikara Waluwatta,

Veyangoda.

13. Matarage Don Gunadasa,  
No. 70, Huludagoda Road,  
Mount Lavinia.
14. Matarage Don Karunratna,  
No. 9A, Huludagoda Road,  
Mount Lavinia.
15. Ganthudage Peter Perera,  
No. 2/1, Menerigama Place,  
Mount Lavinia.
16. Waduthantrige Hemawathie Alwis,  
No. 19/1, Huludagoda Road,  
Mount Lavinia.
17. Mirihanage Maggie Perera,  
“Kusumgiriya”,  
Mahalwarawa Junction,  
Pannipitiya.
18. Matarage Dona Kusumawathie,  
Kusum Somathilake, Sirideva Niwasa,  
Malagama, Malwana.
19. Matarage Don Munidasa
20. Matarage Dona Gunaseeli  
Both of “Kusumgiriya”,  
Mahalwarawa Junction,  
Pannipitya.
21. Kolambage Nollie Peiris
22. Matarage Don Seelet
23. Matarage Dona Sumanawathie
24. Matarage Don Anadasiri

25. Matarage Dona Thilaka  
All of No. 09, Huludagoda Road,  
Mount Lavinia.
26. Ranasinghe Arachchige Don Ariyadasa,
27. Ranasinghe Arachchige Don Edwin
28. Ranasinghe Arachchige Don Piyadasa
29. Ranasinghe Arachchige Don  
Dharmapala
30. Ranasinghe Arachchige Sisilin  
All of No. 633, Station Road,  
Kottawa, Pannipitiya.
31. Dodanwalage Chnadradasa Perera,  
Presidential Secretariat,  
Colombo.
32. Donwalage Walter Perera,  
Hulugoda Lane,  
Mount Lavinia.
33. Donwalage Piyadasa Perera,  
No. 8/2, Huludagoda Lane,  
Mount Lavinia.
34. Donwalage Rupawathie Perera  
No. 7A, Huludagoda Lane,  
Mount Lavinia.
35. N.H.T. Wilson Perera,  
No. 7A, Huludagoda Lane,  
Mount Lavinia.

36. W. Kusumwathie Sriyalatha Fonseka,  
No. 8/1B, Huludagoda Lane, Mount  
Lavinia.

37. K. Maggie Perera (deceased)

37A. A.W.S. Fonseka

38. A.W.S. Fonseka

39. W. Somadasa Fonseka (deceased)

39A. A.W.S. Fonseka

All of No. 8/1, Huludagoda Lane,  
Mount Lavinia.

40. W. Arthur Fernando

41. W. Austin Fernando

42. W. Elsie Fernando

43. W. Helen Fernando

All of 14/4, Huludagoda Lane,  
Mount Lavinia

44. Matarage Dona Sopihamy,  
(deceased)

No. 12, Huludagoda Lane,  
Mount Lavinia

44A. Rillagoda Arachchihge Alexander

No. 12, Huludagoda Lane,  
Mount Lavinia.

45. Matarage Don William (deceased)

No. 36/1, Piliyandala Road,  
Godigamuwa, Maharagama.

45A. Henadheerage Don Asilin Nona,

No. 14/7, Pengiriwatta Lane,  
Gangodawila, Nugegoda.

46. Matarage Don Rosalinhamy  
(deceased)  
No. 12, Huludagoda Lane,  
Mount Lavinia.
- 46A. Matarage Don Ariyadasa  
No. 14/7, Pengitriwatta Lane,  
Gangodawila, Nugegoda.
47. Liyanage Henry Perera (deceased)  
No. 3, Huludagoda Road,  
Mount Lavinia.
- 47A. Liyanage Rojilina Perera nee  
Gunasekera
48. Liyanage Vincent Perera (deceased)  
No. 442, Neelammahara Road,  
Godigamuwa.
- 48A. Wanniarachchige Dona Miyulin,  
No. 2/1, Huludagoda Road,  
Mount Lavinia.
49. Kuda Liyanage Nandawathie,  
No. 9, Huludagoda,  
Mount Lavinia.
50. Kurukulasuriya Peter Perera,  
No. 102, Modara,  
Moratuwa.
51. Punchi Hewage Babynna
52. Kuda Liyanage Ebert,  
Both of No. 32/2, Huludagoda Road,  
Mount Lavinia.

53. Kuda Liyanage Noyal *alias* Sunney,  
(deceased)  
No. 23/1, Huludagoda Road,  
Mount Lavinia.
- 53A. Hettige Dulcie Iranganie Perera,  
No. 23/1, Huludagoda Road,  
Mount Lavinia.
54. Kuda Liyanage Hamini *alias* Walter,  
No. 27/2, Huludagoda Road,  
Mount Lavinia.
55. Kuda Liyanage Weslin,  
No. 146/A, Anderson Road,  
Nedimala, Dehiwala.
56. Rilagoda Arachchige Wimalawathie,  
No. 12, Huludagoda Lane,  
Mount Lavinia.
57. Kudaligama Son Sugathapala,  
No. 9, Huludagoda Lane,  
Mount Lavinia.
58. K.D. Piyasoma,  
No. 14, Huludagoda Lane,  
Mount Lavinia.
59. G.M. Albert,  
No. 14/3, Huludagoda Lane,  
Mount Lavinia.

60. K. Dharmasena,  
No. 14/6, Huludagoda Lane,  
Mount Lavinia.
61. S. Rajawasam,  
No. 18, Huludagoda Lane,  
Mount Lavinia.
62. Dissanayake Mudiynsela Abeysekera,  
No. 14, Huludagoda Lane,  
Mount Lavinia.
63. K. Lurde Gunathilake,  
No. 40/1, Huludagoda Lane,  
Mount Lavinia.
64. G.L. Piyadana (deceased)  
No. 40/1, Huludagoda Lane,  
Mount Lavinia.
- 64A. Warna Jinadasa alias Hettiarachchi,  
No. 21/1, Huludagoda Lane,  
Mount Lavinia.
65. M. Paranawithana,
66. Iranganie Bopearachchi,  
No. 16/1, Attidiya Road,  
Ratmalana.
67. J.K. Paranawithana
68. A.M. Paranawithana  
Both of No. 16/1, Huludagoda Lane,  
Mount Lavinia.



69. Sarath Paranawithana,  
No. 1A/1, Attidiya Road,  
Ratmalana.
70. Dodangodaliyanage Albert  
Jayatunga Mathugama (deceased)  
70A. G.L.D.G. Jayasinghe
71. G. Henkenda,  
3<sup>rd</sup> Lane,  
Ratmalana.
72. W. Edwin Thisera,  
No. 14/3, Huludagoda Lane,  
Mount Lavinia.
73. S.A. Wilson,  
No. 14/3, Huludagoda Lane,  
Mount Lavinia.
74. S.A. Newton,  
No. 14/3, Huludagoda Lane,  
Mount Lavinia.
75. Commissioner of National Housing  
Sir Chittmpalam A. Gardiner Mawatha,  
Colombo 02.
76. G. Lomina de Silva,  
No. 14/3, Huludagoda Lane,  
Mount Lavinia.

77. Sumawathie Dabare,  
No. 14/3, Huludagoda Lane,  
Mount Lavinia.
78. Mudiyanselkage Darley  
Dewalkawatta, Templers Road,  
Mount Lavinia.
79. K.D. Hemawathie,  
No. 6, Huludagoda Lane,  
Mount Lavinia.
80. Mount Hatters Private Limited,  
No. 447, Galle Road,  
Mount Lavinia.
81. M.A. Fernando,  
No. 13/11, Huludagoda Lane,  
Mount Lavinia.
82. S.B. Wilson
83. Cicilin Fernando,  
No. 14/6, Huludagoda Lane,  
Mount Lavinia.
84. L.D. Pabilinqa Gunasekera
85. Roshilitha Gunasekera
86. Cicili Perera,  
Huludagoda Lane,  
Mount Lavinia.

87. B.M. Bandara,  
Huludagoda Lane,  
Mount Lavinia.

88. S.P. Dharmadasa,  
Huludagoda Lane,  
Mount Lavinia.

89. Siriyawathie  
No. 14/5, Huludagoda Lane,  
Mount Lavinia.

**Defendants**

**AND**

01. Gunawathie Liyanage nee Wijeratne,

02. Kuda Liyanage Leslie

03. Kuda Liyanage Kusum kanthi

04. Kuda Liyanage Iranganie

05. Kuda Liyanage Doreen

06. Kuda Liyanage Sandhya,

All of No. 6, Old Road,

Pannipitiya.

**7<sup>th</sup> to 12<sup>th</sup> Defendant-Petitioners**

**Vs.**

01. Matarage Don Lorence Apppuhamy

(deceased)

No. 11, Huludagoda Lane,

Mount Lavinia.

1A. Matarage Dona Sudharma  
No. 142/29 Sekkuwatta,  
Dalupitiya Road, Mahara,  
Kadawatha.

**Plaintiffs-Respondents**

02. Lucien Ivan Wilfred de Alwis

03. John de Alwis,  
Both of No. 10, Quarry Road,  
Ratmalana.

04. Gerald Clerk Wilfred de Alwis,  
No. 22, Huludagoda Road,  
Mount Lavinia.

05. Wilfred Letman Eustace de Alwis,  
Zoological Gardens,  
Dehiwala.

06. W212, Hulugoda Lane,  
Mount Lavinia.

07. Joyce Gladys Christobel Gunathilake  
nee de Alwis, (deceased)  
No. 30, Huludagoda Road,  
Mount Lavinia.

08. E.P.T. Gunathilake

09. Sriyani Gunathilake  
Both of No. 30, Huludagoda Road,  
Mount Lavinia.

10. Sheila Constance Milred  
Gunathilake nee De Alwis,

No. 20, Huludagoda Road,  
Mount Lavinia.

**1<sup>st</sup>, 1A, 2<sup>nd</sup> to 5<sup>th</sup>, 5A and 5B and 6<sup>th</sup>**

**Defendants-Respondents**

11. Matarage Don William (deceased)

No. 36/1, Piliyandala Road,  
Godigamuwa, Maharagama.

12. Henadheerage Don Asilin Nona,

No. 14/7, Pengiriwatta Lane,  
Gangodawila, Nugegoda.

13. Matarage Don Rosalinhamy  
(deceased)

No. 12, Huludagoda Lane,  
Mount Lavinia.

14. Matarage Don Ariyadasa

No. 14/7, Pengitriwatta Lane,  
Gangodawila, Nugegoda.

**45<sup>th</sup>, 45A, 46<sup>th</sup> and 46A Defendants-**

**Respondents**

**AND NOW BETWEEN**

01. Gunawathie Liyanage nee Wijeratne

06. Kuda Liyanage Sandhya

All of No. 6, Old Road,  
Pannipitiya.

**7<sup>th</sup> and 12<sup>th</sup> Defendants-Petitioners-**

**Petitioners**

**Vs.**

01. Matarage Don Lorence Apppuhamy  
(deceased)  
No. 11, Huludagoda Lane,  
Mount Lavinia.

01A. Matarage Dona Sudharma  
No. 142/29 Sekkuwatta,  
Dalupitiya Road, Mahara,  
Kadawatha.

**Plaintiff-Respondents-Respondents**

02. Lucien Ivan Wilfred de Alwis  
(deceased)

03. John de Alwis,  
No. 10, Quarry Road,  
Ratmalana.

04. Gerald Clerk Wilfred de Alwis,  
No. 10, Huludagoda Road,  
Mount Lavinia.

05. Wilfred Ludowollyn Eustace de Alwis,  
Zoological Gardens,  
Dehiwala.

06. W212, Huludagoda Lane,  
Mount Lavinia.

07. Joyce Gladys Christobel Gunathilake  
nee de Alwis, (deceased)

08. E.P.T. Gunathilake

09. Sriyani Gunathilake

10. Sheila Constance Milred

Gunathilake nee De Alwis,  
No. 20, Huludagoda Road,  
Mount Lavinia.

**1<sup>st</sup>, 1A, 2<sup>nd</sup> to 5<sup>th</sup>, 5A and 5B and 6<sup>th</sup>  
Defendants-Respondents-  
Respondents**

11. Matarage Don William (deceased)

No. 36/1, Piliyandala Road,  
Godigamuwa, Maharagama.

12. Henadheerage Don Asilin Nona,

No. 14/7, Pengiriwatta Lane,  
Gangodawila, Nugegoda.

13. Matarage Don Rosalinhamy

(deceased)

No. 12, Huludagoda Lane,  
Mount Lavinia.

14. Matarage Don Ariyadasa

No. 14/7, Pengitriwatta Lane,  
Gangodawila, Nugegoda.

**45<sup>th</sup>, 45A, 46<sup>th</sup> and 46A Defendants-  
Respondents-Respondents-Respondents**

02. Kuda Liyanage Leslie

03. Kuda Liyanage Kusum Kanthi

04. Kuda Liyanage Iranganie

05. Kuda Liyanage Doreen

All of No. 6, Old Road,

Pannipitiya.

**8<sup>th</sup> to 11<sup>th</sup> Defendants-Petitioners-**

**Respondents**

Before: Hon. Priyantha Jayawardena PC, J  
Hon. A.L. Shiran Gooneratne, J  
Hon. Achala Wengappuli, J

Counsel: Mangala Niyarapola with Shamika Seneviratne for the Defendant-Petitioner-Appellant-Appellant

Mokshini Jayamanne for the 1<sup>st</sup> to 6<sup>th</sup> Defendants-Respondents-Respondents

K.G. Pathiraja with J.M. Wijebandara for the 21<sup>st</sup> Defendant-Respondent-Respondent

Ranjan Siriwardena PC with Anil Rajakaruna and R.D. Perera for the 46A Defendant-Respondent-Respondent

N. Wigneshwaran Senior State Counsel for the Hon. Attorney General

Argued on: 8<sup>th</sup> October, 2021

Decided on: 10<sup>th</sup> November, 2023

**Priyantha Jayawardena PC, J**

This is an appeal to set aside the judgment of the Court of Appeal dated 30<sup>th</sup> of March, 2012 which dismissed the Revision Application filed by the appellants on the grounds that there was an inordinate delay in filing the Revision Application and the appellants have failed to explain the reason for the delay.



On the 22<sup>nd</sup> of April, 1974, the plaintiff-respondents-respondents (hereinafter referred to as the “respondents”) instituted action in the District Court of Mount Lavinia to partition a land called Kongahawatta and Otudena Dawatagahawatta alias Gorakagahawatta, situated at Watarappola, Mount Lavinia, in extent of 7 Acres, 1 Rood and 12.53 Perches (A7: R1: P12.53).

Thereafter, the 7<sup>th</sup> and 8<sup>th</sup> defendants-petitioners-appellants (hereinafter referred to as the “appellants”) filed their Statement of Claim on the 9<sup>th</sup> of March, 1993 and pleaded that they are entitled to 14254/211680 share of Lot No. 17 of the undivided land depicted in the Preliminary Plan of the case.

At the trial, the contest was between the appellants and the 49<sup>th</sup>, 66<sup>th</sup> to 69<sup>th</sup> and 79<sup>th</sup> respondents, in respect of the deed bearing No. 3494 dated 1<sup>st</sup> of December, 1958 which was produced marked as “50D1”, as to whether the said deed created a constructive trust.

After the trial, the learned District Judge delivered his judgment on the 1<sup>st</sup> of October, 1990 holding that the said deed marked as “50D1” did not create a constructive trust and that the interlocutory decree was entered accordingly. Hence, the appellants were allocated 142959/211680 shares of the corpus, which is equivalent to 1/15 share of the corpus.

Being aggrieved by the said judgment of the District Court, the appellants appealed to the Court of Appeal against the same. Thereafter, the Court of Appeal, by judgment dated 20<sup>th</sup> of February, 1998 held that the only issue to be considered in the appeal is whether Deed of Transfer No. 3949 dated 1<sup>st</sup> of December, 1958 (50D1) was a nominal transfer by one Dharmadasa to his mother, Mary Perera, which gave rise to a trust in favour of Dharmadasa and, upon his death, in favour of his heirs. The Court of Appeal held that there were sufficient attended circumstances to come to the conclusion that there was a trust and set aside that part of the judgment of the learned District Judge dated 1<sup>st</sup> of October, 1990. Accordingly, it was further held that the allotment of shares in the main partition action should be amended when preparing the Interlocutory Decree. Subject to the above judgment, the District Court judgment dated 8<sup>th</sup> of March, 1990 was affirmed by the Court of Appeal.

Consequently, in compliance with the Court of Appeal judgment, the learned District Judge amended the Interlocutory Decree on the 21<sup>st</sup> of February, 2000.

The appellants stated that, when the surveyor visited the land to be partitioned, it was discovered that the shares allotted to them were much less than what they expected to be given by the judgment.

Thus, the appellants made an application to the District Court on or around the 30<sup>th</sup> of May, 2002 under section 48(4) of the Partition Act No. 21 of 1977 as amended (hereinafter referred to as the “Partition Act”) and/or section 189 of the Civil Procedure Code to amend and/or modify the said Interlocutory Decree.

In the aforesaid application to the District Court, the appellants stated that when the appellants checked the allocation of shares as per the amended Interlocutory Decree, it was discovered that they had been allotted only 588/70560 shares of the corpus, which is equivalent to about 1/120 shares of the corpus, whereas they should have been allotted a share equivalent to 1/15 of the corpus as shown in the plaint and for which evidence had been led at the trial.

Further, in the said application, it was stated that the appellants discovered that the shares that should have been devolved on them by Deeds marked as “7V1”, “7V3”, 7V4” and “7V6” [also marked as P6 to P9], that were produced in evidence at the trial without a contest and also by inheritance under the pedigree were not been taken into consideration in preparing the scheme of shares after the judgment of the Court of Appeal was delivered.

However, the 1<sup>st</sup> to 6<sup>th</sup> respondents and the 45<sup>th</sup> and 46<sup>th</sup> respondents objected to the said application of the appellants to amend and/or modify the said Interlocutory Decree.

After an inquiry, the learned District Judge by Order dated 28<sup>th</sup> of January, 2003 dismissed the application of the appellants.

Being aggrieved by the said Order of the learned District Judge dated 28<sup>th</sup> of January, 2003 the appellants filed a Revision Application in the Court of Appeal on the 27<sup>th</sup> of April, 2003 seeking, *inter alia*, to revise and/or set aside the said Order delivered by the District Court and to amend the Interlocutory Decree dated 21<sup>st</sup> of February, 2000.

After hearing the said Revisions Application, the Court of Appeal, by judgment dated 30<sup>th</sup> of March, 2012 dismissed the said Application of the appellants on the basis that there was an inordinate delay in filing the Revision Application.

Being aggrieved by the said judgment of the Court of Appeal, the appellants sought leave to appeal from this court and prayed for:

- “(a) Issue notice on the Plaintiff and the Respondents;
- (b) Call for an examine the record of District Court of Mount Lavinia Case No; 849/P;
- (c) Stay further proceedings in District Court of Mount Lavinia Case No; 849/P until final determination of this application;
- (d) Set aside and/or revised the impugned judgment dated 30/03/2012 (marked “X13”) in the Court of Appeal Case No: CA (Revision) 385/2003;
- (e) Set aside the Order dated 28/01/2003 (marked “X10” above) and direct the learned District Judge to amend and/or modify the amended interlocutory Decree (marked X6) by allocating correct shares to the Petitioners; or
- (f) In the alternative, set aside the Order dated 28/01/2003 (marked “X10” above) and the amended Interlocutory Decree (marked X6) entered in this case and amend the original Interlocutory Decree dated 01/10/1990 (marked “X4”) by allocating correct shares to the Petitioners;**
- (g) Set aside the judgment and Interlocutory Decree dated 21/01/2000 (marked “X6” above) and the final decree that may be entered in the District Court of Mount Lavinia Case No; 849/P;
- (h) Grant cost of this Application; and
- (i) Grant Special Leave to Appeal
- (j) Grant such other and further relief as to Your Lordships’ Court shall seem fit.”

[emphasis added]

Thereafter, this court granted leave to appeal on the following questions of law;

- “(a) Is the said impugned judgment marked “X13” is ex facie wrong?
- (b) Is the said impugned judgment marked “X13” is bad in law and against the oral evidence adduced in this case?
- (c) Is the said impugned judgment marked “X13” is contrary to law and against the weight of documentary evidence adduced?

(d) Did their Lordships of the Court of Appeal err in law by misdirecting themselves in failing to appreciate the fact that:

(i) the said Order of learned District Judge dated 28/01/2003 (marked “X10”) is contrary to law and against the evidence adduced in that case;

(ii) the learned District Judge has failed to carry out the mandatory provisions of the Partition Act in examining the title of all parties and satisfy himself of the rights of all parties before court;

(iii) the learned District Judge has failed in his duty in acting solely on the computation of shares prepared by the Attorney-at-Law of the Plaintiff (Plaintiff-Respondents-Respondents herein);

(iv) the learned District Judge has failed to address his mind that as per his amended Interlocutory Decree subsequent Scheme of Partition (marked as “X14(a)” and “X14(b)” below), the Petitioners were the only party to this action to be deprived of their complete dwelling house where they have been peaceful and undisturbed possession for over 44 years, whilst they have established their entitlement for a bigger share of the corpus.

(v) the learned District Judge has wrongly interpreted the provisions of section 48(4) of the Partition Act and/or section 189 of the Civil Procedure Code and failed to amend and/or modify the amended Interlocutory Decree as contemplated in the said sections;

(vi) the learned District Judge has wrongfully and illegally held that the Petitioners were attempting to introduce new Deeds and claim shares in the land, whereas, in fact they have only drawn attention to the Deeds that have been already produced and marked in evidence, namely Deeds marked 7V1, 7V3, 7V4 and 7V6 (currently marked “X7(a)”, “X7(b)”, “X7(C)” and “X7(d)” respectively) and the shares inherited under the Pedigree proved in evidence;

(vii) the learned District Judge has completely misunderstood and misconstrued the Petitioners’ application to amend the amended Interlocutory Decree?

(e) Did the Lordships of the Court of Appeal err in law in erroneously concluding that the finality that is given to an Interlocutory Decree and the final judgment of a partition action by the

Partition Act cannot be disturbed by Court of Appeal by invoking the revisionary jurisdiction of that court?

- (f) Did their Lordships of the Court of Appeal err in law in failing to appreciate that the Petitioner have established fit and proper grounds to show their Lordships that the decision of learned District Judge was so erroneous that, with no doubt, shocks the conscience of the court which warrant the intervention of the Court of Appeal by invoking the revisionary jurisdiction?
- (g) Did their Lordships of the Court of Appeal err in law in failing to appreciate that the same court on the same subject matter has taken a very pragmatic and contrary view of the Petitioners' application invoking revisionary jurisdiction of the Court of Appeal by the Order of their Lordships dated 13/05/2003 when it was supported for a stay order at the outset (marked X12)?
- (h) Did their Lordships of the Court of Appeal err in law by misdirecting themselves in failing to appreciate that there was no ground for illiterate and unemployed 7<sup>th</sup> widow Petitioner and her 5 children to suspect that the learned District Judge would come to such an erroneous conclusion after proving in evidence of their entitlement in the corpus and also due mainly to their inability to determine the actual extent of land allotted in the original interlocutory decree actual extent of land allotted in the original interlocutory decree only representing by way of complicated mathematical calculations?
- (i) Did their Lordships of the Court of Appeal err in law in erroneously concluding that the Petitioners were guilty of being non-vigilant right throughout the case, when the Petitioners have in fact taken some timely action to challenge what in their understanding was wrong and in the given circumstances and that is much better than doing nothing at all?
- (j) Did their Lordships of the Court of Appeal err in law by misdirecting themselves in failing to appreciate that considering the circumstances prevailed in the present case there was total want of investigation of title and that there is paramount duty cast on the court by the Partition Law itself to investigate title?
- (k) Did their Lordships of the Court of Appeal err in law by misdirecting themselves in failing to appreciate that the judgment entered for the partition of the land is clearly contrary to law as there has been a total failure by the court to investigate the title of each party?

- (l) Did their Lordships of the Court of Appeal err in law by misdirecting themselves in failing to appreciate that a grave miscarriage of justice had actually occurred and also failing to appreciate that there is a paramount duty imposed by the statute on the court to ensure that the rights of persons claiming title to the land are not placed in jeopardy by the decree sought from court?
- (m) Did their Lordships of the Court of Appeal err in law by misdirecting themselves in failing to appreciate that the evidence adduced and grounds set out before their Lordships' have in fact established extraordinary and exceptional circumstances which warrants the intervention of the Court of Appeal by way of revision notwithstanding the purportedly unexplained delay of 13 years, in seeking revisionary jurisdiction of their Lordships' Court?
- (n) Did their Lordships of the Court of Appeal err in law in erroneously concluding to dismiss the Petitioners' revision application simply on the ground of delay, without giving very extraordinary reasons to justify such dismissal, when it is well-established that the impugned Order of learned District Judge dated 28/01/2003 (marked "X10") and the amended Interlocutory Decree dated 21/02/2000 (marked "X6") are manifestly erroneous and failing to appreciate that it would be unjust to allow the mischief of the order and/or interlocutory decree to continue and reject such revision application simply on the ground of delay?"

During the hearing of the instant appeal, it appeared that most of the questions of law referred to above did not reflect the correct questions of law arising from the judgment of the Court of Appeal. Hence, with the consent of the parties, this court raised the following question of law and the parties agreed to have the hearing confined to the new question of law raised by this court.

“Did the Court of Appeal err in law by coming to the conclusion that there is an inordinate delay in filing the Revision Application and the parties have not explained the reason for the delay in the Revision Application filed in the Court of Appeal?”

In the circumstances, the other questions of law will not be considered in this judgment.

**Did the Court of Appeal err in law by coming to the conclusion that there is an inordinate delay in filing the Revision Application?**

After hearing the first appeal preferred by the appellants the Court of Appeal delivered the judgment on the 20<sup>th</sup> of February, 1998 and held, *inter alia*;

*“We are satisfied that there were enough attended circumstances to come to the conclusion that the mother Mary Perera held the shares in question in trust for the son Dharmadasa and his heirs the 7<sup>th</sup> to 12<sup>th</sup> defendant-appellants abovementioned..... We make order that shares transferred by Dharmadasa to Mary Perera on Deed 50D1 should devolve on the 7<sup>th</sup> to 12<sup>th</sup> defendant-appellants and the allotment of shares in the main petition case should be adjusted and amended accordingly when preparing the Interlocutory Decree. **Except for these changes the judgment dated 08.03.90 shall remain unaffected.**”*

[emphasis added]

Thereafter, the learned District Judge amended the said Interlocutory Decree on the 21<sup>st</sup> of February, 2000 as directed by the Court of Appeal.

Subsequently, the appellants made an application to the District Court on the 30<sup>th</sup> of May, 2002 under section 43(4) of the Partition Act No. 21 of 1977 as amended and/or under section 189 of the Civil Procedure Code to amend and/or modify the said amended Interlocutory Decree, stating that the allocation of shares in the amended Interlocutory Decree is not in conformity with the deeds produced at the trial before the District Court.

After an inquiry, the learned District Judge by Order dated 28<sup>th</sup> of January, 2003 dismissed the application of the appellants on the grounds that the District Court does not have jurisdiction to amend the judgment of the Court of Appeal and that the reliefs pleaded by the 7<sup>th</sup> to 12<sup>th</sup> appellants cannot be granted either under section 189 of the Civil Procedure Code or under section 48(4) of the Partition Act, the said provisions can only be invoked under special circumstances.

Thereafter, the appellants filed a Revision Application in the Court of Appeal, seeking, *inter alia*, to revise and/or set aside the said Order of the District Court.

After hearing the appeal, the Court of Appeal, by judgment dated 30<sup>th</sup> of March, 2012 dismissed the said Revision Application of the appellants and held, *inter alia*:

*“In this instant application the Petitioner was a party to the partition action from early 70s until the judgment was delivered in March 1990 and thereafter he challenged the judgment and was an appellant until the judgment was finally delivered by the Court of Appeal in 1998. The appeal was not on the grounds urged in this Revision Application **but in fact the purported error complained of in this Revision Application was in existence at the time the final appeal was preferred. In these circumstances this Court cannot entertain a revision application to revise an order that was made 13 years ago, in view of this inordinate delay and, as the delay is not explained, this Court dismisses this application without costs.**”*

[emphasis added]

A careful consideration of the said judgment of the Court of Appeal shows that the appellants sought to revise the original judgment delivered by the District Court on the 1<sup>st</sup> of October, 1990 and the application to revise the same was made to the Court of Appeal on the 23<sup>rd</sup> of February, 2003. i.e., after the appeal was decided by the Court of Appeal on the 23<sup>rd</sup> of February, 2003.

Thus, it is necessary to consider the delay in filing the said Revision Application and the maintainability of the said Revision Application.

The jurisdiction to hear Revision Applications are set out in terms of Article 138 of the Constitution and section 753 of the Civil Procedure Code.

Article 138(1) of the Constitution states;

*“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 restitutio 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 judgement, 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.”*

Further, section 753 of the Civil Procedure Code states;

*“The Court of Appeal may call for and examine the record of any case, whether already tried or pending trial, in any court, for the purpose of satisfying itself as to the legality or propriety of any judgment or order passed therein, or as to the regularity of the proceedings of such court, and may upon revision of the case so brought before it pass any judgment or make any order which it might have made had the case been brought in due course of appeal instead of by way of revision.”*

It is pertinent to note that though an appeal is a right conferred on the litigants a revisionary jurisdiction is a discretionary remedy and cannot be exercised as of right. Further, courts exercise revisionary jurisdiction only when the parties satisfy the courts that there is a real need to exercise the discretion of the court to entertain a Revision Application. Hence, the petitioners should aver sufficient reasons in the petition to justify when making an application to invoke the discretionary power of the court.

A similar view was expressed in ***Wijesinghe v Tharmaratnam*** Sri Skantha’s Law Reports Vol. **IV 47 at 49** where 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’.”*

Further, in ***Dharmaratne and Another v Palm Paradise Cabanas Ltd. and Others*** (2003) 3 SLR **24 at 30** it was held;

*“The practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed. The words used by the legislature do not indicate that it ever intended to interfere with this ‘rule of practice’.”*

As stated above, the petitioner should plead the ‘exceptional circumstances’ which warrant court to exercise its discretion in deciding to entertain a Revision Application. Further, the ‘exceptional circumstances’ will vary from one application to another, and such circumstances are unique to each and every application. Moreover, if a petitioner avers ‘exceptional circumstances’ in the petition, the learned judge is required to consider such matters and satisfy himself that there are ‘exceptional circumstances’ that warrant the exercise of discretion to entertain the application of the petitioner. A similar view was expressed in ***Rustom v Hapangama (1978-79) 2 SLR 229*** where it was held;

*“It must depend entirely on the facts and circumstances of each case and one can only notice the matters which courts have held to amount to exceptional circumstances in order to find out the essential nature of these circumstances.”*

However, if the court is not satisfied that the ‘exceptional circumstances’ that are pleaded in the petition do not warrant the invocation of the discretion of court due to the facts and circumstances of the case or due to the law applicable to the relevant Revision Application, the court shall not exercise such discretion in favour of the petitioners.

Further, if a right of appeal was available and the petitioner failed and/or neglected to use the said right, the petitioner should state in his petition the reason for failing to exercise the right of appeal. Furthermore, in order to invoke the discretionary power of court, the petitioner should disclose all relevant material facts and should not misrepresent or suppress material facts. Hence, a petitioner should come to court with clean hands (*Uberrima Fides*). Moreover, there should be no laches in making the application

### ***Laches***

As stated above, a Revision Application should be made within a reasonable time. Thus, delay in making an Application for Revision for an Order made by a lower court results in refusing the application. If there is a delay in making an Application for Revision, the petitioner should explain the reason for such delay in the petition filed in court. A similar view was expressed in ***Rajkumar and Another v Hatton National Bank (2007) 2 SLR 1*** where it was held;

*“The power of revision vested in the Court of Appeal is discretionary. Vide Colombo Apothecaries Ltd. v Commissioner of Labour, Rasheed Ali v Mohamed*

*Ali (supra), and Wijesinghe v Tharmarathnam. On a careful consideration of the above judicial decisions, I hold that revision being a discretionary remedy is not available to those who sleep over their rights. I further hold that it is not the function of the Court of Appeal, in the exercise of its revisionary jurisdiction, to relieve parties of the consequences of their own folly, negligence and laches.”*

Furthermore, a long and unexplained delay disentitles a petitioner to get any relief by way of revision. A similar view was expressed in the following cases.

In ***Gnanapandithan v Balanayagam 1998 (1) SLR 391***, it was held;

*“The question whether delay is fatal to an application in revision depends on the particular facts and circumstances of the case.”*

Further, in ***Carlo Perera v Lakshman Perera (1990) 2 SLR 302*** it was held;

*“The Defendant-Petitioners sought to explain the delay partly on the basis that they had to obtain a certified copy of the proceedings from the District Court. It is noted that the certified copy was obtained on 17.12.1984. This application was thereafter filed on 31.1.1985. Thus, it is seen that the application has been filed within a period of five months of the order that is challenged. It had been filed within six weeks of the certified copy being obtained. Counsel for the Defendant-Petitioners has not cited any precedent in which an application has been dismissed because it was filed within a period of five months of the impugned order. To my mind there has been no undue delay in filing this application. The Rules require that a certified copy of the proceedings be filed together with an application in revision. It is seen from the record that there has been some delay in obtaining the certified copy. The Defendant-Petitioners cannot be faulted for this matter. I accordingly see no merit in this ground of objection.”*

A careful consideration of the judgment of the Court of Appeal shows that the appellant was seeking to revise the Interlocutory Order of the District Court made on the 1<sup>st</sup> of October, 1990.

Therefore, I am of the opinion that the Court of Appeal had not erred in law by concluding that there had been an inordinate delay in filing the said Revision Application. It is pertinent to note

that even in prayer (f) to the petition filed in this court, the appellant seeks to revise the Interlocutory Order made by the District Court on the 8<sup>th</sup> of March, 1990.

In any event, as correctly stated by the learned District Judge, it is not possible to vary or set aside the judgment delivered by the Court of Appeal on the 20<sup>th</sup> of February, 1998 the District Court or by a Revision Application filed in the Court of Appeal. In fact, the said Revision Application is a collateral attack on the previous judgment of the Court of Appeal delivered on the 20<sup>th</sup> of February, 1998. A similar view was expressed in *Cadermanpulle v Ceylon Paper Sacks Ltd. (2001) 3 SLR 112 at 117* where it was held:

*“When the reliefs claimed by the petitioner in this application are considered, it became apparent that the petitioner has claimed the same reliefs which he has claimed in his leave to appeal application. In other words, petitioner is trying to achieve in this application what he could not achieve in his leave to appeal application, in a devious manner, after the lapse of nearly two years from the original order delivered by the learned District Judge. This inordinate delay has not been explained away by the petitioner to the satisfaction of this court. Moreover, the petitioner has not disclosed exceptional circumstances why his application for revisionary relief should be entertained by this court after a lapse of nearly two years from the original District Court order.”*

## **Conclusion**

In light of the above, the following question of law is answered as follows;

Did the Court of Appeal err in law by coming to the conclusion that there is an inordinate delay in filing the Revision Application and the parties have not explained the delay in the Revision Application filed in the Court of Appeal?

NO

In the circumstances, I affirm the judgment of the Court of Appeal dated 30<sup>th</sup> of March, 2012. The appeal is dismissed without costs.

Judge of the Supreme Court

A.L. Shiran Gooneratne, J

I Agree

Judge of the Supreme Court

Achala Wengappuli, J

I Agree

Judge of the Supreme Court