

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

Dippitage Welis Dippita,
Makura,
Hettimulla.
11(a) alias 12th Defendant-Petitioner-
Appellant

SC/APPEAL/139/2026

SP/HCCA/KEG/03/2021 (RE)

DC KEGALLE 24099/P

Vs.

Velaboda Viyannalage Dinesh Miroy
Weerasinghe Magurudeniya,
Makura, Hettimulla.
Substituted Plaintiff-Respondent-
Respondent and other Defendant-
Respondents and others

Before: Hon. Justice Mahinda Samayawardhena
 Hon. Justice Arjuna Obeyesekere
 Hon. Justice Dr. Sobhitha Rajakaruna

Counsel: J.P. Gamage with Theekshana Ranaweera and Chamara
 Fernando for the 11(a) alias 12th Defendant-Petitioner.

The Respondents are absent and unrepresented.

Argued on: 01.06.2026

Written submissions:

By 11(a) alias 12th Defendant-Petitioner-Appellant on
04.06.2026

Decided on: 27.07.2026

Samayawardhena, J.

This is an appeal arising from a partition action.

The District Court of Kegalle delivered judgment on 22.11.2017. No party preferred an appeal against that judgment. However, thereafter, the 12th defendant made an application in terms of section 189 of the Civil Procedure Code seeking the correction of certain clerical and arithmetical mistakes contained in the judgment, particularly in relation to the calculation of the shares to which he was entitled.

The said application was not opposed by any party. By order dated 29.08.2019, the learned District Judge corrected certain clerical mistakes but refused to correct the alleged arithmetical error in the calculation of shares. On appeal, the High Court of Civil Appeal of Kegalle, by judgment dated 25.06.2021, affirmed the order of the District Court.

It is against the said judgment of the High Court that the 12th defendant has preferred this appeal. No party appeared before this Court to resist the appeal. Having heard learned Counsel for the 12th defendant, this Court granted leave to appeal on the question whether the High Court erred in law and in fact by affirming the order of the District Court refusing to correct an obvious arithmetical mistake in the calculation of shares in the judgment in terms of section 189 of the Civil Procedure Code read with section 79 of the Partition Law.

The argument advanced on behalf of the 12th defendant-appellant is simple and straightforward.

The 12th defendant, *inter alia*, raised issue Nos. 29 to 33 at the trial claiming a total entitlement to 102/240 shares of the corpus. Those issues explained the manner in which he derived title to the said shares. All those issues were answered in favour of the 12th Defendant by the learned District Judge.

At the trial, the 12th Defendant produced deeds marked 12V1 to 12V7 in support of his title. The learned District Judge accepted all those deeds. The 12th Defendant's title deed is Deed No. 1290 dated 02.08.1984 marked 12V7, by which his predecessor in title, Gamaralalage Charlis, conveyed all his rights to the land to the 12th Defendant. Gamaralalage Charlis derived title under Deed No. 29643 dated 25.11.1975 marked 12V3 and Deed No. 30340 dated 03.03.1976 marked 12V6.

The learned District Judge accepted that Gamaralage Charlis acquired 57/240 undivided shares under deed 12V3 and correctly allotted those 57/240 shares to the 12th defendant. The learned District Judge also accepted deed 12V6 and further accepted that the rights acquired thereunder by Gamaralage Charlis were conveyed to the 12th defendant by deed 12V7.

However, notwithstanding those findings, the learned District Judge failed to allot to the 12th defendant the 45/240 shares derived through deed 12V6. As a result, those 45/240 shares were left unallotted in the judgment and interlocutory decree.

This is a clear arithmetical mistake or accidental slip or omission. The omission occurred not in the adjudication of rights but in the computation and allocation of shares consequent upon the findings already made. Correcting the error does not require any reconsideration of the merits of the judgment, nor does it affect the share allocation already made in favour of the other parties. It merely gives effect to the findings already reached by the trial court.

Such an error could and should have been corrected by the District Court in terms of section 189 of the Civil Procedure Code read with section 79 of the Partition Law.

For these reasons, I hold that the High Court erred in affirming the refusal of the District Court to correct the omission relating to the 45/240 shares to which the 12th defendant is entitled.

Accordingly, the judgment of the High Court of Civil Appeal dated 25.06.2021 is set aside. The order of the District Court dated 29.08.2019 is varied to the extent that the application of the 12th defendant for the correction of the said omission is allowed.

The District Court is directed, in terms of section 189 of the Civil Procedure Code read with section 79 of the Partition Law, to amend the judgment and the interlocutory decree by allotting to the 12th defendant the unallotted 45/240 shares, in addition to the 57/240 shares already allotted to him.

The appeal is allowed without costs.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.

I agree.

Judge of the Supreme Court