

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

In the matter of an application for Revision and/or Restitutio-in-Integrum under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/RII/12/2022

Case No. DC Kalutara 6887/P

01. Abdul Latheef Mohamed Sahabdeen,
(Deceased),
No. 133/2A Maradana, Beruwala.

01A. Abdul Rahuman Mohamed Uwayis (Legal Representative of the 1st Plaintiff).

01B. Abdul Wadud Ummu Samsam, (Deceased),
No.133/2A, Maradana, Beruwala.

01C. Abdul Rahuman Mohomed Bisarul Laffar,
No.103, Mahagoda Sawiya Lane, Beruwala.

02. Abdul Wadud Ummul Latheef

PLAINTIFFS

Vs.

01. Mohomad Pasi Mohomed Faizer (Deceased).

01A. Samsun Napiliya

01B. Mohomad Farsan Pathuha Fasmiya

01C. Mohomad Naflan Mohomed Niskan

01D. Mohomed Shiyam Fathima Shahika

01E. Mohomed Nishrath

All of are, No.29, Faizer Villa,
Palliyaldiripita, Marakkala Watta, Dinagoda,
Beruwela.

02. Mohomed Pasi Mohomed Sahir

03. Mohomed Pasi Pathumma Rilaya

04. Mohomed Pasi Pathumma Nihara

05. Mohomeda Pasi Pathumma Saheena

06. Mohomeda Pasi Pathumma Jesima

All of No.61/94, Sri Pagcharama,
Beruwala.

07. Ismail Marikkar Mohamed Juwad

08. Mohamed Aswar Mohamed Pasi

09. Mohomed Hajjad

No.10/04, Saviya Road, Mahagoda, Beruwela.

10. Samsudeen Awrosh

No.10/04, Saviya Road, Mahagoda, Beruwela.

11. Abdul Kaseem Pathuma Haleema (Deceased)

No.10/04, Saviya Road, Mahagoda, Beruwela.

11A. Mohamed Samsudeen Mohamed
Awroos

No.10/04, Saviya Lane, Mahagoda, Beruwela.

12. Samdudeen Sithi Nisa,

No.10/4, Saviya Lane, Mahagoda,
Beruwela.
13. Mohamed Samsudeen Aunil Sishaya
14. Mohamed Samsudeen Ummul

Sirosha

Both of 10/4, Saviya Lane,
Mahagoda, Beruwela.
15. Mohamed Seyin Sulsima
No. 42/2, Saviya Lane, Mahagoda,
Beruwela.
16. Mohamad Juwad Siththi Sahima
No.10/6, Saviya Lane, Mahagoda,
Beruwela.
17. Mohamad Uduman Duranul Paleela
No.10/4, Saviya Lane, Mahagoda,
Beruwela.
18. Abdul Kapur Mohamed Ibrahim
No.10/4, Saviya Lane, Mahagoda,
Beruwela.

19. Mohamed Uduman Mohomad Hasan
No.10/4, Saviya Lane, Mahagoda,
Beruwela,
20. Mohamed Uduman Mohamed Naufar
of Dinagoda, Beruwela.
21. Mohamed Uduman Mohamed Paris
of Keselwatta, Digalla Road,
Panadura.
22. Mohamed Uduman Mohamed
Hussain of Dinagoda Beruwela.
23. Mohamed Uduman Mohamed Ibbar
of Dinagoda, Beruwala.
24. Abdul Kaseem Mohamed Jabir of
No. 02, Lotus Road, Darga Town.
25. Mohamed Seyed Mohamed Hussain
of No.38, St. Anne's Road, Dinagoda.
26. Mohamed Pasi Mohamed Farook of
St. Peter's Lane, Moggona.
27. Mohamed Samsudeen Kadeeja
Hanim of No.10/04, Saviya, lane,
Mahagoda, Beruwela.

DEFENDANTS

And Between

Mohamed Samsudeen Kadeeja
Hanim of No.10/04, Saviya, lane,
Mahagoda, Beruwela.

27th DEFENDANT-PETITIONER

Vs.

01. Abdul Latheef Mohamed
Sahabdeen
(Deceased)

No.133/2A, Maradana, Beruwela.

01A. Abdul Rahuman Mohomed Uwayis
(Legal Representative of the 1st
Plaintiff).

01B. Abdul Wadud Umma Samsam
(Deceased)

No.133/2A, Maradana, Beruwela.

01C. Abdul Rahuman Mohomed Bisarul
Lafar (Deceased)
No.103, Mahagoda Saviya Lane,
Berueala.

02. Abdul Wadud Ummal Latheef

PLAINTIFF-RESPONDENT

01. Mohomad Pasi Mohomad Faizer
(Deceased)

01A. Samsun Napiliya

01B. Mohomad Farsan Pathuha
Fasmiya

01C. Mohomad Naflan Mohomed
Niskan

01D. Mohomed Shiyam Fathima
Shahika

01E. Mohomed Nishrath

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04. Mohomed Pasi Pathumma Nihara

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08. Mohamed Aswar Mohamed Pasi
09. Mohomed Hajjad
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No.10/04, Saviya Road, Mahagoda,
Beruwela.
11. Abdul Kaseen Pathuma Haleema
(Deceased)
No.10/04, Saviya Road, Mahagoda,
Beruwela.
- 11A. Mohamed Samsudeen Mohamed
Awroos,
No.10/4, Mahagoda, Saviya Lane,
Beruwela.
12. Samsudeen Sithi Nisa
No.10/4, Saviya Lane, Mahagoda,
Beruwela.
13. Mohamed Samsuden Aunil Sishaya

14. Mohamed Samsudeen Ummul
Sirosha

Both of No.10/4, Saviya Lane,
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15. Mohamed Seyin Sulsima
No.42/2, Saviya Lane, Mahagoda,
Beruwela.
16. Mohamad Juwad Siththi Sahima
No.10/6, Saviya Lane, Mahagoda,
Beruwela.
17. Mohamed Uduman Duranul Paleela,
No.10/4, Saviya Lane, Mahagoda,
Beruwala.
18. Abdul Kapur Mohamed Ibrahim
No. 10/4, Saviya Lane, Mahagoda,
Beruwela.
19. Mohamed Uduman Mohomad Hasan
No. 10/4, Saviya Lane, Mahagoda,
Beruwala.
20. Mohamed Uduman Mohamed Naufar
of Dinagoda, Beruwela.
21. Mohamed Uduman Mohamed Paris
of Keselwatta, Digalla Road,
Panadura.

22. Mohamed Uduman Mohamed Hussain of Dinagoda, Beruwela.
23. Mohamed Uduman Mohamed Ikbar of Dinagoda, Beruwela.
24. Abdul Kaseem Mohamed Jahir of No.02, Lotus Road, Darga Town.
25. Momahed Seyed Mohamed Hussain of No.38, St. Anne's Road, Dinagoda.
26. Mohamed Pasi Mohamed Farook of St. Peter's Lane, Maggona.

DEFENANTS-RESPONDENTS

And Now Between

Mohamed Samsudeen Kadeeja
Hanim of No.10/04, Saviya lane,
Mahagoda, Beruwela.

**27th DEFENDANT-PETITIONER-
PETITIONER**

Vs.

01. Abdul Latheef Mohomed Sahabdeen
(Deceased)
No.133/2A, Maradana, Beruwela.

01A. Abdul Rahuman Mohomad Uwayis
(Legal Representative of the 1st
Plaintiff)

01B. Abdul Wadud Ummu Samsam
(Deceased)
No.133/2A, Maradana, Beruwela.

01C. Abdul Rahuman Mohomed Bisarul
Lafar (Deceased)
No.103, Mahagoda, Saviya Lane,
Beruwela.

01Ci. Mohomed Bisarul Lafar Mohomed
Issac,
No.33/10, Ariyawansha Mawatha,
Beruwela.

02. Abdul Wadud Ummul Latheef

PLAINTIFF-RESPONDENT-RESPONDENT

01. Mohomed Pasi Mohomad Faizer
(Deceased)

01A. Samsun Napiliya

01B. Mohomad Farsan Pathuha
Fasmiya

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01D. Mohomed Shiyam Fathima
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All of No.61/94, Sri Pagcharama,
Beruwela.

07. Ismail Marikkar Mohamed Juward

08. Mohamed Aswar Mohamed Pasi

09. Mohomed Hajjad

No.10/04, Saviya Road, Mahagoda,
Beruwela.

10. Samsudeen Awrosh (Deceased)

No.10/04, Saviya Road, Mahagoda,
Beruwela.

10A.Fathma Nusrath

No.10/4, Saviya Road, Mahagoda,
Beruwela.

11. Abdul Kaseem Pathuma Haleema
(Deceased)

No.10/04, Saviya Road, Mahagoda,
Beruwela.

11A.Mohamed Samsudeen Mohamed
Awroos (Deceased)

No.10/4, Mahagoda, Saviya Lane,
Beruwela.

11B.Samsudeen Sithi Nisa

No.10/4, Saviya Lane, Mahagoda,
Beruwela.

12. Samsudeen Sithi Nisa

No.10/4, Saviya Lane, Mahagoda,
Beruwela.

13. Mohamed Samsudeen Aunil Sishaya
(Deceased)

- 13A. Mohamed Aswar Mohamed Pasi

No.10/04, Saviya Road, Mahagoda,
Beruwela.

14. Mohamed Samsudeen Ummul Sirosha

Both of No.10/4, Saviya Lane,
Mahagoda,
Beruwela.

15. Mohamed Seyin Sulsina

No. 42/2, Saviya Lane, Mahagoda,
Beruwela.

16. Mohamed Juwad Siththi Sahima

No.10/6, Saviya Lane, Mahagoda,
Beruwela.

17. Mohamed Uduman Duranul Paleela

No. 10/4, Saviya Lane, Mahagoda,
Beruwela.

18. Abdul Kapur Mohamed Ibrahim

No.10/4, Saviya Lane, Mahagoda,
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19. Mohamed Uduman Mohomad Hasan

No.10/4, Saviya Lane, Mahagoda,
Beruwela.

20. Mohamed Uduman Mohamed Naufar

of Dinagoda, Beruwela.

21. Mohamed Uduman Mohamed Paris of

Keselwatta, Digalla Road, Panadura.

22. Mohamed Uduman Mohamed Hussain

of Dinagoda, Beruwela **(Deceased)**.

22A. Jameel Fathima Fahima of Dinagoda,

Beruwela.

23. Mohamed Uduman Mohamed Ibbar of

Dinagoda, Beruwela.

24. Abdul Kaseem Mohamed Jabir of

No.02, Lotus Road,

Darga Town.

25. Momahed Seyed Mohamed Hussain of

No.38, St. Anne's Road, Dinagoda.

26. Mohamed Pasi Mohamed Farook of

St. Peter's Lane, Moggona.

DEFENDANTS-RESPONDENT-RESPONDENT

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel

Sanjeewa Dasanayake with Nithil Fernandopulle,
Dhammika Jiminige and Thisari for the Petitioner.

Lasantha Gurusinghe and Iresha Alepathgama and
Nilakshi Silva for the 01.C Plaintiff.

Respondent instructed by G. Amarathunga.

Ravindra Punchihewa for the 7A, 15th & 16th Defendant-Respondents.

N. Naffath instructed by Madhavi Karunarathne for the 8th, 12th, and 14th Respondents.

Chamara Nanayakkara and Ridma Uddeepani for the 17th, 18th, 19th, 20th, 21st and 23rd Defendant-Respondents.

Written Submissions : Of the 1C(I) Plaintiff-Respondent (Substituted filed on 27th October 2025.

Of the 17th, 18th, 19th, 20th, 21st and 23rd Defendants-Respondents filed on 27th October 2025.

Of the 27th Defendant-Petitioner filed on 24th October 2025.

Of the 11B, 15 and Defendants-Respondents filed on 24th October 2025.

Argued On : **26.09.2025**

Judgment On: 13.11.2025

Dr. Sumudu Premachandra J.

1] The 27th Defendant-Petitioner prays for following reliefs from this Court;

- a. Issue notices on the Respondents
- b. Revise and set aside and vary the judgement dated 26.4.2017 delivered and entered by the District Court of Kalutara Case bearing No. 6887/P
- c. Permit the Petitioner to file statement of claim and seek alternative commission in case bearing no. 6887/P, and order to follow due procedure forthwith
- d. Alternatively allocate 7/48 of share to the Petitioner and amend the interlocutory decree accordingly
- e. Make order trial de novo
- f. Issue and interim order staying the proceedings of the District Court of Kalutara case bearing no.6887/P, until hearing and final determination of this action
- g. Grant cost and such other and further reliefs that Your Lordships Court shall deem meet

2] This is an action for partition. The dispute concerns ownership of the land known as “*Kelawanthottam*” alias “*Nakiyawaththa*,” which stems from a series of successive conveyances involving undivided shares. Through various deeds, Ibrahim Lebbe Marikar Mohamed Samsudeen ultimately acquired a dominant 15/16 undivided share, while Abdul Cassim Marikkar Fathima Umma retained the remaining 1/16. Upon Samsudeen’s death, his majority share devolved to his legal heirs his wife (11th Defendant), his son (10th Defendant), and four daughters (12th, 13th, 14th, and 27th Defendants/Petitioner). These heirs,

particularly the 8th to 14th Defendants and the 27th Defendant, form the central group of litigants, asserting rights derived from their common inheritance.

3] The dispute evolved into a partition action initiated by the Plaintiffs, who initially allocated 21/24 of the undivided share to “Unknown parties.” As the case progressed, Samsudeen heirs were impleaded as the 9th through 14th Defendants, while the 27th Defendant/Petitioner appeared nearly fifteen years later. A major issue arose regarding the land’s demarcation, with the 8th to 12th Defendants contesting the accuracy of Preliminary Plan No. 1516 and advocating for Alternate Plan No. 1132. The Trial Judge’s final judgment on April 26, 2017, dismissed several deeds relied upon by these Defendants and allocated the Petitioner an undivided 35/256 share. The Petitioner now contends that the judgment disregarded her arguments and that her rightful inherited share was improperly diverted to other parties, forming the core of her current grievance.

4] The Petitioner is seeking the intervention of this Court to invoke its revisional and/or restitutio in integrum jurisdiction against a judgment and interlocutory decree, primarily on the grounds that they are contrary to law, evidence, and the principles of the Partition Act No. 21 of 1977.

5] Key arguments include the learned trial judge's failure to follow proper steps in Partition Law, errors in evaluating title deeds (10V3, 10V5, 10V6, and 10V7), misdirection regarding issues raised by one of the Defendants, and failure to consider the alleged fraudulent nature of the submitted evidence. The Petitioner asserts that the interlocutory decree and judgment were ab initio null and void, that serious fraud and procedural errors occurred during the trial, and that the continued operation of the decree would cause irreparable loss, prejudice, and eventual eviction from a property occupied for over a century. The application is presented as one involving exceptional circumstances, serious fraud, and miscarriage of justice, necessitating the Court's intervention due to the lack of an alternative remedy.

6] The core argument of the Petitioner is that the Learned District Judge committed "grave errors" and an "ex facie wrong and bad in toto" by failing in the "solemn and inescapable duty" to "investigate title" thoroughly, as required by the Partition Act and case law (citing **Mother v. Thamotheram Pillai, Richard v Seibel Nona, Priyanthi v Uma, and others**). The petitioner contends that this failure resulted in an incorrect allocation of shares, particularly by denying the Petitioner (a sibling of other defendants) her rightful 35/256 share and rejecting relevant deeds.

7] The Substituted Plaintiff- Respondent raised preliminary objections, primarily focusing on the Petitioner's culpable and unreasonable delay (laches) in filing the application for revisionary relief and/or Restitutio in Integrum.

8] The core argument is that the partition action, Case No. 6887/P, which is an action in rem, has been litigated for over 25 years and its outcome should not be reversed due to the Petitioner's lack of due diligence. The Petitioner's delay is deemed "glaring," as the decree was issued on or about 27.04.2018, while the current application was only filed on or about 21.03.2022, an unexplained delay of over 4 years.

9] The Respondent meticulously details the Petitioner's alleged awareness of the proceedings, arguing it is difficult to believe the Petitioner was unaware for 18 years when all her immediate family members and other relatives resided in the same house and were actively participating. Evidence is presented to show that the Petitioner's close family members (the 10th-14th Defendants-Respondents) are her mother, siblings, and other relatives who all reside at "No. 10/4, Saviya Lane, Mahagoda, Beruwala," which is also the Petitioner's address. Notices of the action were published through the Grama Niladhari and affixed at a conspicuous place on the property in 2013. Moreover, the Petitioner was reportedly named as the 11th Defendant in two Statements of Claim filed by an Attorney-at-Law representing her relatives in 2001 and 2003, and was also allegedly notified of a property survey in 2002. The Respondent thus argues that

the Petitioner's subsequent claim of unawareness is untrue, asserting that her failure to participate was "by her own choice and election and not due to any ignorance."

10] In addition to laches, the Respondent raises several other preliminary objections, including that the Petitioner is acting dishonestly and/or in collusion with other parties, is guilty of willful and fraudulent suppression and misrepresentation of material facts, and has failed to demonstrate any special or exceptional circumstances warranting the court's discretionary jurisdiction. The Respondent contends that the Petitioner had access to alternative remedies (like an appeal) and failed to exercise due diligence. Allowing the relief would be contrary to law, cause greater prejudice to the Respondent who has participated for 25 years, and does not redress a substantial prejudice or miscarriage of justice.

11] Further, 16th Defendant-Respondent asserts that the Petitioner failed to annex the entire case record (specifically citing the certified copy of the record being dated 27.04.2018, while the petition is dated 21.05.2022), did not comply with Rule 3 of the Court of Appeal (Appellate Procedure) Rules 1990 regarding Restitutio in Integrum, and is guilty of laches or culpable and unreasonable delay.

12] The Petitioner counters the objections by asserting that under Rule 3, only copies of the relevant proceedings and documents (marked as Q1-Q15) are required, not the entire case record, and that the date of the certified copy should not preclude the filing. Furthermore, the Petitioner argues they are not guilty of laches or negligent, claiming the prejudice is due to negligence and mistakes by the former Attorney-at-Law who mistakenly named the Petitioner as the 11th Defendant. The Petitioner, who is the party aggrieved by the judgment despite evidence supporting her claim, subsequently joined the action as the 27th Defendant.

13] We now consider the preliminary objections. The objections revolve around Laches and Unexplained Delay, Collusion with the 10th and 11th Defendants-Respondents, Suppression of Material Facts and Abuse of Process, and the absence of a Prima Facie Case or Threshold Met.

14] It is seen that the Respondents argue the Petitioner is guilty of a five-year delay from the 2017 Interlocutory Decree to filing the application in 2022, with a four-year unexplained delay after obtaining the case record in 2018. They contend such laches is fatal and that the Petitioner, represented by the same instructing attorney as the 10th and 11th Defendants, filed the application collusively to assist their grievances after the final scheme inquiry, which the Petitioner remained silent on until its advanced stage.

15] Furthermore, the Respondents submit that the Petitioner deliberately suppressed the current status of the Partition Action, annexing only an outdated 2018 case record and failing to disclose subsequent material developments like the issuance of the commission, the final scheme, and objections thereto. This non-disclosure renders the petition ambiguous, misleading, and procedurally defective, preventing the Court from assessing the true context. They pleaded that the action should be dismissed *in limine*.

16] The Petitioner relies on **Gnanapandithen and Another v. Balanayagam and Another**, [1998] 1 SLR 391. In that case His Lordship G. P S. De Silva. CJ. Held that judgement could be vacated if there was no investigation of title where circumstances show the judgement was obtained by collusive action. His Lordship notes;

“1. There was a total want of investigation of title. The circumstances were strongly indicative of a collusive action. In the result, there was a miscarriage of justice in the case, and the appellants were entitled to a

revision of the judgment of the District Judge notwithstanding delay in seeking relief.

2. The question whether delay is fatal to an application in revision depends on the facts and circumstances of the case. Having regard to the very special and exceptional circumstances of the case the appellants were entitled to the exercise of the revisionary powers of the Court of Appeal.”

17] Further, in **Mather vs. Thamotheram Pillai** 6 NLR 246, LAYARD, C.J. had the similar view as;

“In partition proceedings the paramount duty is cast by the Ordinance upon the District Judge himself to ascertain who are the actual owners of the land. As collusion between the parties is always possible, and as they get their title from the decree of the Court, which is made. good and conclusive as against the world, no loopholes should be allowed for avoiding the performance of the duty so cast upon the Judge”

18] Moreover, in **RICHARD AND ANOTHER v. SEIBEL NONA AND OTHERS**, [2001] 2 SLR -1, His Lordship Jayawickrema J., considered the decree held on settlement;

“Court has completely acted in violation of the provisions of the Partition Law and has accepted by way of a settlement, the evidence of the 1st Defendant, without investigating into the title of all the parties as required by the Partition Law. A partition decree cannot be entered by settlement; it is the duty of the Judge to fully investigate into the title to the land and shares.”

19] On careful perusal, it is seen that original partition action was filed on 17.08.1998. Q7 document shows that the Petitioner had filed her statement of claim along with 8 to 12 Defendants, the Petitioner as the 11th Defendant on

25.04.2001. Amended statement claim was filed on 12.03.2003 by the same Defendants (Vide Q7 (i)). In that, the 11th Defendant, that is the Petitioner's share was mentioned in paragraph 11 as 35/256. Q 11 shows when the issues were raised the above Defendants, including the Petitioner were represented by Mr. Anaz, AAL on the instruction of Mr. Dharmasena Fernando on 10.05.2005 and issues Nos 16 to 26 were raised on behalf of them. 06.05.2011, the Plaintiff's case was closed and Mr. Anaz moved a date to call the defence case for the 8 to 14th Defendants, including the Petitioner, which was the 11th Defendant. After a full contested trial, interlocutory judgment was entered by the Learned District Judge of Kalutara on 26.04.2017. In that, 11th Defendant was allotted divided share 18/144. Interlocutory decree was entered and it was registered at Kalutara land registry under folio D206/107 on 10.10.2017.

20] Now, the Petitioner claims that her name was added as the 11th Defendant by mistake of attorney at Law, which cannot be accepted. When a Partition Action is instituted, there were notices issued on the Respondents and affixed the land sought to be partitioned. If they were vigilant, this action cannot be missed by anybody as the Petitioner lived on the same vicinity. Then question arises why the Petitioner has not participated at the partition action if her rights derived from Ibrahim Lebbe Marikar Mohamed Samsudeen. Though, the Petitioner said that she was not served, she has failed to give reasonable explanation. Mere assertion that summons was not served on her is not sufficient to hold that interlocutory decree is bad.

21] In ***Jayalath Pedige Nimal Chandrasiri vs Karuna Pedige Seeti others***, SC APPEAL NO: SC/APPEAL/89/2011, Decided on: 12.05.2023, His Lordship Samayawardhena, J. held that District Judge has no obligation to help parties who do not take part. His Lordship holds;

“This does not mean that in a partition action the burden is on the District Judge to successfully prosecute the case on behalf of the parties whilst the parties take no interest in the case. There is no such obligation. The District

*Judge need not go after the parties pleading with them in earnest for help to identify the land and then investigate title to the land. Vide **Priyanthi v. Gamage Uma** (SC/APPEAL/2/2019, SC Minutes of 15.10.2021).”*

22] In **Thilagaratnam v. Athpuna** [1996] 2 Sri LR 66 at 68 His Lordship Anandacoomaraswamy J. stated:

*“The Learned Counsel for the Appellant cited several authorities **Goonaratne v. Bishop of Colombo** 32 NLR 337, **Peris v. Perera** 1 NLR 362, **Neelakutty v. Alvar** 20 NLR 372, **Cooray v. Wijesuriya** 62 NLR 158, **Juliana Hamine v. Don Thomas** 59 NLR 546 at 549 and **Sheefa v. Colombo Municipal Council** 36 NLR 38 and stated that it is the duty of the Court to examine and investigate title in a partition action, because the judgement is a judgement in rem. We are not unmindful of these authorities and the proposition that it is the duty of the Court to investigate title in a partition action, but the Court can do so only within the limits of pleadings, admissions, points of contest, evidence both documentary and oral. Court cannot go on a voyage of discovery tracing the title and finding the shares in the corpus for them, otherwise parties will tender their pleadings and expect the Court to do their work and their Attorneys-at-Law’s work for them to get title to those shares in the corpus.”*

23] Further, in **Francis Wanigasekera v. Pathirana** [1997] 3 Sri LR 231 at 234- 235, His Lordship Weerasekera J. considered the duty cast upon on investigation title as;

*“Learned Counsel also urged that the learned District Judge failed to act in terms of section 25 of the Partition Act which requires Court to examine and hear and receive evidence of the title of each party as decided in the case of **Sirmalie v. Punchi Ukku** 60 NLR 448. I do agree that section 25 of the Partition Act requires the Court to examine and hear and receive evidence of the title and interest of each party. But it must be remembered that the literal application of the provisions of this section would lead to the most*

disturbing, hilarious and absurd result and no partition case could ever be finally concluded.”

24] Thus, this court cannot see any failure of investigation of title by the learned District Judge. This Petitioner said that she has no alternative remedy. It is noteworthy to say the observation of Weerasuriya, J., in **Jayaratne and another Vs. Premadasa and others** [2004] 1 SLR 340. His Lordship says;

“The Court had no jurisdiction to vary the Judgement. The decree is final subject to appeal under Section 48(1) and also revision or restitution in intergrum. The Court may also vary the Judgement under Section 48(4) only in respect of the parties and in the limited circumstances....”

25] Thus, the interlocutory judgment is subjected to an appeal which was not exercised by the Petitioner as the 27th Defendant. Quite sometimes, the Petitioner had participated in the lower court proceedings. It is seen, by journal entry 116, dated 25.07.2018, the 27th Defendant was represented by Mr. Prabath Gamage, AAL. It is further seen that she has represented after the interlocutory decree until final scheme of plan and this court puzzled why the Petitioner waited till 2022 to file this action by passing Civil Appellate Court. He could have filed revision application if the interlocutory decree is ex facie bad. I reckon, the Petitioner is guilty on laches.

26] In **Maligaspe Koralalage Arwin Peter Nanayakkara, (Deceased) and other vs Epage Dayananda, and others**, SC APPEAL NO: SC/APPEAL/2/2019, Decided on: 15.10.2021, His Lordship Mahinda Samayawardhena, J. noted the partition judgments and decrees should not be easily toppled and held;

“A judgment entered in a partition action after following a longdrawn-out cumbersome procedure shall not be set aside with a stroke of the pen and retrial ordered causing enormous difficulties, under the popular banner “failure to investigate title”, unless there is good cause for doing so.”

27] In **Sri Lanka Insurance Corporation Limited v. Shanmugam and another** [1995] 1 SLR 55, Ranaraja J. held the instance where restitution is available as follows:

*“Restitutio in integrum is an extraordinary remedy; it is not to be given for mere asking or when there is some other remedy available, **Mapalathan v. Elayavan**. It is a remedy which is granted under exceptional circumstances and the power of court should be most cautiously and sparingly exercised, (Perera-supra). A party seeking restitution must act with utmost promptitude, **Babun Appu v. Simon Appu** , (Menchinahamy - supra), and before a change has taken place in the position of the parties, (**Sinnethamby v. Nallathamby**). Where there has been negligence on the part of the applicant seeking relief or his attorney-at-law, restitution will not be granted (**Wickremasoodya v. Abeywardene**). The party invoking the extraordinary powers of this court must display honesty and frankness. Thus, where a party by its own conduct has acquiesced in or approbated the defective proceedings, court will not exercise its discretion to set aside the impugned proceedings. For it is not the function of court in the exercise of its jurisdiction in restitution to relieve the parties of the consequences of their own folly, negligence or laches. (**Don Lewis v. Dissanayake**)”*

28] Further, in **Menchinahamy v. Munaweera** 52 NLR 409, His Lordship Dias, S.P.J. held;

*“It has also been laid down that relief by way of restitutio in integrum should be sought for with the utmost promptitude-see **Babun Appu v. Simeon Appu** 3[(1907) 11 N. L. R. at p. 45.]. It has been argued that an examination of the relevant dates will show not only that the petitioner has been guilty of unreasonable delay in seeking her remedy, but that the facts seem to indicate that she is acting in collusion with the appellants whose appeal against the interlocutory decree was dismissed by this Court. It is pointed*

out that the judgment in appeal was delivered on 16.02.1949; that thereafter there was some abortive attempt to appeal to the Privy Council; and when that failed this petitioner on 10.03.1949, moved this Court and is in effect seeking to over-rule the interlocutory decree and the judgment of the Supreme Court in appeal. The explanation given by the petitioner in her affidavit is that she sought her relief as soon as she heard what had happened, and she submits that the course in this trial has gravely prejudiced her, and she is asking for relief. I am unable on the materials before me to hold that her statements are false. After all she is a village woman living in a remote part of this Island, and it may well be that she was in total ignorance of what was happening. Furthermore, there is no evidence which would justify me in holding that she is acting in collusion with the defeated appellants.”

29] In **Perera v. Don Simon** 62 NLR 118 His Lordship Sansoni, J (as he then was) held;

“In those cases it was held that restitutio would not be granted where there has been negligence on the part of the applicant for relief. The case is all the worse if the error is due to the act of the plaintiff himself, as would appear to be the case here. ...Over three years had elapsed between the entering of the decree and the filing of the present application, and it was therefore filed too late.”

30] In **M.A. Don Lewis v. D.W.S.Disanayake** 70 NLR 8 is somewhat identical to this case. In that, His Lordship Tennekoon, J (as he then was) held;

“These being the facts the first question that arises for consideration is whether this court should exercise its extraordinary powers of revision or by way of Restitutio in Integrum in favour of the applicant. There is no doubt in my mind that the petitioner was aware of the partition action from the date the Surveyor first went on the land. Petitioner has only himself to blame if he pursued the ill-advised course of trying to usurp the place of the 8th

defendant-respondent. Petitioner could, long before the Interlocutory Decree, have sought to have himself added instead of taking the inexplicable course he did. Even after the Interlocutory Decree was entered the petitioner in seeking to intervene persisted in trying to persuade the District Court that he and Carolis Caldera were one and the same person. Further when his application to intervene was dismissed by the District Court (which in its order explicitly stated that the petitioner's remedy if any was by way of an application for revision to this court) the petitioner did nothing for 8 months. It is not the function of this court in the exercise of the jurisdiction now being invoked to relieve parties of the consequences of their own folly, negligence and laches. The maxim Vigilantism, non dormientibus, jura subveniunt provides a sufficient answer to the petitioner's application on the ground now under consideration."

31] Thus, we are of the view that the Petitioner is guilty on lashes and she has failed to show exceptional circumstances to invoke jurisdiction under Article 138 of the Constitution. We uphold the preliminary objections. The Application is dismissed, No Costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL