

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

In the matter of an application for Restitution,  
in the nature of *Restitutio-In-Integrum* under  
and in terms of Article 138 of the Constitution  
of the Democratic Socialist Republic of Sri  
Lanka.

**Court of Appeal**

Case No: RII/0028/2024

DC Kaluthara

Case No. 8028/Partition

1. Nilmini Abeyrathne of  
156, Kurunduwatte,  
Pathakada, Galpatha.

2. Uduwage Don Indika Abeyrathne of  
No. 04, Alwis Watta, Plathota.

**Plaintiffs**

**VS**

1. Uduwage Don Lalith Abeyrathne of  
Pasdunrata Educational Faculty  
Quarters, Dediawala, Waskaduwa.

2. Uduwage Don Surangajith Abeyrathne  
of No. 167, Dediawala, Waskaduwa

3. Uduwage Dona Nishanthi Abeyrathne of  
Nugegoda, Waskaduwa

4. Dona Induka Tushari Abeyrathne of  
No. 168, Dediawala,  
Waskaduwa.

5. Uduwage Dona Seetha Nandani of  
No. 168A Dediawala,  
Waskaduwa.

6. Uduwage Dona Dayani Wickramalatha  
of No. 21/29, Emerald Path  
Thumbowila, Piliyandala

**Defendants**

**AND NOW BETWEEN**

Uduwage Dona Dayani Wickramalatha  
of No. 21/29 Emerald Path,  
Thumbowila, Piliyandala

**6<sup>th</sup> Defendant-Petitioner**

**Vs.**

1. Nilmini Abeyrathne  
of 156, Kuruduwatte,  
Pathakada, Galpatha.
2. Uduwage Don Indika Abeyrathne of  
No. 04, Alwis Watta, Plathota

**Plaintiff-Respondents**

1. Uduwage Don Lalith Abeyrathne of  
Pasdunrata Educational Faculty  
Quarters, Dediawala, Waskaduwa.
2. Uduwage Don Surangajith Abeyrathne  
of No. 167, Dediawala, Waskaduwa.
3. Uduwage Dona Nishanthi Abeyrathne of  
Nugegoda, Waskaduwa.
4. Dona Induka Tushari Abeyrathne of  
No. 168, Dediawala,  
Waskaduwa.
5. Uduwage Dona Seetha Nandani of  
168A, Dediawala,  
Waskaduwa.

**Defendant-Respondents**

Before : R. Gurusinghe, J. (Acting P/CA)  
&  
Dr. S. Premachandra, J.

Counsel : Uditha Malalasekara with Amila Amarasekara  
Instructed by Saumya Jayasena  
**for the 6<sup>th</sup> Defendant-Petitioner**

Prabath De Silva  
**for the 1<sup>st</sup> to 3<sup>rd</sup> Defendant-Respondents**

Ravindra Punchihewa  
**for the 1<sup>st</sup>& 2<sup>nd</sup> Plaintiff-Respondents**

Argued on: 27-02-2026

Decided on : 19-05-2026

### **JUDGMENT**

R. Gurusinghe, J.

The 6<sup>th</sup> defendant-petitioner (Petitioner) filed this *Restitutio-in-Integrum* application seeking *inter alia* the following reliefs:

- (b) Set aside the judgment and the interlocutory decree of the District Court of Kalutara Partition Action bearing No. 8028/Partition
- (c) Set aside the judgment of the Civil Appeal High Court of the Western Province in the case bearing No. WP/HCCA/KAL/27/2019(f)
- (d) Order and direct the Learned Trial Judge to properly investigate the title of each party and to properly identify the corpus of the partition action.

The plaintiff-respondent (Plaintiff) filed the action bearing case no. 8028/P in the District Court of Kaluthara, and is seeking the partition of the land more fully described in the Schedule to the Plaint. The schedule thereto describes

the said land as Lot 1 of Kahatagahawatta, depicted in plan No. 541 dated 12-07-1917 made by J.F. Dias, Licenced Surveyor, and filed of record in the District Court of Kaluthara, bearing Case No 7448.

The 6<sup>th</sup> Defendant-petitioner in the instant application contended that the plaintiff-respondent had failed to produce the final decree or the final partition plan in case No. 7448, which is referred to in the schedule to the plaint.

The preliminary plan No. 2012/292 dated 18-09-2012 was prepared by Lakshman Serasinghe, Licenced Surveyor, who functioned as the Commissioner in the said action. The said Commissioner has further certified that the Land surveyed, substantially corresponds with the land described in the Schedule to the plaint. The preliminary plan depicts only two allotments, namely Lot 1A and Lot 1B. Lot 1A consists of 1 rood 33.72 perches, and whilst Lot 1B consists of 5.94 perches, aggregating to a total extent of 1 rood and 39.66 perches. However, the extent of the land described in the Schedule to the plaint is 2 roods.

The 6<sup>th</sup> defendant-petitioner intervened in the partition action and averred that Lot 1B depicted in the preliminary plan should be excluded from the corpus of the action, as it is a roadway used by the 6th defendant-petitioner and some others as well.

At the commencement of the trial, an admission was recorded to the effect that there was no dispute regarding the pedigree or improvement. The issues raised for determination were confined only to the corpus of the action. The plaintiff raised issues on the basis that both Lot 1A and Lot 1B comprise part of the corpus. However, the plaintiff consented to leave Lot 1B as a common roadway for the use of the parties to the action.

The position of the 1<sup>st</sup> to 3<sup>rd</sup> defendant-respondents was that both Lot 1A and 1B comprised the corpus of the action, and that Lot 1B was not a roadway.

The 6<sup>th</sup> defendant-petitioner raised issues on the basis that Lot 1B was not a part of the corpus, but it constituted a roadway used by the 6th defendant-petitioner as well as several others. The 6<sup>th</sup> defendant petitioner sought to exclude Lot 1B from the corpus of the action.

The Learned District Judge delivered the judgment on 02-01-2019, permitting the partition of the corpus of the action. By the said judgment,

the Learned District Judge decided that the corpus of the action was confined to Lot 1A. Being aggrieved by the said judgment, the 1st to 3rd defendants preferred an appeal to the Civil Appellate High Court of Kaluthara. The Civil Appellate High Court, by judgment dated 16-02-2023, decided that Lot 1B should be included in the corpus of the action and also decided that the 6<sup>th</sup> defendant respondent has no right of way over the corpus, as claimed by her.

The 6<sup>th</sup> defendant was represented before the Civil Appellate High Court by the same Attorney-at-Law, who appeared for the petitioner in the present application. The 6<sup>th</sup> defendant-petitioner has not appealed against the judgment of the Civil Appellate High Court. If the 6<sup>th</sup> defendant-petitioner was dissatisfied with the said judgment of the Civil Appellate High Court, she was entitled to invoke the right of appeal to the Supreme Court in terms of Section 5C of the High Court of the Provinces Special Provinces Act No. 19 of 1990, as amended by Act No. 54 of 2006.

**Section 5C is as follows:**

**5C.**

- (1) An appeal shall lie directly to the Supreme Court from any judgment, decree or order pronounced or entered by a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction granted by section 5A of this Act, with leave of the Supreme Court first had and obtained. The leave requested for shall be granted by the Supreme Court, where in its opinion the matter involves a substantial question of law or is a matter fit for review by such Court.
- (2) The Supreme Court may exercise all or any of the powers granted to it by paragraph (2) of Article 127 of the Constitution, in regard to any appeal made to the Supreme Court under subsection (1) of this section.

The 6<sup>th</sup> defendant-petitioner instituted the present application before this Court on 04-03-2024, nearly one year after the delivery of the judgment of the Civil Appellate High Court. In the Case of Sri Lanka Insurance Corporation Limited vs Shanmugam [1995] 1 Sri LR 55, Dr Ranaraja J. stated *inter alia* that “It is an extraordinary remedy and will be granted under

*exceptional circumstances .... A party seeking restitution must act with utmost promptitude. The Court will not relieve parties of consequences of their own folly, negligence or laches.... A restitution is granted only if no other remedy is available to the party aggrieved.*

*A relief by way of restitutio in integrum in respect of judgments of original courts may be sought:*

- (a) Where judgments have been obtained by fraud by the production of false evidence, non-disclosure of material facts or by force; or*
- (b) Where fresh evidence has cropped up since judgments, which was unknown earlier to the parties relying on it or which no diligence could have helped to disclose earlier, or*
- (c) Where judgments have been pronounced by mistake and decrees entered thereon provided of course it is an error which connotes a reasonable and excusable error.*

In the present application, the petitioner had the opportunity to prefer an appeal against the judgment of the Civil Appellate High Court to the Supreme Court. Further, there is no evidence of fraud, false evidence or mistake of such nature as would warrant the granting of restitution. The mere non-production of the 1917 plan or decree does not, in itself, amount to fraud, particularly in view of the fact that the plaintiff had clearly referred to the said documents. If such documents were available, the 6th defendant petitioner also had the opportunity to produce the same before the court.

SC/Appeal No. 65/2025 and CA/R11/15/2022, W.T.S. Nilantha Fernando Vs. P.M.S. Nilanthi Perera decided on 10-10-2025, the Supreme Court stated *inter alia* “a party dissatisfied with a judgment of the Provincial High Court cannot create a third tier of appellate scrutiny by describing the route as revision or restitutio in integrum.” Further, the Supreme Court decided as follows:

*“Hence. I hold that the Court of Appeal has no jurisdiction, whether by way of final appeal, revision, or restitutio in integrum, to review the judgments or orders of the Provincial High Court, whether in the exercise of its appellate jurisdiction under Act No. 19 of 1990, as amended by Act No. 54 of 2006, or in the exercise of its original jurisdiction under Act No. 10 of 1996. Such jurisdiction is vested exclusively in the Supreme Court.”*

For the reasons stated in this judgment, the application of the 6<sup>th</sup> defendant-petitioner is dismissed. No order for costs.

Judge of the Court of Appeal.  
(Acting P/CA)

Dr. S. Premachandra J.  
I agree.

Judge of the Court of Appeal.