

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

In the matter of an application for Revision  
and Restitutio in integrum in terms of  
Article 138 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

**CA Case No. RII/47/2024**  
**HCCA Negombo**  
**Case No. WP/HCCA/NEGO/12A/2014(F)**  
**DC Negombo Case No.5182/L**

R.M.N. Lechchaman Chettiar of  
Keelapungudi,  
South India.

Appearing by his Power of Attorney Holder  
Pathmanaban Chettiar,  
No.104, Wella Veediya,  
Negombo.

**PLAINTIFF**

**Vs.**

1. L.A. Alice Nona (Deceased)
  - 1A. R.M.N. Gamini
  - 1B. R.M.N. Chandrika
  - 1C. R.M.N. Padmini
  - 1D. R.M.N. Indra Lakshman
  - 1E. R.M.N. Siripala Perera
  - 1F. A.A. Damila Thushari Perera
  - 1G. A.A. Malaka Chamin Perera
2. R.M.N. Gamini
3. R.M.N. Nilani (Deceased)
  - 3A. A.A. Malaka Perera
  - 3B. A.A. Damila Thushari Perera
4. R.M.N. Chandrika
5. R.M.N. Padmini
6. R.M.N. Indra Lakshman  
ALL of Kelapitimulla Estate,  
Kelapitimulla, Hunumulla.
7. The Finance Company Limited,  
Colombo.

8. Epasinghe Arachchilage Siripala Perera
9. Epasinghe Arachchilage Damila Thushari Perera
10. Epasinghe Arachchilage Malaka Chamin Perera  
ALL of Kelapitimulla Estate,  
Kelapitimulla,  
Hunumulla.

**DEFENDANTS**

**AND**

1. L.A. Alice Nona (Deceased)
  - 1A. R.M.N. Gamini
  - 1B. R.M.N. Chandrika
  - 1C. R.M.N. Padmini
  - 1D. R.M.N. Indra Lakshman
  - 1E. R.M.N. Siripala Perera
  - 1F. A.A. Damila Thushari Perera
  - 1G. A.A. Malaka Chamin Perera
2. R.M.N. Gamini
3. R.M.N. Nilani (Deceased)
  - 3A. A.A. Malaka Perera
  - 3B. A.A. Damila Thushari Perera
4. R.M.N. Chandrika
5. R.M.N. Padmini
6. R.M.N. Indra Lakshman  
ALL of Kelapitimulla Estate,  
Kelapitimulla, Hunumulla.
7. The Finance Company Limited,  
Colombo
8. Epasinghe Arachchilage Siripala Perera
9. Epasinghe Arachchilage Damila Thushari Perera
10. Epasinghe Arachchilage Malaka Chamin Perera  
ALL of Kelapitimulla Estate,  
Kelapitimulla,  
Hunumulla

**DEFENDANTS-APPELLANTS**

**Vs.**

R.M.N. Lechchaman Chettiar of  
Keelapungudi,  
South India.

Appearing by his Power of Attorney Holder  
Pathmanaban Chettiar,  
No.104, Wella Veediya,  
Negombo.

**PLAINTIFF-RESPONDENT**

**AND NOW**

1. L.A. Alice Nona (Deceased)
  - 1A. R.M.N. Gamini
  - 1B. R.M.N. Chandrika
  - 1C. R.M.N. Padmini
  - 1D. R.M.N. Indra Lakshman
  - 1E. R.M.N. Siripala Perera
  - 1F. A.A. Damila Thushari Perera
  - 1G. A.A. Malaka Chamin Perera
2. R.M.N. Gamini
3. R.M.N. Nilani (Deceased)
  - 3A. A.A. Malaka Perera
  - 3B. A.A. Damila Thushari Perera
4. R.M.N. Chandrika
5. R.M.N. Padmini
6. R.M.N. Indra Lakshman  
ALL of Kelapitimulla Estate,  
Kelapitimulla, Hunumulla.
7. The Finance Company Limited,  
Colombo
8. Epasinghe Arachchilage Siripala Perera
9. Epasinghe Arachchilage Damila  
Thushari Perera
10. Epasinghe Arachchilage Malaka  
Chamin Perera  
ALL of Kelapitimulla Estate,  
Kelapitimulla,  
Hunumulla

**DEFENDANTS-APPELLANTS-  
PETITIONERS**

**Vs.**

R.M.N. Lechchaman Chettiar of  
Keelapungudi,  
South India.

Appearing by his Power of Attorney Holder  
Pathmanaban Chettiar,  
No.104, Wella Veediya,  
Negombo.

**(DECEASED-PLAINTIFF-RESPONDENT-  
RESPONDENT)**

Subramanian Rajendra Chettiar,  
No.104, Wella Veediya,  
Negombo.

**(SUBSTITUTED PLAINTIFF-  
RESPONDENT-RESPONDENT)**

**Before:** R. Gurusinghe J.

**&**

Dr. Sumudu Premachandra J.

**Counsel:** Kumara Dunusinghe with Punyajith Dunusinghe  
instructed by Manouri Herath for the Defendant-  
Appellant-Petitioners.

Anusha N. Fernando for the Respondents.

**Written Submissions:** By the Substituted-Plaintiff-Respondent-Respondent  
filed on 08/05/2026.

By the Defendants – Appellants - Petitioners filed on  
29/04/2026.

**Argued On:** 05/03/2026.

**Judgement On:** 12/06/2026.

**Dr. Sumudu Premachandra J.**

1] The dispute stems from a Plaint instituted in 1996 by the original Plaintiff, R.M.N. Lechchaman Chettiar, who claimed to be the sole trustee of a land known as the “Kellepitimulla estate” by virtue of a Charitable Trust Deed No. 2039 dated 1939, allegedly executed by his father for the benefit of a Hindu Kovil situated in South India.

2] The Defendants disputed the Plaintiff’s claim to exclusive trusteeship and asserted entitlement to specific allotments depicted in Plan No. 1184/87. They maintained that they had occupied the respective portions of the land with the leave and licence of the Plaintiff’s deceased brother, Ramanadan Chettiar, and alternatively claimed compensation for improvements and developments effected on the property. Although the learned District Judge ultimately held that the land was subject to a trust and declared the Defendants’ deeds null and void, the Court nevertheless awarded substantial compensation to the Defendants for improvements made to the premises and permitted them to remain in possession until such compensation was paid.

3] The Petitioners now contends that the entire action is ab initio null and void due to the original Plaintiff’s failure to comply with the mandatory provisions contained in Sections 102 and 103 of the Trust Ordinance, No. 09 of 1917, which govern actions concerning religious trusts. The Petitioners further aver that no evidence whatsoever was produced before Court to establish the existence, management, operation, or receipt of profits by the alleged South Indian Kovil said to be the beneficiary under the 1939 Trust Deed.

4] Following the filing of cross-appeals before the Civil Appeal High Court of Negombo, the proceedings were terminated in 2019 owing to the prolonged absence of legal representation on behalf of the Plaintiff and uncertainty surrounding his death. However, despite the termination of the appeal

proceedings, the District Court by Order dated 10/09/2020, permitted the substitution of one Subramaniam Rajendra Chettiar as Plaintiff-Respondent-Respondent, allegedly without notice to the Defendants and in the absence of any valid documentary material establishing that he was a lawful heir or otherwise connected to the original Trust created in 1939.

5] In support of the present application for Revision and Restitutio in Integrum, the Petitioners have annexed and marked several material documents and proceedings from the original courts below. These include marked document A1, being the entire proceedings of the District Court of Negombo; A2, being the final Judgement delivered by the said Court; and B, comprising the proceedings before the Civil Appeal High Court of Negombo. The Petitioners have further produced C1, being the application filed before the District Court seeking substitution of the original Plaintiff; C2, being a separate Trust Deed No. 4137 dated 29/12/2014, which the Petitioners state relates to an entirely different land and beneficiary Kovil and is therefore irrelevant to the present dispute; and C3, being the final Order of substitution made by the learned District Judge of Negombo on 10/09/2020.

6] The Defendants-Appellants-Petitioners pray from this Court;

- a) To issue Notices on the Substituted Plaintiff-Respondent-Respondent;
- b) Acting in Revision and/or Restitutio in Integrum to set aside the Judgement dated 12/09/2014 of the Hon. District Judge of Negombo in the case bearing No. 5182/L;
- c) Acting in Revision and/or Restitutio in Integrum to set aside the Order dated 10/09/2020 of the Hon. District Judge of Negombo in the case bearing No. 5182/L;

d) To grant cost; and

e) To grant such other and further relief as Your Lordship shall seem meet.

7] The Respondent challenges the Petitioners' reliance on Sections 102 and 103 of the Trust Ordinance No. 09 of 1917, arguing that these provisions relate to religious trusts and are irrelevant to this case, which instead revolves around the valid creation and enforcement of a private trust under Deed No. 2039.

8] Preliminarily, the Respondent argues that the Petitioners failed to establish the exceptional grounds required for the court's revisionary jurisdiction, committed non-compliance with mandatory law and Supreme Court rules, and are guilty of laches (undue delay), pointing out that they are challenging a District Court judgement dating back to 12/09/2014.

9] Substantively, the Respondent asserts the validity of the private trust, establishes his standing via Deed No. 4137, accuses the Petitioners of unauthorized property possession in bad faith, and claims they are attempting to circumvent statutory time limits by misusing Article 138 for a basic land matter. Consequently, the Respondent prays that the Court of Appeal dismisses the Petitioners' application in limine (at the threshold), affirms the original 2014 District Court judgement and subsequent 2020 substitution Order.

10] It is seen that the District Court ruled in favor of the Plaintiff on 12/09/2014, declaring the land subject to a trust and annulling the Defendants' deeds. Aggrieved by this judgement, the Defendants appealed to the High Court of Civil Appeal in Negombo. However, following the subsequent death of the Plaintiff and a failure by the Defendants' counsel to take necessary steps for legal

substitution, the High Court terminated the appeal proceedings on 05/11/2019, because they want prosecution. Years later, in 2024, the Petitioner (the Defendant) filed an extraordinary application under Article 138 of the Constitution for Revision and Restitutio in Integrum to set aside the original 2014 judgement.

11] It is further seen that the Petitioner had failed to exhaust an available, equally efficacious alternative remedy. The Petitioner initially filed an appeal to the High Court of Civil Appeal, and subsequent to the substitution Order dated 10/09/2020, the appeal was terminated by the Civil Appellate High Court of Negombo.

12] It is to be noted that Restitutio in Integrum will not be granted if the applicant has any other equally effectual remedy open to them. (Vide **Perera et al v Wijewickreme et al** 15 NLR 411).

13] This court sees that the Petitioner waited nearly ten years after the original 2014 judgement and over three years after the substitution Order to file this action, causing inordinate delay, laches, and it amounts to a blatant lack of due diligence.

14] It is Trite law under Sri Lankan law that extraordinary relief must be pursued with the utmost promptitude. (Vide; **Menchinahamy v Munaweera** 52 NLR 409 and **Kumudu Samanthi Akmeemana v Araliya Kankanamge Somasiri de Silva & Others** CA/RII/1/2018 (decided 21/02/2019), **Sri Lanka Insurance Corporation v Shanmugam and Another** [1995] 1 SLR 55.

15] In the principles laid down in the above cases, this remedy is entirely unavailable to the Petitioner, whose own lack of due diligence caused the initial

appeal to be terminated. It is a fundamental legal maxim ***vigilantibus non dormientibus jura subveniunt***- "the law assists those who are vigilant, not those who sleep on their rights" and we hold that the Petitioners are guilty of laches.

16] In **Kumudu Samanthi Akmeemana v. Araliya Kankaanamge Somasiri de Silva & Others** CA/RII/1/2018, Decided on 21/02/2019, His Lordship Samayawardhena, J held;

*“It must be stressed that “the power to grant relief by way of restitutio in integrum is a matter of grace and discretion.” (Usoof v. Nadarajah Chettiar, 58 NLR 436) The petitioner cannot seek restitution as of right. There are several threshold matters to be sorted out before addressing the core issue..... One such important hurdle to overcome is that “relief by way of restitutio in integrum should be sought for with the utmost promptitude.” Vide Menchinahamy v. Muniweera, Babun Appu v. Simon Appu, Sri Lanka Insurance Corporation Limited v. Shanmugam ....., it is crystal clear that the petitioner has not acted with the utmost promptitude when she decided to come before this Court more than two years after the District Court held against her. The delay is too long by any stretch of imagination particularly because the final order of the District Court against her was not ex parte but inter partes..... The explanation for delay over two years is unacceptable. Hence, on that ground alone, the application of the petitioner is liable to be dismissed.”*

17] I now consider the Petitioners' main argument. They say that the original District Court judgement is ab initio void because the court failed to comply with the mandatory, rudimentary provisions of Section 102 and Section 103 of the Trust Ordinance (Ordinance No. 09 of 1917). Under Section 102(3) and (4), no action regarding a public religious trust can be entertained unless the plaintiffs have first presented a Petition to the Divisional Secretary and obtained certification that an inquiry was held and an amicable settlement could not be reached.

18] In ***Thiyagarajah and others v Gopalakrishnanath and others*** [2007] 2 SLR 245, His Lordship Wimatachandra, J, held that a certificate of the Government Agent is imperative under and in terms of Section 102(3) of the Trust Ordinance before filing the District Court Case. This is a single-judge decision of this court; we respectfully dissent from it.

19] In ***Rodrigo v. Raymond*** [2002] 2 SLR 78, it was argued that the case should be dismissed because the Plaintiff had failed to obtain a "Mediation Board Certificate of non-settlement" beforehand. His Lordship NANAYAKKARA, J. held that the absence of a certificate does not create an absolute bar to the institution, and the maintenance of an action even where the value of the action is less than the required amount. The court held that it only creates a latent want of Jurisdiction as opposed to total lack of Jurisdiction or patent want of Jurisdiction, where there is a latent want of Jurisdiction it can be validated by the conduct of parties, such waiver, acquiescence and inaction unlike in the case of total or patent want of Jurisdiction, no such conduct will confer Jurisdiction on the Court.

20] In the case at hand, the Petitioners have not taken the above Jurisdictional objection at the very outset in the District Court as stipulated in section 39 of the Judicature Act.

21] In ***Paramasothy v. Nagalingam*** [1980] 2 SLR 34, His Lordship SOZA, J. held that if no objection was taken to the Jurisdiction, in a normal cause, if the original court has the plenary Jurisdiction to hear such a case, the court is vested with the Jurisdiction. His Lordship noted as follows;

*“By virtue of the provisions of section 39 of the Judicature Act it was incumbent on any party who objects to jurisdiction to do so at the very first opportunity. In this case the court inspected the site in dispute on; the invitation of parties and the order was made after hearing submissions. The*

*petitioner was therefore not entitled to complain on the ground of jurisdiction. The court had plenary jurisdiction and unless the objection was raised the court must be deemed to have jurisdiction.”*

22] The application for Revision and Restitutio in Integrum prayed for are discretionary remedies, which are allowed under the Miscarriage of Justice. We do not see that the non-availability of the certificate of the Government Agent under section 102(3) of the Trust Ordinance, vitiates the entire District Court Proceedings ab initio void.

23] For the aforesaid reasons, we dismiss the application for Restitutio in Integrum without costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL