

**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/0098/2024

DC Moratuwa

Case No: 143/P

Daundage Nandanee Kulawardane  
No. 2, Shantha Place,  
Sri Rahula Mawatha,  
Katubedda, Moratuwa

**Plaintiff**

**VS**

1. Daundage Lakshman,  
No. 110/1, Thelawala, Moratuwa
2. Daundage Vipula Priyashantha  
No. 110/1A, Sri Rahula Mawatha,  
Thelawala, Moratuwa
3. "Sakasuruwam Saha Naya Ganudenu  
Samithiya"  
Thelawala
4. Jayasooriya Arachchige Rasika Roshan  
Perera  
No. 253, Sri Rahula Mawatha,  
Thelawala, Mount Lavinia.
5. J.A. Jagath Perera  
No. 253 A,  
Sri Rahula Mawatha,  
Thelawala, Mount Lavinia

**Defendants**

**AND**

4. Jayasooriya Arachchige Rasika Roshan  
Perera  
No. 253, Sri Rahula Mawatha,  
Thelawala, Mount Lavinia.

5. J.A. Jagath Perera  
No. 253 A, Sri Rahula Mawatha,  
Thelawala, Mount Lavinia.

**04<sup>th</sup> and 5<sup>th</sup> Defendant –**

**Petitioners**

**Vs.**

Daundage Nandanee Kulawardane  
No. 2, Shantha Place,  
Sri Rahula Mawatha,  
Katubedda, Moratuwa.

**Plaintiff-Respondent**

1. Daundage Lakshman  
No. 110/1, Thelawala, Moratuwa

2. Daundage Vipula Priyashantha  
No. 110/1A, Sri Rahula Mawatha,  
Thelawala, Moratuwa.

3. “Sakasuruwam Saha Naya Ganudenu  
Samithiya”  
Thelawala

**01<sup>st</sup>, 02<sup>nd</sup>, 03<sup>rd</sup> Defendant-Respondents**

**AND NOW**

4. Jayasooriya Arachchige Rasika Roshan  
Perera  
No. 253, Sri Rahula Mawatha,  
Thelawala, Mount Lavinia.

5. J.A. Jagath Perera  
No. 253 A, Sri Rahula Mawatha,  
Thelawala, Mount Lavinia.

**04<sup>th</sup> and 05<sup>th</sup> Defendant-**

**Petitioner-Petitioners**

**Vs.**

Daundage Nandanee Kulawardane,  
No. 2, Shantha Place,  
Sri Rahula Mawatha,  
Katubedda, Moratuwa.

**Plaintiff-Respondent-Respondent**

1. Daundage Lakshman  
No. 110/1, Thelawala, Moratuwa.
2. Daundage Vipula Priyashantha  
No. 110/1A, Sri Rahula Mawatha,  
Thelawala, Moratuwa.
3. “Sakasuruwam saha Naya Ganudenu  
Samithiya”  
Thelawala

**01<sup>st</sup>, 02<sup>nd</sup>, 03<sup>rd</sup> Defendant-  
Respondent-Respondents**

Before: R. Gurusinghe, J.  
&  
Dr. S. Premachandra, J.

Counsel : Dulani Peiris instructed by  
Chamali Ranatunga  
**for the Plaintiff-Respondent-Respondent**

Thusitha Wijekoon  
**for the 4<sup>th</sup> and 5<sup>th</sup> Defendant-Petitioner-Petitioner**

Vasantha Gajanayake PC, with Dinusha De Silva and  
Vishmi Silva instructed by Kaushalya Wickramanayake  
**for the 1<sup>st</sup> Defendant-Respondent-Respondent**

Argued on : 23-02-2026

Decided on : 21-05-2026

## **JUDGMENT**

R. Gurusinghe, J.

The 4<sup>th</sup> and 5<sup>th</sup> defendant-petitioners instituted the present application for *Restitutio-in-Integrum*, seeking, *inter alia*, the following reliefs:

- b) Revise and/or set aside the order of the learned District Judge of Moratuwa dated 03-12-2024 made in the Case bearing No. 143/P of the District Court of Moratuwa.
- c) Revise and/or set aside the order of the learned District Judge of Moratuwa contained in the journal entry No. 110 made in the Case bearing No. 143/P of the District Court of Moratuwa
- e) Grant the reliefs prayed for in the petition dated 29-11-2024 filed by the 4<sup>th</sup> and 5<sup>th</sup> Defendant-Petitioner-Petitioners.

The plaintiff-respondents (the plaintiff) instituted partition action bearing No. 143/P in the District Court of Moratuwa by plaint dated 30-10-2009 against three defendants, seeking the partition or sale of the property more fully described in the second schedule to the plaint. The preliminary survey was conducted by F.D. Ediriwickrama, Licenced Surveyor, on the 15<sup>th</sup> and 25<sup>th</sup> of October 2011. Subsequently, the surveyor prepared plan no. 3215 dated 25-10-2011. In the preliminary survey report, the Commissioner reported that Lot A3 depicted in the said plan was in the possession of two new claimants, namely Rasika Roshan Perera and Jagath Perera, who are the petitioners in the present application and were accordingly added as the 4<sup>th</sup> and 5<sup>th</sup> defendants to the action. The Commissioner further reported that the said new claimants informed him during the survey that it was unnecessary to show their buildings, and consequently did not permit him to survey and depict the said buildings within Lot A3.

According to the Journal Entries, summons was duly issued on the 4<sup>th</sup> and 5<sup>th</sup> defendants', and the 4<sup>th</sup> defendant appeared before the Court on 17-09-2013 (JE 38). On 26-11-2013, JE 39 records that "the 4<sup>th</sup> defendant does not wish to contest the action". Further, JE 36, dated 18-06-2013, indicates that "the 5<sup>th</sup> defendant is present and seeks time to retain a lawyer".

The 4<sup>th</sup> and 5<sup>th</sup> defendant-petitioners filed an application in the partition action on 01-06-2020, seeking the exclusion of the land claimed by them from the proposed primary partition plan, namely Plan No.5171 dated 07-

02-2020, prepared by H.D. Ediriwickrama, Licenced Surveyor, on the basis of Title Registration certificates. The said application was dismissed by the Learned District Judge of Moratuwa by Order dated 19-04-2021. However, the petitioners have failed to produce a copy of the said order. Thereafter, the 4<sup>th</sup> and 5<sup>th</sup> defendants state that they preferred an application for leave to appeal against the said Order dated 19-04-2021 before the Civil Appellate High Court of Western Province, holden in Mount Lavinia. The petitioners further aver that the said appeal was dismissed by the Civil Appellate High Court of Mount Lavinia. Nevertheless, the petitioners have failed to produce a copy of the relevant judgment or even to disclose the date of the judgment delivered.

In the present application, the petitioners aver that they were neither served with summons nor appeared before the District Court, as stated in the above paragraph. The 4<sup>th</sup> and 5<sup>th</sup> defendants state that title registration certificates were issued to them by the Registrar of Titles and that the said Title Certificates were duly registered in the Land Registry on 30-05-2012, 28-05-2012, 24-01-2018 and 30-05-2012, respectively. Copies of the said Title Certificates were duly produced, marked A, B, C, and D.

The petitioners instituted four actions in the District Court of Moratuwa in 2022, based on the title registration certificates referred to in the preceding paragraph, seeking to vindicate their title to the said property. In the said actions, the plaintiff, the 1<sup>st</sup> defendant, and the 2<sup>nd</sup> defendant in the partition action were made as defendants.

The petitioners filed an application in Partition action No. 149 on 29-11-2024, seeking an order to stay the execution of the writ of possession issued against them. In the said application, they have averred that they are the holders of the relevant Title Registration Certificates and have already instituted actions against the plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> defendants in the partition action.

Petitioners state that they are vested with a first-class title to the property in question in terms of Section 53 of the Title Registration Act No. 21 of 1998. It was submitted that the Learned District Judge erred in law by failing to take into consideration that the plots of land for which a first-class certificate of title has been issued under the provisions of the Title Registration Act cannot be the subject matter of a partition action.

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.*

The petitioners had knowledge of the pending partition action in respect of the subject land from the date of the preliminary survey conducted on 15<sup>th</sup> and 25<sup>th</sup> October 2011. The Surveyor reported that, due notice was issued to the petitioners. The Journal Entries in the partition action disclose that the petitioners were present in Court on one or two occasions. However, they have neglected to file their statements of claim or to produce their Title Registration Certificates before the court. According to the Journal Entries of the partition action, the *lis pendens* was registered prior to the issuance of the Title Registration Certificates in favour of the petitioners. As stated in the Sri Lanka Insurance case (Supra), *“the Court will not relieve parties of the consequence of their own folly, negligence or laches”*. As the petitioners have acted negligently or wilfully defaulted in appearing before the District Court in the partition action, they are not entitled to succeed in this application.

Petitioners have failed to produce a copy of the judgment of the Civil Appellate High Court. As a result, the reasons for the dismissal of their application were not disclosed to this Court. This amounts to suppression of material facts.

The petitioners have already instituted vindicatory actions against the plaintiff-respondent and the 1st and 2nd defendant respondents. Accordingly, the petitioners have an alternative remedy.

Once the petitioners' appeal in the High Court of Civil Appeals has been dismissed, they are precluded from raising the same matter again before this Court by way of the present application.

If the 4<sup>th</sup> and 5<sup>th</sup> defendant-petitioners were aggrieved by the said judgment of the Civil Appellate High Court, they were 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 petitioners had the opportunity to challenge the decision of the Civil Appellate High Court in the Supreme Court. While the said judgment remains in force, the petitioners cannot succeed in the present application.

SC/Appeal No. 65/2025 and CA/RII/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 set out in this judgment, the application of the petitioners cannot be allowed. Application is dismissed.

Judge of the Court of Appeal.

Dr. S. Premachandra J.  
I agree.

Judge of the Court of Appeal.