

**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 Intergrum Under Article 138 of  
the Constitution of the Democratic Socialist  
Republic of Sri Lanka.

Kumarage Nilmini Soba Ranasinghe,  
Ihala Malawala,  
Rantotuwila.

Plaintiff

Vs

C.A. Revision Application No. 757/2004  
D. C. Elpitiya Case No.2607/P

1. Prema Ratnayake,  
And three (03) others

Defendants

And Between

Prema Ratnayake,  
Kuda Uragaha,  
Uragaha.

1<sup>st</sup> Defendant Petitioner

Vs

1. Kumarage Nilmini Soba Ranasinghe,  
Ihala Malawala,  
Rantotuwila.

Plaintiff - 1<sup>st</sup> Respondent

2. Martin Wijeyasinghe  
Ihala Malawala,  
Rantotuwila.

2<sup>nd</sup> Defendant -2<sup>nd</sup> Respondent

3. Jayalath Aratchiga Wijewardena,  
Ihala Malawala,  
Rantotuwila.

3<sup>rd</sup> Defendant - 3<sup>rd</sup> Respondent

4. Maggie Weerasuriya of  
Aluthgama.

4<sup>th</sup> Defendant - 4<sup>th</sup> Respondent

BEFORE : S. SRISKANDARAJAH, J (P/CA)

COUNSEL : Vidura Gunaratne,  
for the 1<sup>st</sup> Defendant -Petitioner

The Respondents are absent and unrepresented.

Argued on : 03.09.2010 and 29.09.2010

Written Submission on : 15.11.2010 (Defendant Petitioner)

Decided on : 30.01.2012

**S.Sriskandarajah.J**

The Plaintiff Petitioner filed a Partition action on 01.11.1994 to partition the land called ANNASIWATTA situated at Ihala Mala Rantotuwila in extent about one and half (1 ½ ) Acres.

The Pedigree stated in the Complaint dated 22.02.1996 was admitted by the parties to the action. Accordingly the original owners of the said land were, Thommaya Hakuru Araneris and Thommaya Hakuru Viyoris alias Dharmasenage Viyoris. The said Thommaya Hakuru Araneris sold his half (1/2) share by deed No.1157 of 06.12.1933 to the said Dharmasenage Viyoris.

By deed No 18892 of 10.06.1942 (P1) Dharmasenage Viyoris sold his half share to Don Abraham Kumarasinghe. The said Don Abraham Kumarasinghe by deed No.19696 of 23.09.1943 (P2) sold the said 1/2 share to Don Adiriyana Karunaratne. By deed No 285 dated 14.05.1951 Don Adiriyana Karunaratne sold the said 1/2 share to Hewa Hakuru Punchisingho.

The Hewa Hakuru Punchisingho's children were:

1. Nanasena
2. Nanda Ratnayake alias Prema Ratnayake, the 1<sup>st</sup> Defendant
3. Sunanda
4. Somawathie

The Punchisingho's children Nanasena, Sunanda and Somawathie sold their respective shares to one William Pieris by deed Nos. 3338 of 23.12.1957, 3320 of 10.11.1957 and 3341 of 30.12.1957.

The share of the 1<sup>st</sup> Defendant has not been alienated and this fact was admitted and the 1<sup>st</sup> Defendant was given 1/8 th share of the said land in the pedigree of the Plaintiff Respondent.

The Petitioner contended that by an error in the proceedings it has been recorded that by deed No. 3320 marked P4 Nanda Ratnayake and Sunanda Ratnayake sold their rights to William Pieris. But in fact by deed No 3320 marked P4 only Sunanda Ratnayake's share was transferred but not the 1<sup>st</sup> Defendant's share. The learned District Judge delivered his Judgement on

04.09.2003 based on the erroneous proceedings without giving consideration to the deeds that are file of record.

The learned District Judge has failed to examine the title of the Plaintiff and the Defendants. If the learned Judge examined the title he would have arrived at the correct finding that the 1<sup>st</sup> Defendants rights are not alienated by deed No 3320 marked P4. In *A.A.Guanasinghe v Aron Appuhamy* (1970) 79 CLW 110 Samerawickrame J held:

“We are of the view that it would not be satisfactory to permit this decree for partition to stand in view of rather cursory examination in regard to the title of the parties.”

It is settled law that revision will lie to set right a miscarriage of justice in the event of there being in the proceedings a fundamental vice which transcends the bounds of procedural error; *W.G.Roslin v H.B.Maryhamy* [1994] 3 Sri LR 262.

The revisionary jurisdiction of this court is dealt with in detail in *Somawathie v Madawela and Others* [1983] 2 Sri L R, Page 15 at 26 Soza J cited with approval the judgment of Sansoni J In *Mariam Beebee v. Seyed Mohamed* (68 NLR 36) :

“Sansoni C. J. delivering the majority decision of the Divisional Bench that heard this case said as follows at page 38:

"The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by the Court itself, in order to avoid miscarriages of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice the fact that, unless the power is exercised, injustice will result. The Partition Act has not, I

conceive, made any changes in this respect, and the power can still be exercised in respect of any order or decree of a lower Court."

As there was no investigation of title by court when delivering the judgment this court set aside the proceedings and the Interlocutory decree and directs a de novo trial. Application for revision as prayed for in prier (d) of the Petition of this application is allowed without costs.

President of the Court of Appeal