

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

C.A. 446/2009
D.C. Kurunegala 3902/P

R.M. Kumarihamy,
Arambegedara, Udumulla,
Panagamuwa.

9th Defendant-Petitioner.

Vs.

1. S.A. Mujiber Rahuman of Polwatte,
Panagamuwa. .

Added Plaintiff-Respondent.

2. Uduma Lebbe Pathumma,

3. Hawwa Umma,

4. Jainul Abdeen, all of Polwatte,
Panagamuwa.

5. Ameena Umma of Haliyamulla,
Panagamuwa.

6. Abdul Majeed of Polwatte, Panagamuwa.

7. Saleem Alim of Polwatte, Panagamuwa.

8. Umma Rahiyana of Polwatte,
Panagamuwa.

9. M. Ashroff of Thotawepitiya,
Panagamuwa.

Defendant-Respondents.

BEFORE: A W A SALAM, J
COUNSEL: M.S.M. Hussain for 9th Defendant-Petitioner.
ARGUED ON: 11.11.2010.
WRITTEN SUBMISSIONS ON: 14.01.2011.
DECIDED ON: 21.02.2012.

A.W.A. Salam, J.

The plaintiff-petitioner hereinafter referred to as the "petitioner" has filed the present application for *restitutio in integrum*. The facts briefly are that the plaintiff-respondent referred to as the "plaintiff" instituted action for the partition of the land called Alahenpitiye Hena and Walmekotuwewatta in extent

respectively of 3A 1R 3P & 2A 3R 17P. The said lands are shown in the preliminary plan bearing No 1857. The petitioner obtained a fresh commission and plan No 1285 was made and at the instance of the petitioner and the preliminary plan 1857 was superimposed on the said plan No 1285 and the surveyor mentioned in the report that an extent of 5 perches have been included into the land proposed to be partitioned by the plaintiff.

The petitioner then filed a statement of claim relying on plan No 1285 claiming the exclusion of the said extent of 5 perches. According to the proceedings dated 29 August 2003 (X 6), as consent to by the parties an of 5 perches has been excluded from the land depicted in the preliminary plan and the trial proceeded without any points of contest.

Petitioner is now seeking to have the said settlement, judgment and the rest of the proceedings set aside on the basis that she made a genuine mistake in agreeing to exclude only an extent of 5 perches. The petitioner contends that her registered attorney-at-law was misguided by the plan and report marked as X3,X3A,X4 and X4A and that she believed the contents of the plans and the reports are correct.

It is to be noted that the settlement in question has been entered as far back as in August 2003 and the petitioner has filed the present application on 10 July 2009, nearly six years after the settlement. The petitioner maintains that the reason for the delay in filing the application is that the final partition has been made on 20.9.2008 and thereafter the case has been fixed for consideration of the final scheme on 3.3.2009. She further states that upon being dissatisfied with the scheme of partition which disclosed a substantial portion of her land has been included into the corpus, she complained to the registered

attorney-at-law who requested her to wait until the finalisation of the scheme of partition. This, in my opinion cannot be accepted as a valid explanation for the delay. Even the revision application in the Civil Appellate High Court of the North-Western Province has been filed nearly six years after the judgement and ID.

The contention of the petitioner that the judgement has been obtained by fraud producing false evidence, has not been substantiated by documentary evidence warranting the grant of relief sought in the petition.

Taking into consideration the long delay in filing the application for *restitutio in integrum*, I am not inclined to grant relief to the petitioner. Accordingly, the application of the petitioner is dismissed without costs.

Judge of the Court of Appeal

nr/-