

**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 integrum* in terms of  
Article 138 of the Constitution of the  
Republic of Sri Lanka and /or under  
Section 753 of the Civil Procedure Code.

Ediriweera Gamage Matheshamy,  
Heelegesera, Weerasinghe Road,  
Puwakdandawa, Beliatta.

**Plaintiff**

C.A.(Revision) Application No: 874/2004

D.C.Tangelle Case No.3283/P

Vs

1.Ediriweera Gamage Babynona,  
Amukoratuwa, Weerasinghe Road,  
Puwakdandawa, Beliatta.  
And five (05) others.

**Defendants**

**And Now Between**

1. Ediriweera Gamage Babynona,  
Amukoratuwa, Weerasinghe Road,  
Puwakdandawa, Beliatta.
- 3A . Padma Alexander Hettiarachchi,  
No.1380, D 17, Ela, Padalangala.
4. Kaluthanthiri Arachchige Premawathi,  
Kandegedera, Gammedagama, Ketiya,  
Deyyandara.

**Defendant Petitioners**

Vs

Ediriweera Gamage Matheshamy,  
Heelegesera, Weerasinghe Road,  
Puwakdandawa, Beliatta.

**Plaintiff Respondent**

1. Ruwanpathirana Babyhamy,
2. Ediriweera Gamage Samy
3. Ediriweera Gamage Karunawathi,  
All of Heelegedera, Weerasinghe Road,  
Puwakdandawa, Beliatta.

**Substituted Plaintiff Respondent**

2A. K.A.Tinal, No.1283,D15 Ela,  
Thunkama, Embilipitiya,

**Defendant Respondent**

**BEFORE** : **S. SRISKANDARAJAH, J. (P/CA)**  
**COUNSEL** : Shaminda Silva,  
 for the Petitioner  
 A.Witanachchi,  
 for the Plaintiff-Respondent.  
Argued on : 07.02.2011  
Decided on : 25.08.2011

**S.Sriskandarajah, J.**

The land which is the subject matter of this application is described in Schedule 1<sup>st</sup> and 2<sup>nd</sup> to the Plaint of the partition action filed in D.C.Tangelle Case No.3283/P. These lands are in extent about three Roods and twenty one Perches (R.3-P.21) and two Roods and fourteen Perches (R.2-P.14) respectively. After a preliminary survey a Preliminary Plan No 5159 was

prepared by N.Wijeweera Licensed Surveyor. According to this plan the land to be partitioned was shown as one block of land. The judgement was delivered on 29.06.1999 ordering a partition of the corpus among the parties according to the shares mentioned in the Plaint. Thereafter a final commission was issued to execute the partition and a Final Plan No. 6112 dated 29.10.1999 was prepared. According to the aforesaid plan the corpus was partitioned in to three blocks namely Lot1, Lot2 and Lot3. As the Plaintiff was not satisfied with the said division the Plaintiff moved for a fresh commission to prepare a fresh plan with permission from the District Court. On the order of court a plan No 6112A dated 21.04.2001 and a Survey Report was prepared. The Defendants objected to the division suggested by this plan. Thereafter an inquiry was held and after the inquiry the Learned Trial Judge by order dated 24.02.2004 ordered a partition of the corpus among the Plaintiff and the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants according to Plan No.6112A and the relevant Survey Report.

The Petitioner in this application has sought to revise the said order on the basis that the learned District Judge has not given proper consideration to the factual issues of the case when making his order refusing to Partition the land according to the Final Plan No. 6112.

The learned District Judge in his order has considered the concerns expressed by the Plaintiff that according to Plan No.6112, Lot 1 was allotted to the Plaintiff and lot 2 to the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants. In the said lot 2 there is a lavatory bearing No .6 in the plan, and if the plaintiff construct a house in Lot 1 it would face the said lavatory in lot 2. The Defendants' objection to the Plan No 6112A was that the road frontage to lot 2 is smaller than that was given to Lot 1. The learned Judge has considered the fact that Lot 3 which was allocated to the 3<sup>rd</sup> Defendant was purchased by the 1<sup>st</sup> Defendant and as such the said Lot 3 is now amalgamated with Lot 2. In this circumstances the

objection raised by the 1<sup>st</sup> and the 2<sup>nd</sup> Defendant to Plan No 6112A that the road frontage given to Lot 2 is smaller than Lot 1 will not arise as Lot 2 with Lot 3 will have a larger road frontage than Lot 1. The learned Judge after considering the objections of the Plaintiff to Plan No.6112 and the Defendants to the Plan No 6112A has correctly come to the conclusion that the objections of the Defendants has no merit and ordered that the Partition of the land to be effected as per Plan No 6112A.

In these circumstances this court has no reason to interfere with the Order of the learned District Judge dated 24.02.2004 and dismisses this application with costs of Rs 25,000/- to the Plaintiff.

President of the Court of Appeal