

**In the Court of Appeal of the Democratic Socialist Republic
of Sri Lanka**

In the matter of an application for
Revision.

Herath Mudiyansele Malani
Sunanda,
Eliwila, Gonawila.

Plaintiff

Vs.

1. Herath Mudiyansele Ukku
Banda Appuhamy, (deceased)
2. Ranabahu Mudiyansele
Karunanayake, (deceased)
3. Gallage Rexi Irene Pieris
4. Herath Mudiyansele
Weerawardane
- 2A. Ranabahu Mudiyansele
Thushari Ranabahu
(Substituted)

C.A. No. 1409/2000
D.C. Kuliypitiya No. 9532/P

- 1A. Jayasekera Aratchilage
Pemawathi
All of Eliwila, Gonawila.

Defendants

B E T W E E N

Jayasekera Aratchilage
Pemawathie
Eliwila, Gonawila.

**Substituted 1st Defendant
Petitioner**

Vs.

1. Herath Mudiyansele
Malani Sunanda

Plaintiff-Respondent

1. Ranabahu Mudiyansele
Thushari Ranabahu
(substituted)
2. Gallage Rexie Irene Peiris
3. Herath Mudiyansele
Weerawardena
All of Eliwila, Gonawila.

Defendant-Respondents

Before : A.W.A. Salam, J.

Counsel : S.N. Vijithsingh for the Petitioner, Rohan Sahabandu for Plaintiff-Respondent and Dr. S.F.A. Coorey for the 3rd and 4th Respondents.

Argued on : 21/06/2010

Decided on : 14/02/2011

A.W. Abdus Salam, J.

This is an application by the Substituted 1st Defendant-Petitioner to revise the judgment and the interlocutory decree entered in the above partition action on 31/01/2000. The Substituted 1st Defendant - Petitioner has filed a statement of claim and participated at the trial. Admittedly, she has not preferred an appeal within the stipulated period of time. This revision application has been filed as she had not been able to prefer such an appeal. The impugned judgment of the learned District Judge has been delivered on 31/01/2000 and the revision application has been filed on 28/11/2000, nearly 10 months

after the pronouncement of the judgment. The petitioner in her attempt to account for the delay states in the petition that she lost her husband soon after the marriage and she looked after her parents until disaster struck her with the death of the father. This, according to her had resulted in the mother becoming incapacitated. In addition, she states that her sister also met with a serious accident. These events had led to a situation where she was not able to file an appeal. In order to support this position she has produced medical certificate from the Consultant Physician dated 07/12/2000 marked as P15.

As has been submitted on behalf of the 3rd and 4th Defendant-Respondents the medical certificate 'P15' appears on the face of it to have been issued by a doctor who cannot be considered as not being biased towards the petitioner. The contents of 'P15' are self explanatory in this respect. The relevant portion of the medical certificate reads as follows.

"Premawathie is a victim of sad circumstances. Her husband died soon after the marriage. She looked after her elderly parents until disaster struck with her. Death of her father in April 1999. Her mother was bed-ridden with a paralytic illness. In this slow and retarded state of mind she failed to attend Courts for a partition case. I beg Court to grant her reprieve and pardon for her failure to attend Court procedure as due to lapse in memory cause by the depression illness"

'P15' does not show as to whether the author had examined the petitioner or treated her for any illness to narrate the adequate

motivation on the part of the petitioner to attend to her affairs. Further, the medical certificate contains a narration of factual matters which the author could not have reasonably expected to have known as first hand information.

As opposed to 'P15 the respondents have filed a report of the Grama Niladari of the area marked as 'Z2' wherein it is stated that the petitioner had been in a state of proper mental condition and that she attended to affairs without any hindrance from January 2000 to date. This document of the Grama Seva Niladari has not been seriously contested by the petitioner. Hence, it appears that the long delay in filing the revision application has not been satisfactorily accounted for by the petitioner. On account of this unexplained delay alone this application should stand dismissed. There shall be no costs.

Judge of the Court of Appeal

NT/-