

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

Arambewattege Indrawathie  
Rodrigo Munasinghe  
NO. 112, Ihala Bomiriya  
Kaduwela.

**PLAINTIFF**

**D.C. Homagama 483/P**

**Court of Appeal No. CA 388/06**

**Vs**

1. Senadhirage Dona Mayawathie  
Seneviratne (nee Gunasekera)  
(Deceased)
2. Pranithapani Seneviratne  
Both o "Leelawasa"  
Bomiriya, Kaduwela.
3. Peoples Bank  
Avisawella Branch  
Avisawella.
4. M/s Swarnananda Traders  
(Pvt) Limite, Super Market  
Homagama.

**DEFENDANTS**

**AND BETWEEN**

1. DhammikaRajinda Seneviratne  
Of No. 35/5, Uswatte Mawatha  
Etul Kotte.

2. Nimal Piyasinghe  
Of Salawa Ulu Mola Hotel  
Salawa, Kosgama.
3. Anuruth Nandalal Seneviratne  
Of 37/A, Torrington Avenue  
Colombo 07.
4. Kusuma Iranganie Abeywickrama  
Of No. 35, Browns Hill, Matara.
5. Khema Hemanthi Jayamanne  
Of No. 3, Higgahawatte Avenue  
Buthgamuwa, Rajagiriya.
6. Mallika Adhikari  
No. 167/3, Sanasa Mawatha,  
Godigamuwa, Maharagama.
7. Kalyani Perera  
Of No. 390, C Uluwahukare Road  
Welivita, Matale.
8. Saumya Justin  
No. 883/28A, Kotte Road,  
Etul Kotte.
9. Upali Seneviratne  
37, Torrington Avenue,  
Colombo 07.

**PETITIONERS**

**AND**

Arambewattege Indrawathie  
Rodrigo Munasinghe  
No. 112, Ihala Bomiriya,  
Kaduwela.

**PLAINTIFF - RESPONDENT**

1. Senadheerage Dona Mayawathie  
Seneviratne (nee Gunasekera)  
**1<sup>st</sup> DEFENDANT - RESPONDENT**
2. Pranithapani Seneviratne  
Both of "Leelawasa"  
Bomiriya, Kaduwela.  
**2<sup>nd</sup> DEFENDANT- RESPONDENT**
3. Peoples Bank  
Avisawella Branch,  
Avisawella.  
**3<sup>rd</sup> DEFENDANT- RESPONDENT**
4. M/s. Swarnananda Traders  
(Pvt) Ltd, Super Market  
Homagama.  
**4<sup>th</sup> DEFENDANT- RESPONDENT**

**BEFORE** : Deepali Wijesundera J.  
: M.M.A. Gaffoor J.

**COUNSEL** : Ranjan Suwandarathne with  
S. Thennakoon for the Plaintiff  
Respondent  
Rohan Sahabandu PC for the  
2<sup>nd</sup> Defendant Respondent  
Bimal Rajapaksha for the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>,  
6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Petitioners.

**ARGUED ON** : 06<sup>th</sup> November, 2015

**DECIDED ON** : 24<sup>th</sup> March, 2016

Deepali Wijesundera J.

The petitioners have filed this application praying to revise or set aside the judgment delivered on 04/03/2003 and also to set aside the interlocutory decree and the final decree entered in case no. 483/P in the District Court Homagama. This application has been filed three years after the judgment was delivered in the said partition action.

The first and second defendants in the partition action are mother and brother of the petitioners in the instant application.

The learned counsel for the petitioners submitted when the first defendant in the partition case died her son the second defendant was substituted without bothering to find out all the heirs of the deceased which caused a grave prejudice to the rights of the petitioners who are children of the deceased first respondent.

The counsel for the petitioners stated that the real dispute was in regard to the corpus and not the pedigree and that the plan marked X showed a larger land but the parties failed to take steps under *Sec. 19 (2) of the Partition Act* which caused prejudice to the petitioners, which

resulted in a patent lack of jurisdiction. He stated that there has been no investigation of title.

The counsel further stated that there has been a fundamental vice together with a patent lack of jurisdiction therefore the petitioner's revision application should be allowed.

The learned counsel for the respondents submitted that the diseased first defendant respondent was the mother of the petitioner and the second defendant respondent is the brother of the petitioners and the corpus was in regard to their ancestral property therefore the petitioners cannot say that they were unaware of the partition action. He further stated that this partition action was highly contested which lasted nine years and the judgment was delivered in favour of the plaintiff nine years prior to this revision application. The respondents stated that there is an unexplained delay in filing this application and that the petitioners have not stated in their petition that they had no contacts with the mother and the brother therefore they can not say they were unaware of the partition action.

The respondents further submitted that the issues taken up in the instant application were raised in the District Court by the first and second defendants and that the District Judge has dealt with them in

detail and the instant application was filed by the petitioners in collusion with the second defendant. He stated that after the final decree some of the parties have sold their rights to third parties.

The petitioners have filed the instant application to revise or set aside a judgment delivered on 04/03/2003 which was delivered three years prior to the instant application. The first and second defendants in the District Court action are mother and brother of the petitioners and the land involved was their ancestral property. The argument of the petitioners were that after the death of their mother the first defendant without looking for all the legal heirs, the plaintiff in the said case substituted the second defendant their brother in place of the deceased mother and this has greatly prejudiced their rights. The petitioners who obviously knew about the partition action should have taken steps to intervene in the partition case when the mother died. After sleeping over their rights for so long they can not now come and say their rights have been affected.

The petitioners have filed the instant application three years after the judgment was delivered and have not given an acceptable reason for the long delay. After judgment the Interlocutory and Final decrees were entered and after the final decree only the petitioners have decided to

challenge the said judgment. The petitioners have failed to prove the requirements stated in Sec. 48 of the Partition Act to revise the said judgment. They have stated that the pedigree has not been properly analyzed by the District Judge, if that is so they should have appealed against the said judgment at that time. They have been silent until the land was surveyed for the final partition. They have been fully aware of the partition action but did not attempt to intervene in the said action until the final partition.

The petitioners have failed to prove exceptional circumstances to grant revisionary jurisdiction of this court.

For the afore stated reasons I decide to refuse the application of the petitioners with costs fixed at Rs. 50,000/=.

**JUDGE OF THE COURT OF APPEAL**

**M.M.A. Gaffoor J.**

I agree

**JUDGE OF THE COURT OF APPEAL**