

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

Panadura Acharige Don Thomas
Edward Perera,
Thaksala Road,
Moratuwa.
3rd Defendant-Petitioner

CA Case No: CA/RI/18/2018

DC Panadura Case No: 129/P

Vs.

Don Jayaweera Perera,
Don Senaka Jayantha Gamini
Perera,
Perlin, Thaksala Road,
Sarrikkamulla,
Moratuwa.
Plaintiff-Respondents
& Four Others
Defendant-Respondents

Before: Mahinda Samayawardhena, J.

Counsel: S. Kumarasingham for the Petitioner.

Supported &

Decided on: 09.11.2018

Samayawardhena, J.

The 3rd defendant-petitioner filed this application for revision and *restitutio in integrum* seeking to set aside (a) the Interlocutory Decree entered dated 27.08.1999 and (b) the order delivered dated 24.03.2016 by the District Judge of Panadura in Partition Case No. 129/P.

Let me first consider the (a) above.

The 3rd defendant has filed a Final Appeal against the Interlocutory Decree dated 27.08.1999 before this Court (CA 1275/1999/F), and this Court by Judgment dated 22.09.2008 has dismissed that appeal.

Once the Final Appeal is dismissed, it is elementary that the 3rd defendant, 10 years after the said Judgment, cannot come before this Court again by way of revision seeking the same relief—setting to aside the Interlocutory Decree.

If that is allowed, each and every appellant who fails in the Final Appeal, can have a second bite of the cherry, by filing a Revision Application before the same Court seeking the same relief.

The first relief cannot be granted.

This leads me to consider the (b) above.

That relates to the order made by the District Judge in terms of section 36 of the Partition Law, No. 21 of 1977, as amended, after the Scheme Inquiry. The 3rd defendant, in terms of section 36A of the said Law, has filed a Leave to Appeal application against the said order of the District Court before the High Court

of Civil Appeal of Kalutara (WP/HCCA/LA/18/2016) and the High Court of Civil Appeal has refused Leave by order dated 16.06.2016.

The 3rd defendant has then sought Special Leave to Appeal against the said order of the High Court of Civil Appeal from the Supreme Court (SC/HCCA/LA 372/2016), but later withdrawn.

It is thereafter, the 3rd defendant has filed this Revision Application before this Court seeking to set aside the same order of the District Court which was canvassed earlier by way of a Leave to Appeal Application before the High Court of Civil Appeal.

Once Leave to Appeal is refused by the High Court, it is elementary that the 3rd defendant, more than 2 years after the said order of refusal, cannot come before this Court again by way of revision seeking the same relief—setting aside the order dated 24.03.2016 of the District Court made after the Scheme Inquiry.

If that is allowed, each and every party who fails in obtaining Leave to Appeal against an order, can have a second bite of the cherry, by filing a revision application before the same High Court which made the order or before this Court seeking the same relief.

The second relief also cannot be granted.

Notice refused. Application dismissed.

Judge of the court of Appeal