IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for the revision and or restitutio-in-integrum under Article 138 of the Constitution of the Republic of Sri Lanka.

C.A (Revision)
Application No. 130/2014

D.C. Maho 60/P

W.M. Muthumanika
of Nikewaratiya

Plaintiff

-Vs-

1. W.M. Wimaladasa
   Kandegedara,
   Nikewaratiya.

2. W.M. Manikhamy
   Gowamulla,
   Nikewaratiya.

3. W.M. Punchi Banda
   Gowamulla,
   Nikewaratiya.

4. W.M. Mudiyanse
   Gowamulla,
   Nikewaratiya.

5. W.M. Dingiri Banda alias W.M
   Punchi Bandage Dingiri Banda
   Gowamulla,
   Nikewaratiya.

6. W.M. Kiribanda
   Gowamulla,

Nikewaratiya.

7. W.M. Ranbanda
Gowamulla,
Nikewaratiya.

8. S.N.S.T.B. Kaw Amma
Karakole, Nikewaratiya.

9. T.M. DingiriMenika
(Guardian of Minors)

Defendants

And Between

Thennakoon Mudiyanselage
Chithra Kumari Thennakoon
Lake Road,
Karakole,
Nikewaratiya.

Substituted 8th Defendant/Petitioner

-Vs-

W.M. Muthumanika
of Nikewaratiya

Plaintiff/ Respondent

1. W.M. Wimaladasa alias
Wanninayake Mudiyanselage
Kiribandage Wimaladasa
(Deceased)
Kandegedara,
Nikewaratiya.

1A. Wanninayake Mudiyanselage Dissanayake

1B. Wanninayake Mudiyanselage Dingiri Amma alias Wanninayake Mudiyanselage Dilini Ashoka Kumari

1C. Wanninayake Mudiyanselage Somasinghe

1D. Wanninayake Mudiyanselage Nawaratne

1E. Wanninayake Mudiyanselaga Karunawathie

All of
Kotuwaththawala Road,
Kandegedara, Hulugalla,
Nikewaratiya.

2. W.M. Manikhami alias Wanninayake Mudiyanselage Kirihamige Manikhami (Deceased)
Gowamulla,
Nikewaratiya.

2A. W.M. Dingiri Banda

2B. W.M. Kiri Banda

2C. W.M. Ran Banda

All of
Gowamulla,
Nikewaratiya.

3. W.M. Punchi Banda
Gowamulla,
Nikewaratiya

4. W.M. Mudiyanse(Deceased)
Gowamulla,

Nikewaratiya.

4A. Dissanayake Mudiyanselage
Bandara Menika

4B. Wanninayake Mudiyanselage
Thilekaratne

4C. Wanninayake Mudiyanselage
Upatissa Bandara alias
Wanninayake Mudiyanselage
Diluka Bandara

4D. Wanninayake Mudiyanselage
Tikiri Banda alias Wanninayake
Mudiyanselage Asanka
Wanninayake

All of
No. 18, Gowamulla,
Nikewaratiya.

5. W.M. Dingiri Banda alias W.M.
Punchi Bandage Dingiri Banda
(Deceased)
Gowamulla,
Nikewaratiya.

5A. S.W.M. P. Kumarihami Udalagama
alias S.W.M.P. Madduma Kumari
Udalagama.

5B. Ruwan Chaminda Kumara
Wanninayake.

All of
Gowamulla,
Nikewaratiya.

6. W.M. Kiribanda
Gowamulla,

Nikewaratiya.

7. W.M. Ranbanda
Gowamulla,
Nikewaratiya.

Defendant / Respondents

Before: **D.N Samarakoon, J**
B. Sasi Mahendran, J

Counsel: W. Dayaratne, PC for the Substituted 8th Defendant-Petitioner
Chula Bandara for the 6th and 7th Defendant-Respondents

Written Submissions : 09.01.2019 (by the Substituted 8th Defendant-Petitioners)
On 04.12.2019(by the 3rd,6th and 7th Defendants Respondents)

Argued On : 10.12.2021

Order On : 04.04.2022

B. Sasi Mahendran, J

This is an Application filed by the Substituted 8th Defendant-Petitioner (hereinafter sometimes referred to as the 'Petitioner') in terms of Article 138 of the Constitution invoking the jurisdiction of this Court to act in revision and/or restitution-in-intergrum and set aside the judgment and the interlocutory decree entered in case No. 60/P by the District Judge of Maho on 05.11.1979 and to set aside the Order dated 23.11.1998 made by the learned District Judge of Maho in the same case.

The facts pertaining to this case and the background to the present issue before this Court may be set out as follows.

The Plaintiff-Respondent by her Plaint dated 24-06-1974 filed an action in the District Court of Maho seeking to partition a land called "*Wewaihalahena"* which was in extent of eight acres. The Plaintiff-Respondent on 05-07-1976 moved to amend the Plaint enabling her to claim 1/5 share of the said land.

In the said partition action, the Petitioner's mother was added as the 8th Defendant as she claimed ownership to a portion of the corpus.

A commission was initially issued to W.C.S.M. Abeysekera, Licenced Surveyor on 26-08-1974 and later another commission was issued to the same surveyor on 13-01-1975 and accordingly Plan bearing No. 376 dated 06-02-1975 and Report were filed in Court.

The original 8th Defendant had moved to file her statement of claim, but later she gave up her claim on the basis that the corpus sought to be partitioned in this action did not contain the land that she wanted to claim (Vide Journal Entries dated 13.08.1979 on Page 36 and 24.03.1980 on page 38 of the Appeal Brief).

It should be noted that, the original 8th Defendant had, prior to the institution of this case, filed a Case bearing No. 2422/L in the District Court of Kurunegala against one, W.M. Punchibanda who is the 3rd Defendant/ Respondent in this case and obtained a judgment in her favour declaring that she is the lawful owner of the land which is depicted as Lot-1 in Plan No. 844, dated 15.11.1967, made by K.M.H. Navaratne, Licenced Surveyor. Thereafter, the 8th Defendant obtained the Decree executed against the 3rd Defendant-Respondent in the Case No. 2422/L. The Fiscal handed over possession to the 8th Defendant ejecting the 3rd Defendant-Respondent along with the 4th and 5th Defendants-Respondents in this case who were also in possession of the 8th Defendant's land.

Against the writ, the 4th and 5th Defendants-Respondents applied for an Interim Injunction on 23.02.1995 on the basis that the 8th Defendant had renounced her title to the land concerned, by not filing her statement of claim.

After the issuance of an Enjoining Order, the original 8th Defendant filed an application in the District Court of Maho on 03.02.1997 under Section 839 of the Civil Procedure Code praying to set aside the judgment and interlocutory decree entered in the case and to hold the trial de novo.

On 23.11.1998 the learned District Judge delivered his Order dismissing the said application of the Original 8th Defendant. The learned District Judge observed that Section 839 of the Civil Procedure Code cannot be invoked when there are express statutory provisions providing for a particular matter and highlighted the nature of finality attached to interlocutory decrees under the Partition Law. The relevant excerpts of the judgment of the Learned District Judge are as follows:

"මේ අනුව පැහැදිලිව පෙනී යනුයේ, 1977 අංක 21 දරන බෙදුම් නඩු පනතෙහි 48 වන වගන්තිය මගින් එකී වගන්තියෙහි (4) සහ (5) වන උප වගන්තීන් මගින් විධිවිධාන සලස්වා ඇති අවස්ථාවන්හි හැර එම පනතේ 26 වන වගන්තිය යටතේ වාතර්ාගත කරන ලද අතුරු තීන්දු ප්‍රකාශයක් හෙවත් මුල් තීන්දු ප්‍රකාශයක් අවසානාත්මක සහ තීරණාත්මක විය යුතු බවට ප්‍රකාශිතමව ව්‍යවස්ථාපිත ප්‍රතිපාදනයක් පනවා ඇති බවය."

Further the learned Judge stated that;

"තවද අධිකරණය විසින් නෛසගර්ික බලය ක්‍රියාත්මක කල යුතු වනුයේ, අධිකරණයේ අභිමතය අනුව වන අතර එලෙස අධිකරණයේ අභිමතය ක්‍රියාත්මක කිරීමකදී, එකී අභිමතය ක්‍රියාත්මක කරන ලෙස ඉල්ලා සිටින පාශර්වකරුගේ ක්‍රියා කලාපයද ඒ සම්බන්ධයෙන් අධිකරණය විසින් සැලකිල්ලට ගත යුතු වේ. මෙම බෙදුම් නඩුව සම්බන්ධයෙන් සිතාසි ලැබ අධිකරණයෙහි පෙනී සිට, හිමිකම් ප්‍රකාශ ගොනු කර නොලැබ, 1980.03.24 දින අධිකරණහි පෙනී සිටිමින් සිය නීතිඥ මහතා මගින් සිය ඉල්ලීම අස්කර ගැනීමට ඉල්ලා සිටිමින් ස්වේච්චාවෙන්ම මෙම ඉඩම් නඩුවෙන් ඉවත් වී ඇති මෙහි 8 වන විත්තිකාරිය සිය 1997.02.03 දිනැති ඉල්ලීමෙන් අයද සිටිනුයේ ඊට වසර 17 කට පෙර එනම් 1979.11.05 දින අධිකරණය විසින් මෙම නඩුවෙහි කර ඇති තීන්දුව සහ අතුරු තීන්දු ප්‍රකාශය ඉවත් කරන ලෙසය. එබැවින් එකී අවස්තානුගත කරුණු යටතේ අධිකරණයේ අභිමතය

ක්‍රියාත්මක කරමින් ඊට වසර 17 කට පෙර අධිකරණය විසින් කර ඇති තීන්දුවක් සහ අතුරු තීන්දු ප්‍රකාශයක් ඉවත් කිරීම කිසි සේත්ම යුක්ති සහගත නොවන බව ද මම වැඩිදුරටත් තීරණය කරමි."

Against the said Order of the learned District Judge the Petitioner preferred an appeal bearing No.CA 89/99(F) to this Court. On 14.11.2013 an objection was raised by the Counsel for the Respondent to the effect that there is no right of appeal against the said Order. Accordingly, the Petitioner withdrew the said appeal.

The Petitioner filed the present application for Restitutio-in- intergrum and/or Revision in respect of this partition action on 29.04.2014.

<u>Grounds relied on to invoke the Restitutio-in-integrum and/or revisionary jurisdictions of this Court by the Petitioner are as follows;</u>

a. The Plaintiff- Respondent has failed to prove the title to this case and the entire case has been decided by the learned District Judge only on the oral testimony of the original owner namely Punchirala and there was absolutely no document to prove that Ranmenika was a child of Punchirala.

b. The entire case is a collusive action among the Plaintiff-Respondent and 1-7 Defendant-Respondents as they have neither filed a statement of claim nor participated at the trial.

c. On perusal of journal entry No 39 the trial has been held ex- parte which is totally in contravention of mandatory provisions of Partition Law and there was no reference in the judgment that it was an ex-parte trial.

d. The original 8th Defendant did not file a statement a claim because the Court Commissioner in this case namely Abeysekera, who prepared

the preliminary plan superimposed Lot 1 in Plan No. 844 and clearly reported to court that the 8th Defendant's land is situated outside the corpus.

e. According to the judgment dated 05.11.1979 the 8th Defendant was not given any share

f. The 8th Defendant was placed in possession by the Fiscal of District Court of Maho

g. A grave prejudice and irreparable loss and damage had been caused to the Substituted 8th Defendant-Petitioner as her mother the original 8th Defendant who prosecuted case No.2422/L in the District Court of Kurunegala against the 3rd Defendant-Respondent in this case who was declared as a trespasser has now been declared as an allottee of 1/5th share as a result of this collusive partition action depriving the legal rights of the original 8th Defendant which were devolved on her heirs.

On the other hand, the 6th and 7th Defendant-Respondents have taken the following preliminary objections in their statement of objections.

a. The Petitioner has named 1st, 2nd, 4th and 5th Defendant-Respondents who were dead before the above numbered case was filed.

b. The Petitioner has failed to file the Revision Application in the Provincial Civil Appellate High Court of Kurunegala.

c. The Petitioner is guilty of laches as she has filed this Application after 35 years seeking to set aside the judgment and interlocutory

decree entered in case No. 60/P of the District Court of Maho dated 05.11.1979.

d. Petitioner has failed to show any exceptional circumstances.

Before proceeding to consider the stance of the parties, it will be appropriate to briefly survey the principles annunciated in some judicial decisions of our rich jurisprudence on the remedies sought in this matter.

Restitutio-in- integrum

One of the earliest cases that considered the scope of Restitutio in Integrum and how our courts applied the principle when granting this relief was discussed in Abeyesekere v. Harmanis Appu14 NLR 353 .

In this case, His Lordship Wood Renton J.(as he then was) held,

"Under the civil law, where a person suffered a legal prejudice by the operation of law, the praetor having personally inquired into the matter (causae cognitio) in the exercise of his imperium, which enabled him to consider all the actual facts of the case, might issue a decree re-establishing the original legal position, that is to say; replacing the person injured in his previous condition. In Roman law restitutio in integrum was the removal of a disadvantage in law which had legally occurred. It was a protection against justice(as distinguished from an action against injustice) which was rendered necessary on account of the practical impossibility of taking legally, in advance, all the circumstances into consideration that in reality may occur….. The remedy was received into the Roman-Dutch law in a wider form. Restitutio was not only granted to minors. It might be granted to any one, either in toto, on the grounds of metus, dolus, absentia, and minority, or partially, on the ground that the damage suffered exceeded the value of what was obtained through the transaction by half (ob laesionem enormem). Van der Linden gives as additional grounds for partial restitution absence and error, and further,

all such equitable reasons as rendered it unjust that the act should remain in existence."

His Lordship, at page 357, also referred to a few local decisions.

"In Stork v. Orchard, Mr. Justice Lawrie, then Acting Chief Justice, held that the remedy of restitutio in integrum was available in all cases where a contract can be shown to have proceeded on total misconception. In Gunaratne v. Dingiri Banda, Sir John Bonser C.J., with whom Withers. J. concurred, held that the proper remedy, where the consent of a party to a case instituted in the District Court was obtained by fraud and so judgment obtained, was to apply to the Supreme Court for an order on the Court below to review the impugned judgment and to confirm or rescind it. At the close of his judgment, Sir John Bonser said:" Any such application will, of course, be an ex parte one." In describing the Roman-Dutch procedure, he made use of the following language :"If the applicant satisfied that Court" (i.e. , the highest Court of Appeal in Holland) "that he had a prima facie case, the case was remitted to the Judge who pronounced the decree, and if he found that the decree had been fraudulently obtained, he would restore the parties to their original position."

In Perera et al v. Wijewickreme, 15 NLR 411, His Lordship Pereira, J. held;

"This was an extraordinary remedy, even under the Roman-Dutch law, allowed for good grounds, which, in the case of contracts, were limited to fear, violence, fraud, minority, absence, excusable error, and prejudice in above half the value of a thing alienated, and to such equitable grounds as justified the reduction of cancellation of the contract (Voet 4, 1, 26; V. d. L. 1, 18, 10). It was also allowed in the case of certain incidents of a suit, as, for instance, when circumstances showed that the applicant should be permitted a fresh opportunity of proof or to bring new facts to the notice of the Court (Voet 4, 1, 34), and it was not granted unless no other remedy was available to the applicant or unless restitution was the more effectual remedy (Voet 4, 1, 13, 14)."

In Phipps v. Bracegyrdle 35 NLR 302 His Lordship Driberg,J. held;

"It can be granted where a decree has been obtained by fraud (Wood-Renton C. J. in Buyer v. Eckert and Jayasuriya v. Kotelawala), also where a proctor has consented to judgment against the instructions of his client (Silva v. Fonseka' and Narayan Chetty v. Azeez'), for in such cases it could be said that there was in reality no consent. On the same principle I can understand, though there is no reported case on the point, relief being granted on the ground that both parties have agreed to a settlement under a mistake of fact, for as in the case of contract the element of consensus would be absent."

In A.E.M. Usoof v. Nadarajah 61 NLR 173 His Lordship H.N.G. Fernando J. (as he then was) held;

"While two of the three members of the Bench expressed themselves in terms which are open to the construction that in their opinion the only means of setting aside a decree improperly obtained, including a decree obtained by fraud, would be by the process of restitutio-in-integrum in the Supreme Court, the case itself was one where only mistake was alleged and any reference purporting to cover cases of fraud was therefore obiter."

In Halib Abdul Cader Amer v. Danny Perera alias Podi Mahatmaya. 1998 (2) SLR 321 His Lordship G.P.S. De Silva C.J. held;

"In any event. …. "the power to grant relief by way of restitution in integrum is a matter of grace and discretion";(Usoof vs Nadarajah Chettiar, 61 NLR 173 at 177); "the remedy by way of restitution in integrum is an extraordinary remedy and is given only under very exceptional circumstances." (Menchinahamy vs Muniweera, 52 NLR 409 at 413). No such circumstances are to be found in the present case."

In Sri Lanka Insurance Corporation Ltd v. Shanmugam [1995] 1 SLR 55 His Lordship Ranaraja, J held;

"Superior courts of this country have held that relief by way of restitution in integrum in respect of judgments of original courts may be sought where (a) the judgments have been obtained by fraud, (Abeysekera-supra), by the production of false evidence, (Buyzerv.Eckert), or non-disclosure of material facts, (Perera v. Ekanaike), or where judgment has been obtained by force or fraud, (Gunaratne v.Dingiri Banda, Jayasuriya v. Kotelawela). (b) Where fresh evidence has cropped up since judgment which was unknown earlier to the parties relying on it, (Sinnethamby-supra), and fresh evidence which no reasonable diligence could have helped to disclose earlier, (Mapalathan-supra). (c) Where judgments have been pronounced by mistake and decrees entered thereon, (Sinnethamby-supra), provided of course that it is an error which connotes a reasonable or excusable error, (Perera v. Don Simon). The remedy could therefore be availed of where an Attorney-at-Law has by mistake consented to judgment contrary to express instructions of his client, for in such cases it could be said that there was in reality no consent, (Phipps-Supra, Narayan Chetty v. Azeez), but not where the Attorney-at-Law has been given a general authority to settle or compromise a case, (Silva v. Fonseka) ."

Revision

The object of power of revision has been very clearly enunciated by His Lordship Chief Justice Sansoni in Mariam Beebee v. Seyed Mohamed, 68 NLR 36, as follows;

"The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriage of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice the fact that, unless the power of exercised, injustice result. The partition Act has not, I conceive, made any change in this

respect, and the power can still be exercised in respect of any order or decree of a lower Court."

This trend of authority has continued and in the case of Rasheed Ali v. Mohomed Ali & Others 1981 (2) SLR 29, His Lordship Soza J. held,

"I will now turn to the argument advanced on behalf of the 1st respondent that in the circumstances of the instant case an application for revision will not lie. It is well established that the powers of revision conferred on this Court are very wide and the Court has the discretion to exercise them whether an appeal lies or not or whether an appeal where it lies has been taken or not. But this discretionary remedy can be invoked only where there are exceptional circumstances warranting the intervention of the Court. ……. In the absence of exceptional circumstances the mere fact that the trial Judge's order is wrong is not a ground for the exercise of the revisionary powers of this Court."

In Athurapana v. Premasinghe, (S.C Appeal No. 21/2002 decided on 14.05.2004 published in 2004 BLR 60) His Lordship Sarath N. Silva C.J. (along with Hector Yapa,J and Nihal Jayasinghe,J.) held;

"Section 753 of the Civil Procedure Code which gives the ambit the revisionary jurisdiction of the Court of Appeal empowers the Court examine the record 'for the purpose of satisfying itself as to the legality or propriety of any judgment or order …..or as to the regularity of the proceedings' and thereupon pass any judgment or make any order as the interests of justice may require.'….

The Section has three elements that constitute the basis of the exercise of revisionary jurisdiction. They are:

i. The legality or propriety of the judgment or order called in question
ii. The regularity of the proceedings; and
iii. The need to pass any judgment or make any order in the interests of justice.

An examination of these elements demonstrate that every illegality, impropriety or irregularity does not warrant the exercised only where the

illegality., impropriety or irregularity in the proceedings has resulted in a miscarriage of justice, by the party affected being denied what is lawfully and justly due to that party. In such event the Court will in revision set right the illegality, impropriety or irregularity by passing 'any judgment or making any order as interests of justice may require.'"

In Siriwardena v. Thabrew &Others C.A (Rev) Application No. 2360/2004 decided on 08.09.2010, (Published in 2011 BLR 221), His Lordship Anil Gooneratne, J held;

"I have considered the following authorities. Rustom Vs Hapangama (1978-79) 2 SLLR 225 where it was held that powers of revision of the appellate court is very wide, though exercised in exceptional circumstances ……; This dicta is followed in several earlier decided cases, Rasheed Ali Vs. Mohamed 1981 (1) SLR 262; Revisionary remedy is discretionary and will not be exercised unless the application disclose the circumstances amounting to miscarriage of Justice. 1997(2) SLR 365."

Availability of the remedies

Now, we proceed to consider the availability of the remedies of restitution and revision in the light of the abovementioned judicial pronouncement, to the facts in this case.

The main grievance of the Petitioner stems from the fact that the portion of the land which was declared entitled to her in the District Courtof Kurunegala case No. 2422/L which was instituted by her against W.M. Punchibanda (Father of 5th to 7th Defendants) was erroneously partitioned by the interlocutory decree entered in case No. 60/P.

It must be noted that the Petitioner had by her own volition decided to refrain from filling any Statement of Claims in the Partition Action 60/P.

There is no material before this Court to ascertain as to whether the land partitioned in case No. 60/P is the same land which was declared entitled to the Petitioner in case bearing No.2422/L. Although, she had been made a party to the action and she having opted not to file statement of claims, she now urges the court to grant relief. As such, this Court is unable to conclude that there has been any miscarriage of justice that has occasioned to the Petitioner. As adumbrated in the judicial decisions cited above, power of revision can only be exercised when there are exceptional circumstances. The Petitioner has failed to satisfy this Court of the existence of any exceptional circumstances.

In order to succeed in obtaining the relief of restitution, the Petitioner ought to establish that the judgment was obtained by fraud or by production of false evidence or by any of the other grounds referred to above. There is not even an iota of evidence to convince this Court that the Respondents deceived the original court by misrepresentation of facts to obtain the relief. Even collusion between the parties has not been established. This Court observes that due to the lack of due diligence and the failure to file necessary pleadings at the proper stage the Petitioner was deprived from obtaining relief, if any, and now blatantly makes this complaint of injustice.

The other aspect is delay. The Petitioner has failed to give reasons for the delay of filling this action. The remedy of restitution-in-intergrum and/or revision will not be available to a party who is guilty of laches and delay. The following judicial pronouncements fortify this proposition.

In Abun Appu v. Simon Appu et al. 11 NLR 44, His Lordship Wendt, J. held,

"The delay is wholly unexplained and is unreasonable. The Courts rightly require the utmost promptitude in taking advantage of such a discovery, and I consider that the petitioner's laches disentitles him to any relief"

In Perera v. Don Simon 62 NLR 118 His Lordship Sansoni, J. (as he then was) held,

"I would refer in this connection to Mapalathan v. Elayavan and Dember v. Abdul Hafeel . In those cases it was held that restitutio would not be granted where there has been negligence on the part of the applicant for relief. The case is all the worse if the error is due to the act of the plaintiff himself, as would appear to be the case here.

.....Over three years had elapsed between the entering of the decree and the filing of the present application, and it was therefore filed too late."

In M.A. Don Lewis v. D.W.S.Dissanayake 70 NLR 8 His Lordship Tennekoon,J (as he then was) held;

"These being the facts the first question that arises for consideration is whether this court should exercise its extraordinary powers of revision or by way of Restitutio in Integrum in favour of the applicant. There is no doubt in my mind that the petitioner was aware of the partition action from the date the Surveyor first went on the land. Petitioner has only himself to blame if he pursued the ill-advised course of trying to usurp the place of the 8th defendant-respondent. Petitioner could, long before the Interlocutory Decree, have sought to have himself added instead of taking the inexplicable course he did. Even after the Interlocutory Decree was entered the petitioner in seeking to intervene persisted in trying to persuade the District Court that he and Carolis Caldera were one and the same person. Further when his application to intervene was dismissed by the District Court (which in its order explicitly stated that the petitioner's remedy if any was by way of an application for revision to this court) the petitioner did nothing for 8 months. It is not the function of this court in the exercise of the jurisdiction now being invoked to relieve parties of the consequences of their own folly, negligence and laches. The maxim Vigilantibus, non dormientibus, jura subveniunt provides a sufficient answer to the petitioner's application on the ground now under consideration."

In Seylan Bank v. Thangaveil 2004 (2) SLR 101, it was held by His Lordship Wimalachandra,J.

"..... An unexplained and unreasonable delay in seeking relief by way of revision. Which is a discretionary remedy, is a factor which will disentitle the Petitioner to it. An application for judicial review should be made promptly unless there are good reasons for the delay. The failure on the part of the petitioner to explain the delay satisfactorily is by itself fatal to the application.".

This judgment was discussed in CA (PHC) APN 012/2019, decided on 21· 07. 2020. by Her Ladyship Devika Abeyratne, J.

In Siriwardena v. Thabrew & Others (supra) His Lordship Anil Gooneratne, J. held,

"The petitioner by this revision application seeks to set aside an order refusing special leave under section 48(4) of the Partition law and to set aside the Judgment of 11.03.1999 it is evident from the material placed before this Court that the 3rd Defendant though filed his statement of claim on 04.03.1986 and also moved for a Commission (not executed) had not appeared before the District Court and pursued his defence for a very long time and failed to give notice to court of change of address or act diligently, though Court had made every possible attempt to notice the 3rd Defendant. The Substituted 3A Defendant had also not acted diligently after the death of his father in the year 1996 (trial was on 1999) to prosecute his defence until the year 2003 which explains that almost 7 years have lapsed from the death of the 3rd defendant, and by that time, Court had on an application of parties after inquiry allotted the unallotted lot"

In Nimalawathie v. Perera & Another 2015 (1) SLR 393, His Lordship Gafoor, J. held;

"The conspicuous delay makes the Petitioner guilty of laches. The Petitioner herself says in her petition that she became aware of the existence of the partition

case only on 27.06.2005 at the Kelaniya Police Station. It also reveals that the documents marked P10 to P13 filed with the petition had been obtained by the Petitioner from the District Court office on 11.07.2005 Even soon thereafter the Petitioner has not taken steps to file this revision application. The Petitioner has not given any reason for this inordinate delay. "In an application for Revision it is necessary to urge exceptional circumstances warranting the interference of this Court by way of revision Filing an application by way of revision to set aside an order made by the District Court 3 1/2 years before the institution of the revision application is considered as inordinate delay and the application would be dismissed on the ground of laches"

This Court observes there is an unexplained delay of more than 35 years in filing this revision application and therefore, it can be concluded that the Petitioner is guilty of laches.

After the appeal filed in this Court was dismissed on 14.11.2013 the Petitioner waited for another six months to make the present application to this Court. In addition to her prolonged delay in the District Court, the Petitioner has further delayed to come before this court. The Petitioner has not endeavoured to explain the delay at all. Having regard to what has been said above concerning the conduct of the Petitioner we are of the opinion that there is no reason for this Court to reexamine the facts alleged by the Petitioner.

Before we conclude this judgment, having in mind the principle enunciated in **H.A.M. Cassim v. GA Batticaloa 69 NLR 403,** that "There must be finality in litigation," I like to quote a passage from the judgment of His Lordship Dias J in Menchinahamy v. Muniweera52 NLR 409 which highlights the importance of finality in matters such as these.

"This case, therefore, is a melancholy example of the workings of our antiquated and cumbersome Partition Ordinance. This case forcibly reminds one of the famous though mythical case of Jarndyce v. Jarndyce immortalized by Charles Dickens in " Bleak House " of which it was said-" And thus, through years

and years, and lives and lives, everything goes on, constantly beginning over and over again, and nothing ever ends ". And now, at the end of 1950, if the contention of the petitioner is right, the work of twelve long years will be of no effect, because the dispute which was settled by the interlocutory decree of the District Judge and the judgment in appeal of the Supreme Court will have to be ignored, and the matter dealt with anew."

For the reasons enumerated above, we are of the view that this application is without merit. It is accordingly dismissed with costs.

JUDGE OF THE COURT OF APPEAL

D.N.SAMARAKOON,J

I AGREE

JUDGE OF THE COURT OF APPEAL