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

In the matter of an application under the provisions of the Constitution for Revision and/or Restitutio in Integrum against the judgment of the Hon. Additional District Judge of Avissawella dated 03-05-2018.

Rajapaksa Arachchilage Ratnawardane (dead)

Rajapaksa Arachchilage Newil Suranga Ratnawardane

CA/RI Case No: CA RII 10/2020

No 347,

DC. Avissawella Case No: 23332/P

Pussella, Parakaduwa.

Substituted-Plaintiff

Vs

1. Amarakoon Arachchilage Chandralatha Amarakoon
   No. 258/4,
   Iddamalgoda, Getaheththa.

2. Kathri Arachchilage Somawathie alias Napawala Meththa Samanera Wahanse (dead)

2A. Kathri Arachchilage Somapala,
No. 369, Uduwaka, Getaheththa.

3. Kathri Arachchilage Rosalin Nona,
   No: 357/3, Kahatagahahena, Napawala,
   Getaheththa.

4. Kathri Arachchilage Esalin Nona,
   No: 72/C, Thoranagoda, Eheliyagoda.

5. Kathri Arachchilage Gunaratne (dead)

5A. Kathri Arachchilage Suraj Napawala,

No 357/3, Kahatagahahena, Napawala, Getaheththa.

6. Kathri Arachchilage Premawathie,
No: 14/1, Mapotha, Koshena,
Kalatuwawa.

7. Kathri Arachchilage Somapala,
No: 369, Care/of: Uduwaka Post,
Uduwaka, Getaheththa.

8. Konda Kankanamalage Somaweera Appuhamy,
No: C/25, Welangalla, Getaheththa.

9. Rajapaksa Appuhamilage Kusumawathi,
No. 446, Uduwaka, Getaheththa.

10. Rajapaksa Appuhamilage Amarawathi,
No. 357/3, Kahatagahahena, Napawala,
Getaheththa.

11. Rajapaksa Appuhamilage Amarawathi,
No. 357/3, Kahatagahahena, Napawala,
Getaheththa.

12. Weliwitiya Kankanamalage Heenmenike,
Uduwaka Post, Uduwaka, Getaheththa.

13. Rajapksa Arachchilage Varuna Rajapaksa,
No. 371, Napawala, Getaheththa.

<u>Defendants</u>

And Now Between,

Rajapaksa Arachchilage Ratnawardane

(dead)

Rajapaksa Arachchilage Newil Suranga Ratnawardane

No. 347,

Pussella, Parakaduwa.

Substituted – Plaintiff - Petitioner

Vs

1. Amarakoon Arachchilage Chandralatha Amarakoon
   No. 258/4,
   Iddamalgoda, Getaheththa.

2. Kathri Arachchilage Somawathie
   Alias Napawala Meththa Samanera
   Wahanse (dead)

2A. Kathri Arachchilage Somapala,

   No. 369, Uduwaka, Getaheththa.

3. Kathri Arachchilage Rosalin Nona,
   No: 357/3, Kahatagahahena, Napawala,
   Getaheththa.

4. Kathri Arachchilage Esalin Nona,
   No: 72/C, Thoranagoda, Eheliyagoda.

5. Kathri Arachchilage Gunaratne (dead)

5A. Kathri Arachchilage Suraj Napawala,

   No 357/3, Kahatagahahena, Napawala,
   Getaheththa.

6. Kathri Arachchilage Premawathie,
   No: 14/1, Mapotha, Koshena,
   Kalatuwawa.

7. Kathri Arachchilage Somapala,
   No: 369, Care/of: Uduwaka Post,
   Uduwaka, Getaheththa.

8. Konda Kankanamalage Somaweera
   Appuhamy,

No: C/25, Welangalla, Getahetthta.

9. Rajapaksa Appuhamilage Mahipala,
   No. 369, Uduwaka, Getahetthta.

10. Rajapaksa Appuhamilage Kusumawathi,
    No. 446, Uduwaka, Getahetthta.

11. Rajapaksa Appuhamilage Amarawathi
    No. 357/3, Kahatagahahena,
    Napawala, Getahetthta.

12. Weliwitiya Kankanamalage Heenmenike,
    Uduwaka Post, Uduwaka,
    Getahetthta.

13. Rajapaksa Arachchilage Varuna
    Rajapaksa,
    No. 371, Napawala, Getahetthta.

Defendants -Respondents

Before: **D.N. Samarakoon, J.**

B. Sasi Mahendran, J.

Counsel: M.D.J. Bandara for the Substituted-Plaintiff-Petitioner

W. Dayaratne, P.C. with Harsha Silva for the 1st Defendant-Respondent

Supported On: 25.01.2022

Written Submissions: 29.03.2022 (by the Substituted Plaintiff Petitioner)

On 08.04.2022 (by the 1st Defendant-Respondent)

Decided On: 25.05.2022

B. Sasi Mahendran, J.

This is an application filed by the Substituted- Plaintiff-Petitioner (hereinafter referred to as the "Plaintiff") in terms of Article 138 of the Constitution invoking the jurisdiction of this court to act in revision and/or restitutio-in-integrum to set aside the judgment and the interlocutory decree entered in case No. 23332/P of the District Court of Avissawella dated 03.05.2018 and to stay the proceedings of the said case until the final determination of this application.

When this matter was taken up for support for interim relief on 25.01.2022, learned Counsel for the 1st Defendant-Respondent raised the following preliminary objections,

a. The Petition does not demonstrate valid reasons for the invocation of the restitutionary jurisdiction of this Court.
b. No exceptional circumstances have been pleaded
c. The Plaintiff is guilty of laches

After hearing the oral submissions of both parties, they were directed to file written submissions. This Order pertains to whether notices ought to be issued.

The main contention of the Plaintiff is that the learned District Judge failed to correctly identify the corpus and wrongly allocated more shares to the 1st Defendant-Respondent. It is noteworthy that the Plaintiff filed a revision application against the said judgment in the High Court of Civil Appeal of the Western Province holden at Avissawella and he withdrew it later.

The facts of this case are briefly set out before addressing the preliminary objections.

The Original Plaintiff filed this partition action for the partition of a land called 'Minuwandeniyewatta' in an extent of 3 Acres. A Commission was issued and the Preliminary Plan bearing No. 4542 dated 26.10.2011 was prepared by H.K. Mahinda, Licensed Surveyor. The Plan along with the Surveyor's Report was produced at the trial.

The said corpus has been depicted as Lots 1 to 13. On receipt of Summons, all the Defendants-Respondents appeared and tendered their statements of claim. The trial spanned a number of days and on 27.02.2018 all parties agreed to conclude the trial by entering a settlement and accordingly, after the evidence of the Petitioner was led, having marked some documents, the learned Trial Judge delivered the judgment on 03.05.2018 allocating the relevant shares to the parties. Thereafter, the interlocutory decree was entered and a commission was issued for the preparation of the final plan.

According to Paragraph 10 of the Petition, the Plaintiff came to know of the contents of the judgment only in the month of September 2019.

The main ground alleged by the Plaintiff is that the land described in the Schedule to his Plaint is 3 Acres in extent, yet the extent of the corpus depicted in the preliminary plan is 7 Acres and 24.44 Perches. It should be noted the particular plan and report were marked by the Plaintiff at the trial. If he had any doubt, under provisions of Section 18(2) of the Partition Law, the Plaintiff could have called the Surveyor to give evidence to clear any ambiguity. However, he has not done so.

The preliminary objections raised by the Respondent in regard to the maintainability of this application will now be dealt with.

Invocation of the Restitutionary jurisdiction

The grounds which must be satisfied by the Plaintiff in an application for restitutio in integrum have been expounded in the following cases.

In Sri Lanka Insurance Corporation Ltd v. Shanmugam & Another [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, (Buyzer v. 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, (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)"

His Lordship Nawaz J. in Edirisinghe Arachchilage Indrani Chandralatha v. Elrick Ratnam, CA R.I. Case No. 64/2012 decided on 02.08.2017, reaffirmed these grounds as follows,

"Any party who is aggrieved by a judgment, decree or order of the District Court or Family Court may apply for the interference of the Court and relief by way of restitutio in integrum if good grounds are shown. The just grounds for restitution are fraud, fear, minority etc. Our Superior Courts have held that the power of the Court to grant relief by way of restitutio in integrum, in respect of judgments of original Courts, is a matter of grace and discretion, and such relief may be sought only in the following circumstances:-

a) Fraud
b) False evidence
c) Non-disclosure of material facts
d) Deception
e) Fresh evidence
f) Mistake
g) Fear"

In the instant application, the Plaintiff has been unable to prove, to the satisfaction of this Court, the existence of any of the aforesaid grounds.

Absence of exceptional circumstances

As mentioned above, the Plaintiff had invoked the revisionary jurisdiction in the High Court of Civil Appeal of the Western Province Holden at Avissawella in case No. 11/2020, against the same Order which is canvassed in this forum. It was withdrawn on 20.07.2020. On a perusal of the Petition, no reason is forthcoming as to why it was withdrawn.

Our Courts have consistently held that when a revision application is filed there is a duty cast on the applicant to show exceptional circumstances that exist for this Court to exercise its revisionary jurisdiction. This dictum is illustrated in the following cases.

In Rustom v. Hapangama [1979] 1 SLR 352 his Lordship Ismail J. observed as follows:

"The trend of authority clearly indicates that where the revisionary powers of the Court of Appeal are invoked the practice has been that these powers will be exercised if there is an alternative remedy available only if the existence of special circumstances are urged necessitating the indulgence of this Court to exercise these powers in revision. If the existence of special circumstances does not exist then this Court will not exercise its powers in revision"

In Rasheed Ali v. Mohamed Ali [1981] 2 SLR 29 his Lordship Soza J. remarked thus:

"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—see Alima Natchiar v. Marikar"

This view was affirmed by his Lordship Wanasundera J. in the Supreme Court in Rasheed Ali v. Mohamed Ali [1981] 1 SLR 262, in the following words:

"The Court of Appeal, after an examination of numerous authorities, has rightly taken the view that the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. When, however, the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances. Ordinarily, the Court will not interfere by way of review, particularly when the law has expressly given an aggrieved party an alternate remedy such as the right to file a separate action, except when non-interference will cause a denial of justice or irremediable harm."

In Distilleries Company of Sri Lanka v. Deputy Commissioner of Labour [2007] 1 SLR 361 his Lordship Sarath De Abrew J. held that,

"....it must be reiterated that invoking revisionary powers of this Court is a discretionary remedy and its exercise cannot be demanded as of right unlike the statutory remedy of Appeal. Certain pre-requisites have to be fulfilled by a petitioner to the satisfaction of Court in order to successfully invoked the exercise of such discretionary power."

His Lordship referred to the judgment of T. Varapragasam & Another v. S.A. Emmanuel CA (Rev) 931/84 - CAM. 24.7.1991, which laid out certain factors which a court ought to consider when exercising its discretion in favour of a party seeking revision.

a) The aggrieved party should have no other remedy,
b) If there was another remedy available to the aggrieved party, then revision would be available if special circumstances could be shown to correct it,
c) The aggrieved party must come to court with clean hands and should not have contributed to the current situation,
d) The aggrieved party should have complied with the law at that time,
e) The acts complained should have prejudiced his substantial right,
f) The acts or circumstances complained of should have occasioned a failure of justice.

In Kulatilake v. Attorney General 2010 (1) SLR 212 his Lordship Chitrasiri J. held;

"It is trite Law that the revisionary jurisdiction of this Court would be exercised if and only if exceptional circumstances are in existence to file such an application. Moreover, it must be noted that the Courts would exercise the revisionary jurisdiction, it being an extraordinary power vested in Court, especially to prevent miscarriage of justice being done to a person and/or for the due administration of justice."

We are of the view that the Plaintiff has failed to satisfy this Court of the existence of exceptional circumstances warranting intervention of this court by way of revision.

Laches

Further, the Plaintiff has failed to explain the delay in filing the application. The impugned judgment was delivered on 03.05.2018. He is the Plaintiff of the said partition action and participated in it by giving evidence before the District Court. In Paragraph 10 of the Petition, he has stated that he had not received any opportunity to read the judgment until September 2019. Having lodged an application for revision in the High Court of Civil Appeal of the Western Province Holden at Avissawella on 20.02.2020 he later withdrew that application on 20.07.2020. In the present application filed one month after the withdrawal, he has failed to explain valid reasons for the extended delay.

One of the reasons on which our Courts have dismissed revision applications is when the applicant is guilty of laches. While this Court is mindful that the question of whether the delay is fatal to an application in revision depends on the facts and circumstances of the case, and that an application should not be rejected on this ground alone if the impugned order is manifestly erroneous and is likely to cause grave injustice (vide Caroline Nona & Others v. Pedrick Singho & Others [2005] 3 SLR 176) in the instant case this application has been filed approximately 2 years and 3 months from the date of the impugned judgment and no valid reason is advanced for the undue delay in making this application.

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."

In the instant case, by failing to adduce any valid excuse, the Plaintiff is guilty of laches.

For the foregoing reasons, we are inclined to hold in favour of the 1st Defendant-Respondent and uphold the objections raised on behalf of the 1st Defendant-Respondent. The application is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

D.N. SAMARAKOON, J.

I AGREE **JUDGE OF THE COURT OF APPEAL**