

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

In the matter of an Application for Restitution,  
in the nature of Restitutio in Integrum under  
the provisions of Article 138 of the Constitution  
of the Democratic Socialist Republic of Sri  
Lanka

Ranawaka Lekamlage Roberthina Dias,  
No. 123 A, Kiribathgala watte Road,  
Malabe.

**Case No. RII 07 2016**

**WP/HCCA/AV/1302/2012F**

**8<sup>th</sup> DEFENDANT PETITIONER**

**D.C. Homagama Case No. 114/P**

1. Josage Gunawathie Perera, Kaduwela Road, Malabe and others.

**SUBSTITUTED 9<sup>th</sup> DEFENDANT  
PLAINTIFF**

**Before:** Hon. Justice D. N. Samarakoon

Hon. Justice Sasi Mahendran

**Counsel:** S.N. Vijith Singh with M. Perera for 8<sup>th</sup> defendant petitioner

W. Dayaratne, P.C. with R. Jayawardena for the 15B, 16<sup>th</sup> and 17<sup>th</sup>  
defendant respondents

Mangala Tikiri Bandara Tennakoon for the 4<sup>th</sup> respondent

Sirimal B. Withanage for the 4B respondent

**Written Submissions on:** 24.05.2022 by the petitioner

31.05.2022 by 15B, 16<sup>th</sup> and 17<sup>th</sup> defendant  
respondents

**Date:** 15.11.2022

**D.N. Samarakoon, J.**

The main allegation of the 08<sup>th</sup> defendant petitioner is that whereas there is a duty cast upon the learned district judge in a partition action, to investigate the title of the parties, he has not considered that Nicholas Perera, the original owner transferred undivided 4 acres from the subject matter, which is little more than 17 acres in extent, in favour of her predecessors.

The said transfer, according to the petitioner, has been effected by deed No. 6820 dated 15.07.1876 marked as 8 D.1.

It appears however, that the said deed is, to use the terms used by the petitioner herself in her written submissions dated 24.05.2022 at paragraph 5, where it is said, that, “if the said deed bearing No. 6820 marked as 8D.1 is not readable and understandable...”. The petitioner contends that the learned district judge should have informed this to the petitioner, who will then be able to call expert evidence, etc.

The written submissions of the 15B, 16 and 17 defendant respondents dated 31.05.2022, at page 3, states what was the position, if 8D.1 was accepted.

“In terms of the statement of claim of the 8<sup>th</sup> defendant petitioner that the original owner of this land was namely Josage Nicholas Perera who under and by virtue of Deed bearing No. 6820 dated 15.07.1876 and.....has gifted an undivided 4 acres to aforesaid Josage Nonahamy and Jayasinghe Arachchige Don Baron Appuhamy. Therefore said Nicholas Perera’s wife namely Katugampalage Manchinona and her children are entitled to undivided ½ share leaving 4 acres of land”.

The said respondents, in written submissions at page 4 reproduces what the learned district judge has said with regard to deed No. 6820, as reproduced below,

“The document marked as 8.D.1 is partly decayed and it cannot be deciphered in any way. Furthermore, 8 D.1 does not say as to what is the land relevant to that document. All the suggestions made with effect to that such a document has been executed in respect of the subject matter of the action has been vehemently refused by the plaintiff. If at least the extracts of the Registration Folios were produced, the Court could have ascertained as to what land the said document relates. The 8<sup>th</sup> defendant who relies upon the said document has not taken any steps to prove that document. Furthermore, Josage Nonahamy, claimed to have been obtained rights from 8 D.1 has executed deeds P.07, P.08, 8D.2 and 8D.3, after the date of 8D.1, but she has not referred to rights obtained from deed No. 6820 (8D.1).

The said Josage Nonahamy has alienated her maternal inheritance by all those deeds. Furthermore, the 8<sup>th</sup> defendant, when she was cross examined, has stated that she did not have the original of 8D.1 with her, but she received it from a surveyor called Mr. Wickremasinghe. Therefore, on matters that has been established with regard to 8 D.1 and its contents I hold that it has not been proved that the said document pertains to the land which is the subject matter of this action. Hence, I hold, on a balance of probability, that the original owner Josage Nicholas Perera died without alienating any share of the land and his rights were inherited by his wife and children”.

Hence Josage Nonahamy has acted as if 8 D.1 was not executed.

The petitioner has also alleged that there is a discrepancy of the totality of the shares since it has been given as 136/137.

However, the petitioner has filed an appeal bearing No. WP/HCCA/AV/1302/2012 in the Civil Appellate Court of Avisswella, which was dismissed.

It is also submitted that the Registration of Documents has not commenced by the date of 8D.1 as it started from 1935. However, in 1935 it was Registration of Cheettu and the Registration of Document Ordinance came into being in 1927. Hence it appears that there was no registration of 8D.1.

The 4A defendant respondent has also stated in written submissions dated November 2018 at page 9 that the appeal bearing No. WP/HCCA/Av/1302/2012 was dismissed because the respective counsel for the present petitioner informed that he has no instructions.

As a party has a duty to establish his or her title in a partition action and the duty to investigate title by Court under section 25 of the Partition Law No. 21 of 1977, does not extend beyond evidence tendered to Court and also as the learned district judge has said, as Josage Nonahamy has not referred to 8D.1 in subsequent deeds, the petitioner cannot get rights on 8D.1.

In the circumstances, the petitioner's application is dismissed. There is no order on costs.

Judge of the Court of Appeal

Hon. Sasi Mahendran, J.

I agree.

Judge of the High Court of Civil Appeal