

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

In the matter of an Application for Revision and  
or Restitutio in Integrum under and in terms of  
Article 138 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka

Mohamed Samsudeen Kadeeja Hanim of  
No. 10/04, Saviya Lane, Mahagoda,  
Beruwala.

**C.A. RII No. 12/2022**

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

**D.C. Kalutara Case No. 6887/P**

1. Abdul Latheef Mohamed Sahabdeen  
(deceased) of No. 133/2A, Maradana,  
Beruwala.

And 01 other

**PLAINTIFF RESPONDENTS**

1. Mohamed Pasi Mohamed Faizer (deceased)  
of No. 10/04, Saviya Road, Mahagoda,  
Beruwala

And 25 others

**DEFENDANT RESPONDENTS**

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

Hon. Justice Sasi Mahendran

**Counsel:** Sanjeewa Dasanayake with Riski Kamoordeen for 2th defendant  
petitioner

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

**Date:** 30.11.2022

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

One of the grounds for which the petitioner seeks to invoke the revisionary and restitutio in integrum jurisdiction of this Court is that whereas 27<sup>th</sup> defendant was never served with summons or made a party, the learned district judge had purportedly answered points of contests raised by the 27<sup>th</sup> defendant.

Furthermore, several defendants have been intervened after the preliminary survey on the basis that the preliminary plan does not depict the subject matter correctly. However, the petitioner claims that in the alternative plan prepared at the instigation of those defendants who intervened, the Surveyor has shown only parts of land possessed by those defendants and not the entirety of the land. Hence on a prima facie basis it appears to this Court that there arises a grave doubt as to whether the district court identified the subject matter on which question depends whether the correct shares were allocated.

The petitioner seeks to revise and set aside the judgment and to file statement of claims and also to obtain an alternative commission to survey the subject matter.

As the **Chief justice Melanie Claude Sansoni** said in **Mariam Beebee vs. Sayed Mohamed (1965) 68 NLR 36,**

“The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of the Court. Its object is the due administration 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 is exercised, injustice will result. The Partition Act has not, I conceive, made any changes in this respect and the power can still be exercised in respect of any order or decree of a lower Court”.

In addition, the Court cannot, at this early stage decide on complicate matters on law.

As **William John Kenneth Diplock, Baron Diplock** said in **American Cyanamid Co. Ltd., vs. Ethicon [1975]**<sup>1</sup>,

“It is no part of the Court’s function at this stage of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations....that it aided the Court in doing that which was its great object, viz., abstaining from expressing any opinion upon the merits of the case until the hearing (Wakefield vs. Duke of Buccleuch ((1865) 12 L. T. 628).

This Court also does not wish to confine its power of restitutio in integrum only to certain grounds sometimes enumerated in judgments. Whether to exercise the power of Restitutio in Integrum or not is a matter for mature considerations after the matter is fully heard.

In the Lecture on “**Judicial Ethics**”, made by late **Justice Dr. A. R. B. Amerasinghe** to the District Judges of the Western Province on 01<sup>st</sup> June 1991 [This is incidentally, the First Article of the First Issue of the Judges Journal published by the Judges Training Institute of Sri Lanka] His Lordship said,

“In **Goold v Evans & Co (1951) 2 T. L.R. I 189,1 191**, Lord Justice Denning put the matter in this way: "(The Judge) must keep his vision unclouded ... Let the advocates one after the other put the weights into the scales - the ' nicely calculated less or more' - but the judge at the end decides which way the balance tilts, be it ever so slightly. The judge's part in all this ...is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been

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<sup>1</sup> [American Cyanamid Co v Ethicon Ltd - \[1975\] Full judgment - All England Law Reports/1975/Volume 1 - StuDocu](#)

overlooked or left obscure to see that the advocates behave themselves seemly and keep to the rules laid down by law to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. 'If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate; and the change does not become him well.. Such are our standards."

His Lordship added,

“Lord Chancellor Eldon, it is said was slow on the Bench while the Vice Chancellor, Sir John Leach was too hasty. Atkinson, in his biography of Sir Samuel Romilly, 1920, 219, recalls that Sir Samuel had remarked: "**I begin to think that the tardy justice of the Chancellor is better than the swift injustice of his deputy.**" And B. L. Shientag (The Personality of the Judge, 1944,69) relates that when Sir John Leach had cleared his work before the end of the term, a barrister had suggested that Sir John could fill the time by having his causes set down again and hearing the other side!"

Hence this Court issues notice on the respondents.

Judge of the Court of Appeal

Hon. Sasi Mahendran, J.

I agree.

Judge of the High Court of Civil Appeal