

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

In the matter of an application for  
Revision / Restitutio in Integrum under  
Article 138 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

Restitution Application No.

C.A. 230/2013

D.C.(Kurunegala)

Case No. 6106/P

T.M. Nadeera Sanjaya Tennakoon

Poramadala, Nungamuwa,

Yatagaloluwa.

Plaintiff

Vs.

1. Tennakoon Mudiyanseelage Sobana  
Ajith Tennakoon, Poramadala,  
Yatagaloluwa.

2. Herath Mudiyanseelage  
Babynona  
Poramadala, Yatagaloluwa.

3. Tennakoon Archchilage  
Wolter Amarasinghe,  
Nungamuwa, Yatagaloluwa.

4. Nishanthi Pushpa  
Suriyaarchchi,  
Poramadala, Yatagaloluwa.

Defendants

And Now Between

1. Tennakoon Mudiyansele Sobana  
Ajith Tennakoon
2. Herath Mudiyansele  
Babynona  
Poramadala, Yatigaloluwa.  
Defendant – Petitioners

Vs.

T.M. Nadeera Sanjaya Tennakoon  
Poramadala, Nungamuwa,  
Yatagaloluwa.

Plaintiff Respondents

**BEFORE**

**: P.W.D.C. JAYATHILAKE, J**

**COUNSEL**

**: Asthika Devendra for the  
Defendant Petitioner.**

**Lakshman Perera P.C. with**

**Niluka Dissanayake for the**

**Respondent.**

**ARGUED ON**

**: 24.07.2014**

**DECIDED ON**

**: 24.07.2015**

**P.W.D.C. Jayathilake, J**

This is an application for Restitutio in Integrum, for placing the parties to the status quo which prevailed prior to the matter being taken up for trial. The trial in the application means the trial in the partition case bearing No. 6106 P in the District Court of Kurunagala. When this case was taken up for trial on 16.10.2012 before the District Judge of Kurunagala, the Court had been informed that there was no contest between parties with regard to the subject matter or to the title of the parties. Accordingly, the Plaintiff and the 1<sup>st</sup> to 4<sup>th</sup> Defendants who were represented by counsel had admitted that the land, sought to be partitioned was depicted in the preliminary plan No.4536 and lot No. 2 of the plan No. 4838 shall be excluded as the said lot was not a portion of the subject matter.

Thereafter, the evidence of the Plaintiff had been led without any contest. Accordingly, the judgment had been delivered on 30.11.2012 allotting undivided 7/16 shares to the Plaintiff and 9/16 shares to the 1<sup>st</sup> Defendant. This application had been made to this court on 02.08.2013. The Petitioners are the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants of the said case and the Respondent is the Plaintiff thereof.

It is obvious that the evidence of the Plaintiff had been led on the basis that the person called Tilakarathne who had gifted his undivided share of land by the

deed marked as P 3 which had been cancelled by the deed marked as P 4 was a person governed by the Kandyan Law. This fact had not been contested by the Defendant Petitioners. The Petitioners state that the said position to the effect that the parties were governed by the Kandyan Law was not taken in the plaint and was only taken in the evidence of Plaintiff Respondent before the court. They further state that they were not in a position to give proper instructions to their counsel in respect of the said position since this position had been taken surprisingly by the Plaintiff Respondent.

Though the fact that Tilakarathne was governed by the Kandyan Law was not referred to in the plaint, since the fact that the deed P 3 had been cancelled by the deed P 4 had been in the plaint, the fact that Tilakarathne was governed by the Kandyan Law had been meant is understood.

Despite the fact that Tilakarathne had been governed by the Kandyan Law or the Common Law, if the Petitioner had held the position that the said cancellation of the gift was invalid the matter should have been challenged before the trial court.

On the other hand, the documents discovery subsequent to the entering of Interlocutory Decree in a partition case cannot be taken into consideration for placing the parties to the status quo which prevailed prior to the matter taken up for trial.

The failure of the parties to give proper instructions to their counsel shall not be a ground to quash the decisions of the court. In particular, an Interlocutory Decree entered in a partition action cannot be quashed or revised due to the negligence of the parties. As such, the application of the Petitioners in this case cannot be maintained as it is based on the above mentioned grounds. Therefore this court dismisses the application subject to costs.

*Appeal dismissed*

**JUDGE OF THE COURT OF APPEAL**