

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

U. Mendis of
Galle Road,
Balapitiya.

**DECEASED 7TH DEFENDANT-
APPELLANT**

Vs.

C.A. 716/1994 (F)
D.C. Balapitiya 1050/P

W. A. Lalanie Mendis of
No. 72, Goduwawatta, Galle Road,
Balapitiya.

**SUBSTITUTED 7TH DEFENDANT-
APPELLANT-PETITIONER**

A. C. Mohamed Refars of
No. 93, Galle Road,
Balapitiya.

**PLAINTIFF-
RESPONDENT(DECEASED)**

- a. S.S. Subeida Buzham
- b. Mohomed Rifra
- c. Mohomed Nifras
- d. F. Nizar of
No. 93, Galle Road, Balapitiya.

**SUBSTITUTED-PLAINTIFF-
RESPONDENT**

And now between

1. Abdul Cafar Yesera
2. Abdul Cafar Munas
3. Abdul Cafar Viplas
4. Abdul Cafar MoahAparies
5. Abdul Cafar Garafa
6. Abdul Cafar Mohamed Hanifa Siththy.
Yenambu
7. Abdul Cafar Mohamed Sathar
8. Abdul Hameed Mohamed Sathar
Goduwawatte, Balapitiya.
9. Fareed Umma,
All of Balapitiya
10. Abdul Wahid Mohamed Sumsum
11. Mohamed Niyam,
Goduwawatte, Balapitiya
12. Mohamed Galeem. Arisity
Galmangoda, Balapitiya
13. Mohamed Saleem Pathuma Distia
14. Abdul Wajeed Mohamed Siyadu
15. Abdul Hajeed Ummu
- 10A Mohamed Saleem Mohamed Arud
Balapitiya.

**DEFENDANTS-RESPONDENT-
RESPONDENTS**

BEFORE: Anil Gooneratne J.

COUNSEL: Udaya Bandara for the
Substituted-Defendant-Appellant-Petitioner

Sabry Nilamudeen for the
1st & 5th Defendant-Respondents-Respondents

ARGUED ON: 25.11.2011

DECIDED ON: 19.01.2012

GOONERATNE J.

This is a re-listing application. By an Order of Court entered on 18.11.1996 (X7) the appeal was rejected as brief fees had not been deposited by (vide Rule 13(b) of the Supreme Court (Court of Appeal - Appellate procedure copies of record Rues 1978) the Appellant. The Defendant-Appellant-Petitioner after about 15 years filed motion dated 24.5.2011 along with petition, affidavit and documents marked X1 to X8 moving this court to re-list the appeal.

I have heard the facts narrated by learned counsel for the Substituted 7th Defendant-Appellant. This was a partition case where District Court entered judgment on 29.9.1994 in favour of Plaintiff according to learned counsel. The 7th Defendant-Appellant appealed to this court by Petition of Appeal of 24.11.1994 (X5). The 7th Defendant-Appellant had died on 29.10.1995. (X6). Brief fees had not been paid since the 7th Defendant-Appellant was dead at the time when Registrar of the Court of Appeal called for brief fees. That was the main reason for not depositing the brief fees according to the learned counsel for Defendant-Appellant-Petitioner. The Respondent's counsel who was heard on the date of support

for re-listing opposed re-instatement of this appeal, mainly due to a very long lapse of time.

In the oral submissions made before me the long delay was not explained by counsel. Perusal of whatever documents filed in this application I cannot find any acceptable/reasonable ground to enable this court to consider reinstatement of the appeal. Learned counsel thought it fit to mention the fact of a subsequent order made by the original court and an appeal to the Provincial High Court. This court need not be concerned of other subsequent developments not connected to the re-listing application. As far as the partition appeal to this court is concerned the appeal stands dismissed and rejected as from 18.11.1996.

In all the above circumstances application for re-listing refused and rejected.

Application refused.

JUDGE OF THE COURT OF APPEAL