

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

C.A. 879/98 (F)

Mathugama DC Case No. P 2464

Dewarakottage Pemawathi,
"Nandana", Panthiya,
Mathugama.

Plaintiff

-Vs-

Dewarakottage Hendrik Appuhami,
"Nandana", Panthiya,
Mathugama.

W. Francis Perera,
Pissawatta, Panthiya,
Mathugama.

Defendants

And

W. Francis Perera,
Pissawatta, Panthiya,
Mathugama.

2nd Defendent - Appellant

-Vs-

Dewarakottage Pemawathi,
"Nandana", Panthiya,
Mathugama.

Plaintiff-Respondent

Dewarakottage Hendrik Appuhami,
"Nandana", Panthiya,
Mathugama.

1st Defendent-Respondent

And Now Between

W.T. Roshan Perera,
W.T.D. Anuradhi Perera

Both of

Welkandala Road,
Panthiya,
Mathugama.

Petitioners

-Vs-

W. Francis Perera (Deceased),
Pissawatta, Panthiya,
Mathugama.

2nd Defendent- Appellant-Respondent

-Vs-

Dewarakottage Pemawathi,
"Nandana", Panthiya,
Mathugama.

Plaintiff-Respondent-Respondent

Dewarakottage Hendrik Appuhami,
"Nandana", Panthiya,
Mathugama.

1st Defendent-Respondent-Respondent

Case No. CA 879/98 (F)

DC Matugama 2464/P

BEFORE : K.T. Chitrasiri, J.

COUNSEL : Prinath Fernando for the Petitioners.
Amanthi Jayasinghe for the Plaintiff
Respondent.

DECIDED ON : 18.01.2013

K.T. CHITRASIRI, J.

When this matter was mentioned on 04.12.2012, the Counsel Mr. Dilan Perera who appeared watching the interest of the heirs of the deceased appellant had moved time to file substitution papers. On that date Court had observed that several dates were given to effect the substitution and thereafter had made order giving them the final opportunity to file substitution papers. Even though they were to file substitution papers two weeks before today, those had been tendered only on 16.01.2013 namely day before yesterday.

Having perused the petition and the other documents filed, it is seen that the petitioners being the children of the deceased appellant had moved that they be substituted. Petitioners have left out their mother who is the wife of the deceased being substituted in the room of the deceased appellant. Wife of the deceased was present in Court on

the last occasion. Therefore, the application made in the petition dated 16.01.2013 is erroneous. Accordingly, the said petition dated 16.01.2013 is dismissed.

It is brought to the notice of Court that the 2nd Defendant Appellant had died in the year 1999 and that was 13 years before. All this time no steps were taken to substitute the heirs of the deceased 2nd Defendant Appellant. Such conduct clearly shows that the heirs of the appellant had not prosecuted the appeal diligently. In the circumstances, Court makes an order abating the appeal.

Registrar is directed to keep the record for a period of two months from today and soon thereafter to send the record to the District Court of Matugama allowing the learned District Judge to take necessary steps.

Appeal is abated. Accordingly, proceedings in this Court are terminated.

Proceedings terminated.

JUDGE OF THE COURT OF APPEAL

KRL/-