

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

C.A.948/98F

D.C Horana No:3074/P

Kandage Leeladasa Perera

Appukutti Arachchige Sirisena
Bamunumulla, Bandaragama.

Plaintiff

-Vs-

- (1) Liyanage Robo Singo
Barnunumulla, Bandaragama.
Kandage Liladasa
Bandaragama.
- (3) Kandage Karunawathi
Bamunumulla, Bandaragama.
- (4) Kandage Alawathi
Bamunumulla, Bandaragama.
- (5) Kandage Gilin Nona
Bamunumulla, Bandaragarna.
- (6) Appukutti Arachchige Elo Singho
Bamunumulla, Bandaragama.
- (7) Appukutti Arachchige Violet
Bamunumulla, Bandaragama.
- (8) Kandage Leelawathi (dead)
Bamunumulla, Bandaragama.
- (BA) Kandage Kamalawathi
Bamunumulla, Bandaragama.
- (9) Kandage Daya Premasiri Perera
Bamunumulla, Bandaragama.

- (10) Kandage Munis Perera
Bamunumulla, Bandaragama.
- (11) Kandage Gulanis Perera
Bamunumulla, Bandaragama.
- (12) Pathirage Punawathi
Bamunumulla, Bandaragama.
- (13) Pathirage Alan Nona
Bamunumulla, Bandaragama.
- (14) Pathirage Ratnawathi
Bamunumulla, Bandaragama.
- (15) Hidallage Piyadasa Perera
Bamunumulla, Bandaragama.
- (16) Liyanage Diman
Wapala Mahruthma Road, Wadduwa.
- (17) Pitipanage Simon Perera
Bamunumulla, Bandaragama.
- (18) Kandage Liyan Singho
Bamunumulla, Bandaragama.
- (19) Pathirage Richard Perera
Bamunumulla, Bandaragama.

Defendants

Now and Between

- (2) Kandage Leeladasa (dead)
Bamunumulla, Bandaragama.

2nd Defendant Appellant

- (2a) Amaratungage Leelawathi
(Wife of the Deceased)
No:44, Bamunumulla, Bandaragama.
- (2b) Kandage Chandana Sanjeewa Perera
(son of the Deceased)
No:44, Bamunumulla, Bandaragama.

(2c) Kandage Nadeeka Sanjeewani Perera
(daughter of the deceased)
No:44, Bamunumulla, Bandaragama.

(2d) Kandage Jayantha Perera
(son of the deceased)
No:44, Bamunumulla, Bandaragama.

(2e) Kandage Krishanthi Perera
(daughter of the deceased)
No:44, Bamunumulla, Bandaragama.

2nd Defendant Substituted Appellants

-Vs-

Appukutti Arachchige Sirisena
Bamunumulla, Bandaragama.

Plaintiff Respondent

- (1) Liyanage Robo Singo
Bamunumulla, Bandaragama.
- (2) Kandage Liladasa
Bamunumulla, Bandaragama.
- (3) Kandage Karunawathi
Bamunumulla, Bandaragama.
- (4) Kandage Alawathi
Bamunumulla, Bandaragama.
- (5) Kandage Gilin Nona
Bamunumulla, Bandaragama.
- (6) Appukutti Arachchige Elo Singho
Bamunumulla, Bandaragama.
- (7) Appukutti Arachchige Violet
Bamunumulla, Bandaragama.
- (8) Kandage Leelawathi (dead)
Bamunumulla, Bandaragama.

- (BA) Kandage Kamalawathi
Bamunumulla, Bandaragama.
- (9) Kandage Daya Premasiri Perera
Bamunumulla, Bandaragama.
- (10) Kandage Munis Perera
Barnunurnulla, Bandaragarna.
- (11) Kandage Gulanis Perera
Barnunumulla, Bandaragama.
- (12) Pathirage Punawathi
Bamunumulla, Bandaragama.
- (13) Pathirage Alan Nona
Bamunumulla, Bandaragama.
- (14) Pathirage Ratnawathi
Bamunumulla, Bandaragama.
- (15) Hidallage Piyadasa Perera
Bamunumulla, Bandaragama.
- (16) Liyanage Diman
Wapala Mahruthrna Road, Wadduwa.
- (17) Pitipanage Simon Perera
Bamunumulla, Bandaragama.
- (18) Kandage Liyan Singho
Bamunumulla, Bandaragama.
- (19) Pathirage Richard Perera
Bamunumulla, Bandaragama.

Defendant Respondents

C.A. No. 948/98(F)

D.C. Horana Case No. 3074/P

Before : K.T. Chitrasiri, J.

Counsel : Harendra K. Perera for the Plaintiff-Respondent.

Argued &
Decided on : 05.02.2013.

K.T. Chitrasiri, J.

2nd, 9th and 19th Defendant-Appellants have filed notices of appeal challenging the judgment dated 11.12.1997. However, 2nd and 19th Defendant-Appellants have not filed petitions of appeal. Only the 9th Defendant-Appellant had filed a petition of appeal which is dated 09.03.1998.

Upon considering the aforementioned dates of the impugned judgment and the petition of appeal filed by the 9th defendant-appellant, it is clear that the petition of appeal had been filed 60 days after the delivery of the impugned judgment. Therefore, it is seen that the petition of appeal had been filed

contravening the provisions of the procedure stipulated in law. Therefore, this appeal should stand dismissed for not complying with Section 754 (4) of the Civil Procedure Code.

At this stage Miss. Hemamala Kumari, Attorney-at-Law informs court that she had been appearing for the 9th defendant-appellant previously. However, she further submits that she has not received instructions from the appellant to appear in this case thereafter even though she has informed him to give instructions by way of a telegram.

9th defendant-appellant is absent and unrepresented in this Court today. Having perused the docket, I note that the appellant were given several dates, since 29.8.2011 to file substitution papers in order to substitute the heirs of the deceased parties. The appellant has not taken steps to do so. Without substitution being effected, merits of this appeal cannot be considered. It is the duty of the appellant to have the substitutions effected in order to proceed with the appeal. In the circumstances, it is clear that the appellant is not prosecuting the appeal diligently.

Accordingly, I decide that this appeal should be dismissed under Rule 34 of the Supreme Court Rules as well.

For the aforesaid reasons I make order dismissing the appeal with costs.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

AKN