

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

Case No: CA 1173/98(Final)

D.C. Galle Case No: 13207/L

Madduma Liyanage Podinona,
Gonala Junction,
Unawatuna.

Plaintiff

-Vs-

Korale Kankanamge Gimara,
Dedugodawatta, Uluwitike,
Galle.

Defendant

AND NOW BETWEEN

Korale Kankanamge Gimara,
Dedugodawatta, Uluwitike,
Galle.

Defendant-Appellant

-Vs-

Madduma Liyanage Podinona,
Gonala Junction,
Unawatuna.

Plaintiff-Respondent

Before : **K.T. Chitrasiri,J**

Counsel : N.A. Gunawardhana with E. Ariyaratna
for the Defendant-Appellant.

Lilanthi de Silva for the Aggrieved Party
Petitioner.

**Argued &
Decided on** : **21.02.2013.**

K.T. Chitrasiri, J

Counsel for the defendant-appellant submits that the Registered Attorney of the appellant has written to the defendant and also has informed him by way of a telephone call directing him to give instructions for them to appear in this case. He further submits that despite those requests the defendant has failed to give instructions to proceed with this appeal. Accordingly, it is clear that the appellant is not prosecuting this appeal diligently.

When this matter was mentioned in this Court on the very first day, it was brought to the notice of Court that the whereabouts of the plaintiff-respondent were not known. It was also informed that the plaintiff had gone missing. Despite those submissions, the defendant

appellant has failed to take steps to substitute the heirs of the plaintiff-respondent as yet.

At this stage, Lilanthi de Silva Attorney -at- Law submits that she has filed a petition in which the petitioner is M.P. Sumithra who is an outsider, in order to substitute the two children of the plaintiff-respondent. The said petition is dated 25.04.2012.

As mentioned hereinbefore it is the duty of the defendant-appellant to take steps to proceed with this appeal. She has not even given instructions to the lawyers to prosecute the appeal. Neither has she taken steps to substitute the heirs of the plaintiff-respondent if her whereabouts are not known. In the circumstances, acting under Rule 34 of the Supreme Court Rules, I make order dismissing the appeal. No costs.

Appeal dismissed.

Judge of the Court of Appeal

Na/-