

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

C.A.No.648/98 (F) & C.A.648B/98 (F)

D.C.Kalutara No.5857/P

Mohamed Fawzy Mohamed Fazly
No.179/2,
Main Street,
Dharga Town.

Substituted 1st Defendant-Appellant

-Vs-

Mohamed Ismail Mohamed Najeeb
Aluthgam Street,
Darga Town.

Substituted-Plaintiff-Respondent

AND

2. Mausan Marikkar Mesthriyar Mohamed
Riskan No.34,
Main Street,
Darga Town.

3. Abdul Majeed Mohamed Zahir -(Dead)
Main Street,
Darga Town.

4. Asana Lebbe Marikkar Mohamed Ismail
No.32 Main Street,
Darga Town -(Dead)

And 12 others

Defendants-Respondents

C.A.NO.648/98(F) & C.A.648B/98(F)D.C.KALUTARA NO.5857/P

BEFORE : **K. T.CHITRASIRI, J.**

COUNSEL : Plaintiff-Appellant in C.A.648/98(F) is absent and unrepresented.

M.Nizam Kariapper with M.I.M.Iynullah for Substituted-1st Defendant-Appellant in C.A.648B/98(F)

M.U.M.Alisabry PC for the 5th and 6th Defendant-Respondents.

S.A.U.Kulasooriya for the 2nd Defendant-Respondent.

ARGUED & DECIDED ON : 06. 05.2013.

CHITRASIRI,J.

When this matter was mentioned on 2nd March 2012, it has been noted that the notice sent to the Substituted-Plaintiff-Appellant had been returned with an endorsement that the address is insufficient. In that journal entry, it is also minuted that the Registered Attorney Mr.A.C.M.A.Mashood of the Substituted-Plaintiff-Appellant has expired and the notice sent to him also had been returned accordingly. Therefore, the appeal filed by the Substituted-Plaintiff-Appellant cannot be proceeded with. Accordingly, the appeal in the appeal C.A.648/98 is abated and the proceedings in that appeal are terminated.

When this matter was mentioned on the last occasion, Court was informed that the 3rd and 4th Defendant-Respondents have died in the year 2006 and 2001 respectively. Even though so many years have lapsed no steps have been taken to substitute the heirs of the 3rd and 4th

Defendant-Respondents. It is the duty of the appellant to take necessary steps to substitute the heirs of the parties who are dead. He has not taken this step for many years. Without substitution being effected this appeal could not be proceeded with.

Therefore, it is seen that the appellant is not prosecuting the appeal diligently. In these circumstances Court makes an order abating this appeal.

Appeal is abated. Accordingly the proceedings in this appeal (C.A.648B/98) are also terminated.

Proceedings terminated.

JUDGE OF THE COURT OF APPEAL.