

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

CA APPEAL NO: CA 1031/98 (F)

DC Kegalla Case No: 1532/L

1. Devika Banganadessalage Rani, Kolongalla.
2. Diwulwewagedara Siripala, Kolongalla.

PLAINTIFFS

Vs.

1. Meddewattegedara Pini, Kolongalla.
2. Meddewattegedara Gunaratne, Kolongalla.

DEFENDANTS

And between

1. Meddewattegedara Pini (Deceased), Kolongalla.
2. Meddewattegedara Gunaratne, Kolongalla.

DEFENDANTS-APPELLANTS

Vs.

1. Devika Banganadessalage Rani, Kolongalla.
2. Diwulwewagedara Siripala, Kolongalla.

PLAINTIFFS - RESPONDENTS

And now between

Meddewattegedara Ruparatne, Kolongalla.

PETITIONER

Vs.

1. Devika Banganadessalage Rani, Kolongalla.
2. Diwulwewagedara Siripala, Kolongalla.

PLAINTIFFS RESPONDENTS-RESPONDENTS

C.A 1031/98**D.C. Kegalle 1532/L****Before: K.T.Chitrasiri, J.**Counsel: D.M.G. Dissanayake for the Defendant-Appellant.
Manori Pathirana for the Plaintiff –Respondent.Argued &
Decided on : 15.07.2013.**K.T.CHITRASIRI, J.**

In this case, the petition of appeal has been filed naming the 1st and the 2nd defendants namely, Pini and Gunarathne as the two appellants. Said Pini was the mother of the 2nd defendant Gunarathna. At this stage, both counsel concede that the 2nd defendant- appellant had passed away by the time the petition of appeal had been filed. They also concede that seven parties have been substituted on 27.07.1976 in place of the deceased 2nd defendant though they were not been named as parties in the petition of appeal. (Journal entry 16 found at page 24 of the appeal brief).

Therefore, it is clear that those seven substituted defendants who were substituted in place of the 2nd defendant have not been made a party to the petition of appeal though they have become parties to the action by the time the petition of appeal was filed. Those parties who were substituted in place of the 2nd defendant were his wife and his children. One of his children who had become a substituted defendant

namely, Maddewattegedara Ruparathne has filed a petition moving to have him substituted in place of the 1st defendant appellant who had died after filing of this appeal, on the basis that he is one of the grand children of the deceased 1st defendant appellant. The said application to have the said M.Ruparathne substituted, was rejected on the basis that there were no supporting evidence to establish the relationship between the petitioner, M.Ruparathne and the deceased 1st defendant appellant namely Pini.

In the circumstances, it is clear that the petition of appeal in this case had been filed by a person who supposed to have passed away by the time the petition of appeal was filed instead of his heirs who were already been made parties to the action. Moreover no application has so far been made by the heirs of the deceased 1st defendant – appellant to have them substituted in order to prosecute this appeal. Therefore, this Court makes an order abating the appeal. Appeal abated.

In view of the order made today, the proceedings in this case are terminated.

Proceedings terminated.

JUDGE OF THE COURT OF APPEAL.

Vkg/-