

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

Case No. CA 122/98 (F)
D.C. Kurunegala No.3604/P

Abdul Jabbar Mohamad Kaleel
Veherabanda,
Dorateyawa
Kurunagala

SUBSTITUTED PLAINTIFF-APPELLANT-PETITIONER

Vs.

1. Ismile Lebbelage Sulha beebie, Veherabanda, Dorateyawa.
2. Yanus Lebbelage Mansoor. kubalanga, Kurunagala
3. Abdul Majeedugae Ismile, Veherabanda, Dorateyawa
4. Thanga Udayargae Jeynuul Abdeen, Thorayaya, Kurunagala
5. Thanga Udayargae Sitthi Musiriya, Nakalagamuwa, Kohilagedara
6. Thanga Udayargae Nelabdeen
7. Thanga Udayaragae Neyars
8. Thanga Udayaragae Mohammadu Sappar
9. Thanga Udayarage Reyala
10. Qubbar Lebbelage Mohammadu Saldeen
11. Mohammadu Lebbelage Fareed (Deseased)
12. Mahammadu Labbelage Aleema Umma

All of Veherabanda, Dorateyawa, Kurunagala

DEFENDENT-RESPONDENT-RESPONDENTS

1. Fareed Nisbah Nona,
2. Fareed Mohamed Mowjood,
3. Fareed Mohamed Janabdeen,
4. Fareed Mohamed Shafeek,
5. Fareed Mohamed Naleer,
6. Fareed Jazeema Begum.

Defendant-Respondent

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

Counsel : N.M. Suhaid with Ishani Godellawatte
for the Plaintiff-Appellant.

Decided on : 06.08.2013

K.T. Chitrasiri, J

When this matter was mentioned on 22.05.2013, Counsel for the appellant had moved to support the petition dated 22.05.2013. The application made in that petition was to substitute the heirs of the deceased 11th Defendant-Respondent.

However, the journal entry made by the Learned District Judge on 13.06.1997, when the case was pending in the lower court, shows that Idroos Lebbe Syeddina Umma, she being the wife of the deceased 11th defendant, had already been substituted in the room of the deceased 11th Defendant-Respondent. Having effected the said substitution and without disclosing the same, another application had been made to substitute the heirs of the 11th Defendant-Respondent by the petition dated 22.05.2013. In that petition and also in the affidavit annexed to the petition does not reveal the matters that had taken place on 13.06.1997 in the District Court. However the said application made in

the petition dated 22.05.2013 was rejected due to the failure to establish the nexus between the deceased 11th defendant and his heirs.

So far no substitution papers have been filed, even though the 11th Defendant-Respondent had died in the year 1997 and the person who was substituted in his place also had died on the 22.04.2000. It shows that the appellant has failed to take steps to effect the substitution for more than 13 years, even though the appellant has obtained many dates to take necessary steps.

At this stage counsel for the appellant moves for a further date to file substitution papers. The above mentioned attitude of the appellant may lead to cause grave injustice to the parties who are holding a decree in their favour in the event a further time is granted to the appellant. Also, the conduct of the appellant has prevented them reaping the benefits of the decree for more than 15 years having spent their money and the time. Hence the application for the date to file substitution papers is refused.

The above circumstances also show that the appellant is not prosecuting this appeal diligently. Accordingly, court makes an order abating the appeal.

Appeal abated.

Judge of the Court of Appeal

Na/-