

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

**CA. 852/98(F)**

D.C. Gampaha Case No. 30634/P

Panapitiyage Chandrapala  
Kanduboda South,  
Delgoda.

And Others

**Appellants**

**Vs.**

Panapitiyage Don Balusinyo  
Kanduboda.

And Others

**Respondents**

C.A. 852/98(F)

:

D.C. Gampaha Case No. 30634/P

Before

:

K.T. CHITRASIRI, J.

Counsel

:

Upali Lokumarakkala for the 3B Substituted Defendant-Appellant  
Rohan Sahabandu, PC with Samithrie Kumarawadu for the Plaintiff-  
Respondent  
Harsha Soza, PC with Upendra Walgampaya for the 24<sup>th</sup> and 25A  
Defendant-Respondents

Argued &

Decided on

:

04.09.2013

K.T. CHITRASIRI, J.

Counsel for the 3B Defendant-Appellant moves to support the Petition dated 28.08.2013. Along with the said Petition, an affidavit dated 26.08.2013 deposed to by the substituted 3B Defendant-Appellant namely K.P. Sumanapala also is filed. In that affidavit it is stated that the 1<sup>st</sup> Defendant-Respondent has died leaving his son. The Death Certificate of the deceased 1<sup>st</sup> Plaintiff-Respondent is filed marked as X1 and the Birth Certificate of the son is marked as X2. Person sought to be substituted namely P.D. Anura is present in Court. He consents to have him substituted in order to prosecute this appeal. Having considered the evidence contained in the aforesaid affidavit and the documents filed, as part and parcel of the affidavit, Court substitutes P.D. Anura as the Substituted 1<sup>st</sup> Plaintiff-Respondent in the room of the deceased 1<sup>st</sup> Plaintiff-Respondent for the purpose of prosecuting this appeal. This substitution is effected in respect of the appeal filed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3A Defendant-Appellants. Counsel for the Appellant is directed to file the amended caption accordingly.

Two appeals have been filed in this case by two Plaintiff-Appellants and by the 1<sup>st</sup>, 2<sup>nd</sup> and 3A Defendant-Appellants. However, only one number is allocated to both the appeals. The number C.A. 852/09(F) has been assigned to the appeal filed by the 1<sup>st</sup>, 2<sup>nd</sup>

and 3A Defendant-Appellants. The Registrar is directed to allocate the number C.A. 852A/98(F) to the appeal filed by the two Plaintiff-Appellants.

At this stage, Counsel for the two sets of Appellants inform Court that the 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 15<sup>th</sup>, 19<sup>th</sup> and 21<sup>st</sup> Defendant-Respondents are also dead after the appeals were filed. Both Counsel are not aware of the dates of the deaths of those Respondents. They also submit that they are not in a position to find out the necessary particulars to have the substitution effected.

When this matter was mentioned on two previous occasions namely, 15.03.2013 and 30.05.2013, the Counsel for the Appellants were directed to file substitution papers to substitute the heirs of those deceased Respondents. No steps have been taken as yet to effect the said substitution though several months have passed since then. Without the substitution being effected, this appeal cannot be taken up for hearing. The appellants have not taken steps to substitute the heirs of those deceased Respondents even though many dates were given for them to file necessary papers for substitution. Therefore, it is apparent that both sets of appellants are not prosecuting their respective appeals with due diligence.

In the circumstances, Court makes an order abating the appeal.

*Appeal is abated.*

JUDGE OF THE COURT OF APPEAL

Cr/-