

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

CASE NO. 1180/2000(F)

D.C MARAWILA CASE NO. 18/P

DC CHILLAW CASE NO. 19959/P

Adhikari Mudiyanseleage Allis Appuhami,
Koswatte,
Thulawala. (Dead)

Adhikari Mudiyanseleage Chandrapala

**SUBSTITUTED-PLAINTIFF-
APPELLANT- PETITIONER**

Vs.

01. Perumbuli Arachchige Wijesinghe
- 01A. Herath Narasinghe Mudiyanseleage Punchi Nona
02. Herath Narasinghe Mudiyanseleage Punchi Hami
03. A.M Weerawardhana
04. A.M Obesena (*Dead*)
- 04A. H.M Leelawathie
05. A.M Piyadasa
06. A.M Muthu Manike, (*Dead*)
- 06A. Seetha Hemalatha

& others

DEFENDANTS

C.A. 1180/2000(F)

D.C. Marawila Case No. 18/P (19959/P)

BEFORE : K.T. CHITRASIRI, J.

COUNSEL : Mrs. S. Ravindran instructed by Buddika Ratnayake for the
Substituted Plaintiff-Appellant-Petitioner
Sandamal Rajapakse for the 10th Defendant-Respondent

Argued &

Decided on : 26.11.2013

K. T. CHITRASIRI, J.

When this matter was mentioned on 29.08.2013, Counsel for the appellant informed Court that the 2nd, 4a, 8th, 9th, 13th, 14th, 15a, 16b, 16c, 18th, 19th and 32nd defendant-respondents have died. Accordingly, he has moved for a date to file substitution papers in respect of the deceased 4a, 15a, 16b, 16c, 18th, 19th and 32nd defendant-respondents. He also has moved to issue notices on the persons sought to be substituted in the room of the other deceased 2nd, 8th, 9th, 13th and 14th defendant-respondents. No notices have been tendered to Court enabling the

Registrar to issue the same on those persons who are to be substituted even though almost three months have lapsed since the last date. Neither has he filed substitution papers in respect of the other defendant-respondents who are dead.

Counsel appearing today for the appellant submits that she has filed substitution papers in respect of 2nd, 13th, 14th defendant-respondents only yesterday. Those papers have not been filed into the docket as yet. However, no notices have been issued on the persons sought to be substituted in those applications made in the papers supposed to have filed yesterday.

Counsel for the appellant today informs Court that the 13th, and 14th defendants had died in the years 1997 and 1998 respectively. It shows that those respondents have died even before the impugned judgment was delivered. However, in the petition of appeal, those deceased persons have been named as the respondents to this appeal though they have died by then.

However, according to the submissions of the learned Counsel for the appellant, eighteen (18) respondents have died by now and no proper steps have taken as yet to substitute the heirs of those deceased respondents. Some of them have died as far back as in the year 1997. Those circumstances show that the appellant, he being the plaintiff has failed to take steps to bring the proper

parties before court even when the case was pending in the original court. Accordingly, it is clear that the appellant is not prosecuting this appeal diligently.

In the circumstances, this court makes an order abating the appeal. Appeal is abated.

Proceedings terminated

JUDGE OF THE COURT OF APPEAL

AKN