

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

Mohamed Salley Beebee Seinam,
No 52, Mosque Road,
Kalutara South.

And 07 others.

Plaintiffs

C.A. No. 744 / 2000 F

Vs.

D.C. Kalutara No. 6138 / P

Mohamed Amanullah Fathima Naseema
No 52, Mosque Road,
Kalutara South.

And 01 other.

Defendants

AND NOW BETWEEN

Mohamed Salley Beebee Seinam,
No 52, Mosque Road,
Kalutara South.

And 07 others.

Plaintiff Appellants

Vs.

Mohamed Amanullah Fathima Naseema
No 52, Mosque Road,
Kalutara South.

Defendant Respondents

BEFORE : UPALY ABEYRATHNE, J.

COUNSEL : Sanjeewa Dasanayake for the Plaintiff
Appellants
M.S.A. Wadood with Taranga Edirisuriya
and Charitha Kulasinghe for the Defendant
Respondents.

ARGUED ON : 05.11.2013

DECIDED ON : 29.01.2014

UPALY ABEYRATHNE, J.

1st 2nd 3rd 4th 5th 6th 7th and 8th Plaintiff Appellants (hereinafter referred to as the Appellants) have preferred the instant appeal seeking to set aside the judgment of the learned additional District Judge dated 19.09.2000. During the pendency of this appeal the Appellants filed an application for substitution and brought to the notice of this Court that the 6th Plaintiff Appellant has died prior to the pronouncement of the judgment in the District Court and the learned Trial Judge has delivered the judgment without effecting the substitution in place of the deceased 6th Plaintiff Appellant. The learned counsel for the Appellants submitted that in terms of the decisions of the Supreme Court said judgment is rendered a nullity and case should be sent back to the District Court to effect the substitution in place of the deceased 6th Appellant.

The learned counsel for the Respondents submitted that since the Appellants have already made an application to the Court of Appeal if the deceased

6th Appellant's heirs are substituted by the Court of Appeal no prejudice would be caused to any of the parties and the appeal could be heard and concluded.

I observed that the 6th Plaintiff Appellant has died on 26.05.1999 (vide: death certificate bearing No. 3041 dated 26.05.1999) and the judgment has been delivered on 19.09.2000. When I consider the said facts it seems to me that in terms of the decision given in *Munasinghe and Another vs. Mohamed Jabir Navaz Carim* [1990] 2 SLR 163 the judgment referred to above is rendered a nullity. In the case of *Karunawathie vs. Piyasena and others* [2011] 1 SLR 172 at 177 the Supreme Court observed that "When a party to a case had died during the pendency of that case, it would not be possible for the court to proceed with that matter without appointing a legal representative of the deceased in his place. No sooner a death occurs of a party before court, his Counsel loses his position in assisting court as long with the said death and without any substitution he has no way of obtaining instruction"

In the light of the said authorities I make order that this case be remitted back to the District Court of Kalutara for the purpose of effecting the substitution in place of the deceased 6th Plaintiff Appellant. The 6th Appellant has died after the conclusion of the evidence and submissions of both parties. Hence I am of the opinion that the district court is entitled to pronounce the same judgment afresh. Therefore the present District Judge of Kalutara is directed to redeliver the judgment dated 19.09.2000 after taking the steps for substitution. The judgment of the District Court would stand and the case would proceed from that point onwards and an appeal could be preferred from the said judgment. The parties should bear their own costs.

Judge of the Court of Appeal