

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

C.A. No. 1064/1996(F)
D.C. Marawila No. 148/P

A.M. Nandawathie
Bogahawetiya,
Nalladarankattuwa.

**30th DEFENDANT-APPELLANT-
PETITIONER**

Vs.

1 (A). A.M. Chandrasa
Pahala Mahawewa,
Mahawewa.

2 (A). A.M. Anoma Keerthi Kumari
Pahala Mahawewa,
Mahawewa.

**PLAINTIFF-RESPONDENTS-
RESPONDENTS**

C.A. No. 1064/1996(F)

D.C. Marawila No. 148/P

BEFORE : K.T. CHITRASIRI, J.

COUNSEL : Malaka Herath for the 30th defendant-appellant
C. Ladduwahetti with L.L.de Silva for the
plaintiff-respondent.

ARGUED AND

DECIDED ON : 14th July, 2014.

K.T. CHITRASIRI, J.

This is an application for relisting. This Court made order on 31.01.2014 abating the appeal. In the petition dated 31.03.2014 that was filed seeking to vacate the order of abatement dated 31.01.2014, it is stated that the necessary papers are filed and annexed to the said petition in order to substitute the heirs of the deceased 11th, 12th and 13th defendant-respondents.

The person sought to be substituted in the room of the 11th and 13th defendant-respondents is a child of a brother of the deceased 11th and 13th defendant-respondents. In those affidavits nothing is mentioned to show that those two defendants died issueless. Furthermore, the sisters and brothers of the deceased 11th and 13th defendant-respondents are also not been referred to in those two

applications. Therefore, the petitioner has failed to show that the person sought to be substituted is the correct person who is entitled to proceed with this appeal on behalf of the 11th and 13th defendant-respondents.

In view of the above, learned Counsel for the appellant submits that he will take necessary steps to show the manner in which the person sought to be substituted becomes the proper and correct person to proceed with this appeal and accordingly, he undertakes to file fresh papers. In view of the above circumstances, this application is dismissed without costs.

“ JUDGE OF THE COURT OF APPEAL

Kwk/=