

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

In the matter of an Application to relist
case No: 65/98 (F) which has been
Abated.

Karunamuni Samson De Silva,
Nagoda,
Kalutara.

Case No: CA/65/1998 (F)

DC Kalutara Case No: 4746 (P)

Plaintiff

01. Sandaradura Indralath
Kandapansala Road,
Mahawaskaduwa,
Waskaduwa.

02. Karunamuni Disna
Kusumawathie De Silva
Mahawaskaduwa,
Waskaduwa.

03. Arumadura Nandawathie
Wijayatilake
No: 128, Galle Road,
North Kalurara.

04. Seekku Arachchige Milis Wijayatilake
No:128, Galle Road,
North Kalutara.

05. Arumadura Suwineetha Kalani
Wijayatilake
No:128, Galle Road,
North Kalutara.

06. Arumadura Priyantha Jayanath
Wijayatilake
No:128, Galle Road,
North Kalutara.

07. Umange Herbert Seneviratne
Kandapansala Road,
Mahawaskaduwa,
Waskaduwa.

08. Indurawage Loranona
Mahawaskaduwa,
Waskaduwa.

09. Umange Herbert Seneviratne
Mahawaskaduwa,
Waskaduwa.

10. Munasinghe Selbinona
Mahawaskaduwa,
Waskaduwa.

11. Weerakkodi Disilin Nona
Welw Pansala Road,
Mahawaskaduwa,
Waskaduwa.

12. Induruwage Lora Nona
Wellabada,
Mahawaskaduwa,
Waskaduwa.

13. Sandradura Menuwel Silva
Mahawaskaduwa,
Waskaduwa.

14. Munasinghe Saldin Nona
Mahawaskaduwa,
Waskaduwa.

15. A.Donald Perera
Udowita, Naebada.

Defendants

AND BETWEEN

01. Sandradura Indrajath
Kandapansala Road,
Mahawaskaduwa,
Waskaduwa.

07. Urange Herbert Seneviratne
Kandapansala Road,
Mahawaskaduwa,
Waskaduwa.

1st and 7th Defendant – Appellants

Karunamuni Samson De Silva
Nagoda, Kalutara.

Plaintiff – Respondent

02. Karunamuni Disna
Kusumawathie De Silva
Mahawakaduwa,
Waskaduwa.

03. Arumadura Nandawathie
Wijayatilake
No:128, Galle Road,
North Kalutara.

04. Seekku Arachchige Milis Wijayatilake
No:128, Galle Road,
North Kalutara.

05. Arumadura Suwineetha Kalani
Wijayatilake
No:128, Galle Road,
North Kalutara.

06. Arumadura Priyantha Jayanath
Wijayatilake
No:128, Galle Road,
North Kalutara.

08. Indurueage Loranona
Mahawaskaduwa,
Waskaduwa.

09. Umange Herbert Seneviratne
Mahawaskaduwa,
Waskaduwa.

10. Munasinghege Selbinona
Mahawaskaduwa,
Waskaduwa.

11. Weerakkodi Disilin Nona
Welw Pansala Road,
Mahawaskaduwa,
Waskaduwa.

12. Induruwage Lora Nona,
Wellabada,
Mahawaskaduwa,
Waskaduwa.

13. Sandradura Menuwel Silva
Mahawaskaduwa,
Waskaduwa.

14. Munasinghe Saldin Nona
Mahawaskaduwa,
Waskaduwa.

15. A. Donald Perera
Udowita, Naebada.

**Defendants – Respondents –
Respondents**

**Before : W.M.M.Malinie Gunarathne, J
: P.R.Walgama, J**

**Counsel :S. Kumarasingham for the appeallants.
: Ranjan Suwandarathne for the 15th Respondent –
Respondent.**

Argued on : 25.09.2015

Decided on: 29.02.2016

P.R.Walgama, J

The instant appeal concerns an application made by the 1st and 7th Defendants - Appellants - Petitioners to have this appeal relisted as the same has been abetted on 17.06.2014, on the basis of the absence of the Appellants.

The above Appellants lodged the instant appeal seeking to set aside the judgment entered by the Learned District Judge of Kalutara dated 02.12.1997, in the Partition case bearing No. 4746/1987.

The Learned District Judge has rejected the Plaintiff's pedigree and had accepted the pedigree of the 1st and 7th Defendants, and held that lot No3 and the house standing thereon is a separate land and same had been allotted to the 15th Defendant - Respondent.

In this instant appeal the only contestant party is the 15th Defendant - Respondent.

It was the position of the 1st Defendant Appellant that Lots 3,4, and 7 shown in the preliminary plan do not form part of the corpus and the said lots had been possessed by the 15th Defendant - Respondent and thereby gain prescriptive title to the said lots.

It is the contention of the 15th Defendant - Respondent that the disputed portion to wit. the lot 3 was not a part of

the corpus and the said portion has been transferred by the 7th Defendant - Appellant.

The stance of the 15th Respondent is that the lot 3, in the Preliminary plan has been registered in a different folio as a different land. Therefore it is asserted by the 15th Defendant - Respondent that he holds title to the said lot 3 by virtue of Deed No. 4040.

The 1st and the 7th Defendant- Appellants appealed against the said judgment to the Court of Appeal on 16.01.1098, and the Court of Appeal by the Judgment dated 15.10.2012 had dismissed the Appeal. The 1st and the 7th Appellants, appealed against the said judgment to the Supreme Court, and it was at that stage it brought to the notice of Court at the time of the judgment was pronounced in the Court of Appeal the Plaintiff was dead.

As the Plaintiff was dead at the time of Court of Appeal delivered the Judgment, the Supreme Court held that the Judgment of the Court of Appeal is invalid and ordered to rehear after necessary substitution is done.

Pursuant to the afore said this Court has issued notices on all parties, returnable on 17.06.2014. The journal of the said date indicates that the 1st and 7th Defendant- Appellants were absent and unrepresented, and only 15th Defendant - Respondent was present. Hence His Lordship of this Court had abated this appeal.

The Petitioners thereafter filed a motion dated 27.06.2014 and moved court to support the same. When the above motion was supported this Court ordered the Appellants to issue notices on all parties, But nevertheless it is seen from the journal entries that no steps had been taken by the Appellants to substitute the deceased Plaintiff, as directed by the Supreme Court.

Therefore without complying the order of the Supreme Court this Court cannot proceed further. Hence the application of the Appellants to relist this appeal should stand dismissed.

Accordingly appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J
I agree,

JUDGE OF THE COURT OF APPEAL