

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

C.A. No. 537/1995

D.C. Balapitiya Case No. 256/P

Arumahandi Dayaman
Matiwala, Thelwatta

Plaintiff

Arumahandi Sanjeewa pushpakumara
Matiwala, Thelwatta

**Proposed substituted-Plaintiff-
Respondent-Petitioner**

Vs.

1. Nallahandi Ratnasiri
2. Nallahandi Piyawathie
3. Thuyahandi Sirisena
4. Thuyahandi Gunawathie
5. Thuyahandi Seelin Nona
6. Thuyahandi Wilbert Silva
7. A.M. Maulin Nona

All of Thelwatta

8. Waradana Aryaratne de Silva

of Ahungalla, Bogahapitiya

9. Maldeniye Samaramalee
10. Handunnetti Upul Indra Kumara Mendis
11. Handunnetti Amal Thushara Mendis
12. Handunnetti Shyamalee Priyangika Mendis
13. Handunnetti Himalee Reshika Mendis

All of Ratgama

Petitioners-Appellants-Respondents

C.A. No. 537/1995

D.C. Balapitiya Case No. 256/P.

Before : Vijith K. Malalgoda, P.C., J (P/CA)

Counsel : Lasith Chaminda appears for Proposed Substituted Plaintiff-Respondent-Petitioner.

Argued &

Decided on : 03.03.2016.

Vijith K. Malalgoda, P.C., J (P/CA)

This matter is coming up by a motion filed by the Proposed Substituted Plaintiff-Respondent-Petitioner seeking an interpretation with regard to the order made by this Court abating the proceedings on 31.03.2006. It is observed from this case record that this case which is a District Court final appeal from the District Court of Balapitiya in Case No. 265/P had come up before this Court prior to 31.03.2006 on several occasions with notices for the parties and their Registered-Attorneys. However it is observed by this Court when the matter came up on 31.03.2006 it was observed by Court that the petitioner-appellant had not taken any interest in prosecuting this matter. The Court after considering the journal entry made by the relevant subject clerk and also considering journal entries previously

minuted in the docket, has decided to abate the proceedings in this Court. Subsequently considering the fact that there was no appeal against the said order of abatement the Court had sent back this case to the District Court of Balapitiya on 21.06.2007.

Learned Counsel for the proposed substituted plaintiff-respondent-petitioner brings to the notice of Court of an order made by the District Judge of Balapitiya on 08.07.2015 which is produced in his motion dated 18.01.2016 marked ' C '. According to the said order it appears that the District Judge is awaiting a decision from this Court even though the proceedings are abated by this Court and returned the record back to the District Court of Balapitiya. As observed by this Court the order to abate the appeal was made as far back as on 31.03.2006, but since then the petitioner-appellant has not taken any steps to come before this Court or go before the Supreme Court against the said decision. The said decision is arrived by this Court mainly due to the fact that the petitioner-appellant has failure to prosecute this matter before this Court. Learned Counsel appearing for the Proposed Substituted Plaintiff-Respondent-Petitioner brings to the notice of Court the provisions in Section 402 of the Civil Procedure Code which allows the District Court for abatement when a party fails to take a step for 12 months.

When considering the above provisions the Court finds that the failure by the parties especially by the petitioner-appellant in this matter to prosecute the case prior to 2006 as well as after 2006 clearly indicates their inaction in this matter. When considering these

facts, this Court is of the view that the only interpretation this Court can give with regard to the Order made by this Court on 31.03.2006 is that the appeal before this Court has been dismissed.

Registrar is directed to communicate this order to the learned District Judge of Balapitiya. Registrar is further directed to issue today's proceedings to the Proposed Substituted Plaintiff-Respondent-Petitioner on payment of usual charges.

PRESIDENT OF THE COURT OF APPEAL

AKN