

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

1. Ramasami Mangalanayagi
2. Raju Muthuveeran,
Both of No.114, Jayalanka Road,
Kandapola.

Petitioner- Applicants

VS.

Appeal Court No. 35/2003

Kandy High Court Revision/ 39/2001

Nuwaraeliya Primary Court Case No. 26730

1. Ramasami Ramakrishnan,
Postwood Watte
New Colony
Kandapola.
2. Ramasami Rajgopal,
Postwood ,
New Colony,
Kandapola.
3. Ramasami Wijekumar,
Postwood New Colony,
Kandapola.
4. Ramasami Manoharan,
Postwood New Colony,
Kandapola.

- 5, Ramasami Anandan,
Bakers Farm No.27,
Mahagastota,
Nuwaraeliya.
6. Ramasami Mohanadas,
Postwood New Colony,
Kandapola.
7. Ramasami Muralidaran,
Postwood New Colony,
Kandapola.
8. Ramasami Rajeskanna,
Cotelodge Watte,
Kandapola.

Respondents

1. Ramasami Ramakrishnan,
Postwood, New Colony,
Kandapola.
2. Ramasamy Rajgopal,
Postwood New Colony,
Kandapola.
3. Ramasami Udayakumar,
Postwood New Colony,
Kandapola.
4. Ramasami Manoharan,
Postwood New Colony,
Kandapola.
5. Ramasami Anandan,
Bakers Farm,
No. 27, Mahagastota,
Nuwaraeliya.

6. Ramasami Mohandas,
Postwood New Colony,
Kandapola.
7. Ramasami Muralidaran,
Postwood New Colony,
Kandapola.
8. Ramasami Rajeskanna,
Cotelodge Watte,
Kandapola.

Respondent - Petitioners

VS

1. Ramasami Mangalanayagi,
2. Raju Muthu Veeran,
Both of No. 114, Jayalanka Road,
Kandapola

Respondents

AND

1. Ramasami Mangalanayagi,
2. Raju Muthuveeran,
Both of 114, Jayalanka Road,
Kandapola.

Respondent – Appellants.

Vs.

1. Ramasami Ramakrishnan,
Postwood New Colony,
Kandapola.

2. Ramasami Rajgopal,
Postwood New Colony,
Kandapola.
3. Ramasami Wijekumar,
Postwood Watte,
New Colony,
Kandapola.
4. Ramasami Manoharan,
Postwood New Colony,
Kandapola.
5. Ramasami Anandan,
Bakers Farm,
No.27, Mahagastota,
Nuwaraeliya.
6. Ramasami Mohandas,
Postwood New Colony,
Kandapola.
7. Ramasami Muralidaran,
Postwood New Colony,
Kandapola.
8. Ramasami Rajeskanna,
Cotelodge Watte,
Kandapola.

Respondent – Petitioner-
Respondents

**BEFORE : W.M.M. Malini Gunaratne, J.and
P.R. Walgama, J.**

COUNSEL : : Athula Perera with Chathurani de Silva
for the Appellant.

Buddhika Gamage
for the Respondent

Argued on : 05.08.2015

Written Submissions
filed on : 20.11.2015 (Filed only by Appellant)

Decided on : 08.03.2016

Malinie Gunaratne, J

Pursuant to an application filed in the Primary Court of Nuwara Eliya, by the Petitioner – Respondent – Appellants (hereinafter referred to as the Appellants) in terms of Section 66 of the Primary Court Procedure Act, the learned Primary Court Judge held an inquiry into the dispute between Respondent – Petitioner – Respondents (hereinafter referred to as the Respondents) made an order confirming the possession of the Appellants, in respect of the land and the premises in question.

Being aggrieved by the said Order, Respondents sought to move in Revision against the said Order by Revision Application No. 39/2001, filed before the High Court of Kandy.

The learned High Court Judge, disagreeing with the Order made by the learned Primary Court Judge, set aside the said Order on 07.01.2003.

The Appellants have now filed this appeal seeking to set aside the said Judgment of the learned High Court Judge dated 07.01.2003.

When this appeal was taken up for argument on 21.11.2012, the learned Counsel for the Appellant had brought to the notice of this Court, that there is no valid judgment made in the High Court, since the 1st Respondent had died pending the revision application in the High Court, and as no substitution being effected before the delivery of the judgment by the learned High Court Judge.

It was agreed by both parties to file written submissions on the question of the validity of Judgment. It is relevant to note that written submissions has been filed only on behalf of the Appellants.

The contention of the learned Counsel for the Appellant is, when this Appeal was mentioned before this Court on 26.02.2013 it was brought to the notice of this Court by the Counsel appearing for the Respondents that, the 1st Respondent had died. The Counsel further contended when perusing the death certificate of the 1st Respondent – Ramasami Ramakrishnan, it was revealed that the said Ramasami Ramakrishnan had died on 07.10.2002, while the revision application was pending in the High Court Kandy and no substitution had been effected in place of the deceased 1st Respondent.

In the circumstances, it was the stance of the learned Counsel for the Appellant, since the 1st Respondent has died pending the Revision Application in the High Court, and as no substitution had been effected before the delivery of the judgment by the learned High Court Judge, the said Judgment has no force in law and the said Judgment is null and void.

It is to be noted that the Revision Application had been taken up for argument on 25.11.2002 (vide Page 34 of the brief) and the learned High Court Judge has delivered the Judgment on 07.01.2003. As such, it is crystal clear by this time the 1st Respondent was dead and it had not been brought to the notice of the Court.

In the circumstances, the issue now that arises for consideration is, since the 1st Respondent had died pending the case in the High Court, whether the said Judgment is a nullity and or no force in law.

It was observed by Shirani Bandaranayake C.J. in *Gamaralalage Karunawathie vs. Godayalage Piyasena and Others* – SC Minutes dated 05.12.2011 “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 bringing in the legal representatives 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 along with the said death and without any substitution he has no way in obtaining instructions. At that stage, the question arises, as to how and what are the steps that has to be taken in order to cure the defect”.

In the present appeal, as clearly stated earlier, prior to the judgment of the High Court dated 07.01.2003, the 1st Respondent had died on 07.10.2002. No steps had been taken for substitution of parties. Accordingly, it is evident that the judgment delivered by the learned High Court Judge is ineffective and therefore it would be rejected as a nullity.

For the said reason all proceedings after 07.10.2002 and the Judgment of the High Court dated 07.01.2003 is set aside.

Accordingly, this case is sent back to the High Court of Kandy for the Respondents (Petitioners in the High Court) to take steps according to law, for substitution and direct the learned High Court Judge of Kandy to proceed with the case after effecting substitution in place of the 1st Respondent – Ramasami Ramakirshnan.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL