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

In the matter of an application for Leave to Appeal under and in terms of Section 5C of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006

SC Appeal No. 45/2013 and 44/2013

SC HC (CA) LA No. 420/12 and 421/12

UVA/HCCA/BDL/LA/03/12 and UVA/HCCA/BDL/REV/04/2012

DC Badulla No. 752/L

Nimal Dhammika Jayaweera,
No. 05, Spring Valley Road,
Hindagoda, Badulla.

Plaintiff

Vs.

T. M. Nandasiri, (Deceased)
No. 03, Spring Valley Road,
Hindagoda, Badulla.

Defendant

1A. Margaret Lokubadusuriya,
No. 51, Spring Valley Road,
Badulla.

1B. Tennakoon Mudiyanselage Shalika,
No. 74, Badulusirigama,
Badulla.

1C. Tennakoon Mudiyanselage Sujeewa,
No. 70, Passara Road,
Hindagoda, Badulla.

1D. Tennakoon Mudiyanselage Saman
Wasantha Kumara,
No 03, Spring Valley Road,
Hindagoda, Badulla.

Substituted-Defendants

And Between

Nimal Dhammika Jayaweera,
No. 05, Spring Valley Road,
Hindagoda, Badulla.

Plaintiff-Petitioner

Vs.

1A. Margaret Lokubadusuriya,
No. 51, Spring Valley Road,
Badulla.

1B. Tennakoon Mudiyanselage Shalika,
No. 74, Badulusirigama,
Badulla.

1C. Tennakoon Mudiyanselage Sujeewa,
No. 70, Passara Road,
Hindagoda, Badulla.

1D. Tennakoon Mudiyanselage Saman
Wasantha Kumara,
No 03, Spring Valley Road,

Hindagoda, Badulla.

Substituted-Defendant-Respondents

And Between

1A. Margaret Lokubadusuriya,
No. 51, Spring Valley Road,
Badulla.

1B. Tennakoon Mudiyanselage Shalika,
No. 74, Badulusirigama,
Badulla.

1C. Tennakoon Mudiyanselage Sujeewa,
No. 70, Passara Road,
Hindagoda, Badulla.

1D. Tennakoon Mudiyanselage Saman
Wasantha Kumara,
No 03, Spring Valley Road,
Hindagoda, Badulla.

Substituted-Defendant-
Respondent-Petitioners

Vs.

Nimal Dhammika Jayaweera,
No. 05, Spring Valley Road,
Hindagoda, Badulla.

Plaintiff-Petitioner-Respondent

And Now Between

1A. Margaret Lokubadusuriya,
No. 51, Spring Valley Road,
Badulla.

1B. Tennakoon Mudiyanselage Shalika,
No. 74, Badulusirigama,
Badulla.

1C. Tennakoon Mudiyanselage Sujeewa,
No. 70, Passara Road,
Hindagoda, Badulla.

1D. Tennakoon Mudiyanselage Saman
Wasantha Kumara,
No 03, Spring Valley Road,
Hindagoda, Badulla.

Substituted-Defendant-Respondent-
Petitioner-Appellants

Vs.

Nimal Dhammika Jayaweera,
No. 05, Spring Valley Road,
Hindagoda, Badulla.

Plaintiff-Petitioner-
Respondent-Respondent

Before: Buwaneka Aluwihare PC, J.

Murdu N. B. Fernando PC, J.

P. Padman Surasena J.

Counsel: Lakshan Livera for the Substituted Defendant-Respondent-Petitioner-Appellants instructed by Yasas De Silva.

Nuwan Bopage with Manoj Jayasena for the Plaintiff-Petitioner-Respondent-Respondent.

Argued on: 20. 10. 2020

Decided on: 31. 10. 2023

JUDGEMENT

Aluwihare PC, J.,

1. The Plaintiff-Petitioner-Respondent-Respondent (hereinafter referred to as the 'Plaintiff') filed action in the District Court of Badulla seeking a declaration of title to the subject matter of the action and to eject the now deceased, original defendant and all those holding under him. The Substituted Defendant-Respondent-Petitioner-Appellants (hereinafter referred to as the 'Appellants') state that the now deceased original Defendant (the husband and father of the present 1st and 2nd Appellants respectively) filed answer seeking the dismissal of the action. After the trial, by judgment dated 22nd May 2001, the Learned District Judge of Badulla dismissed the action of the Plaintiff.

2. Aggrieved by the said judgment the Plaintiff appealed to the High Court of Civil Appeals (Uva Province), and having considered the appeal the Learned Judges of the High Court by its judgment dated 11.03.2010, held that the Learned District Judge had misdirected himself in his findings. Accordingly, the High Court set

aside the findings of the Learned District Judge and answered the issues in favour of the Plaintiff.

3. The judgment of the High Court was pronounced on 11th March 2010 in open court and the journal entry of that date states as follows;

   "*Respondent and his registered Attorney present in court. Appellant and his registered Attorney absent and unrepresented.*

   Appellant not present. No appearance. Defendant-Respondent present. Mr. Ratwatte AAL for the Respondent. Judgment pronounced in open court."

   From the foregoing, it appears that it was the Plaintiff and his Attorney who were not present and not the Defendant. The record bears out that the learned Attorney-at-Law for the Defendant had informed the court that he might consider appealing against the judgment. It transpired, however, that the Defendant had passed away about 2 months prior to the date on which the judgment of the High Court was delivered and this fact was not disclosed to the court, although the Attorney-at-Law along with another who was representing the Defendant were in court on the day the judgment was delivered.

4. The present Appellants (heirs of the deceased Defendant) state that when the appeal was taken up for the delivery of the judgment, there was no intimation to the Court, of the death of the original Defendant and the Uva Provincial High Court of Civil Appeal delivered its judgment (marked 'C') on 11th March 2010.

5. The Appellants state that immediately upon coming to know of the delivery of the said judgment, the 1D Appellant, the son of the deceased original Defendant, had by way of a motion dated 20th April 2010 (marked 'D') brought to the notice of the Uva Provincial High Court of Civil Appeal that the said judgment has been delivered after the death of the original Defendant and moved that he be substituted in the room of the deceased Defendant. The Plaintiff states that the 1D

Appellant did not seek a re-hearing of the case or a re-pronouncement of the judgment but simply sought to have himself substituted in the room of the deceased Defendant.

6. When the motion referred to was supported before the Uva Provincial High Court of Civil Appeal, the court directed the 1D Appellant to submit written submissions. Thereafter, by order dated 11th May 2010 the High Court refused the 1D Appellant's application on the ground that according to the journal entry dated 11th March 2010, the deceased original Defendant or someone on his behalf was present and that the Registered Attorney-at-Law has represented and taken notice on behalf of the Deceased Defendant.

7. Thereafter, an application was preferred to the Court of Appeal by the 1D Appellant to revise the aforesaid order of the High Court of Civil Appeal. The Plaintiff states that instead of filing an appeal to the Supreme Court challenging the original judgment of the Civil Appellate High Court, and subsequent order dated 11th March 2010 relating to substitution, the Appellant sought to set aside both the judgment and the order by a revision application to the Court of Appeal.

8. The Appellants state that they withdrew the said application (before the Court of Appeal) subsequently, as it was the duty of the Plaintiff to take the necessary steps to substitute the proper person in the room of the deceased original Defendant. The Plaintiff, however, maintains in the written submissions that the Plaintiff took up a preliminary objection to the application on the grounds that as per the provisions of the Civil Procedure Code and the High Court of the Provinces (Special Provisions) Act No. 54 of 2006, the Court of Appeal does not have the jurisdiction to hear and determine the appeal. The Plaintiff states that it was due to the said preliminary objection, the counsel for the Appellants had withdrawn the said appeal.

9. On 30th June 2011, the Plaintiff made an application to the District Court of Badulla under section 341 of the Civil Procedure Code to substitute the Appellants

in the room of the deceased original Defendant. The Appellants state that they were purportedly substituted in the room of the deceased original Defendant for the purpose of executing the decree and thereafter the Plaintiff filed a Petition dated 30th September 2011 to execute the decree.

10. The Learned District Judge directed those notices be issued on the Petitioners (the present Appellants) on 06th January 2012, on which date the Appellants filed statement of objections to the Plaintiff's application on the basis that since the judgment of the Uva Provincial High Court of Civil Appeal was delivered after the death of the deceased Defendant, there is no valid judgment in favour of the Plaintiff. The Learned District Judge had made an order on the same day, rejecting the objection of the Appellants and ordered the execution of the writ.

11. To have the said order of the District Judge referred to above set aside, the Appellants filed an application for leave to appeal in the High Court of Civil Appeal. The application was supported on 12th July 2012. After hearing submissions from both parties, the Learned High Court Judge, by order dated 06th September 2012, dismissed the application.

12. Being aggrieved by the said dismissal, the Appellants preferred two Leave to Appeal applications to this court and were granted Leave to Appeal. The Leave to Appeal application numbered SC HC CA LA No. 420/2012 was concerned with the application UVA/HCCA/BDL/LA/03/2012 while the Leave to Appeal application SC HC CA LA No. 421/2012, was concerned with the revision application UVA/HCCA/BDL/REV/04/2012. Leave to Appeal was granted for SC HC CA LA No. 420/2012 as SC Appeal 45/2013 and for SC HC CA LA No. 421/2012 as SC Appeal 44/2013. In addition, interim relief was granted to the Appellant as per prayer (g) of the Petition staying the execution of the decree until the final determination of this application. SC Appeal 44/2013 and SC Appeal 45/2013 i.e. the present matter, were supported together. The parties having agreed to abide by a single judgement, the decision in the present matter should be considered as concluding SC Appeal 44/2013 as well.

13. The questions of law on which Leave to Appeal was granted are stated in paragraph 19 of the petition as follows;

Paragraph 19

i. *Whether the Learned High Court Judges have erred in law by failing to consider the fact that the judgement dated 11. 03. 2010 of the Uva Provincial High Court of Civil Appeal of Badulla has no effect in law and is a nullity as the same has been delivered after the death of the original Defendant before the steps being taken to substitute the heirs?*

ii. *Whether the Learned High Court Judges have erred in law by failing to consider the fact that the District Court has no jurisdiction to execute a decree in which the judgment was delivered after a death of a party and in the absence of a substitution, it is of no consequence that the proceedings had been formally conducted for are* coram non judice*?*

iii. *Whether the Learned High Court Judges have erred in law by failing to consider the fact that the judgment entered against the dead party is void and a nullity?*

iv. *Whether the Learned High Court Judges have erred in law by failing to consider the fact that the proceedings being void, there is no judgment and a decree to be executed under section 341 of the Civil Procedure Code?*

v. *Whether the Learned High Court Judges have erred in law by failing to consider the fact that due to the failure on the part of the Respondent to substitute the Defendant at the correct stage the appellants have been deprived of their statutory right to prefer an appeal against the judgment of the appeal bearing No. UVA/HCCA/BDL/18/2001 (F)?*

vi. *Whether the Learned High Court Judges misconceived in law in holding that the application of the Appellants is* res judicata*?*

14. Upon considering the questions of law referred to in the preceding paragraph, it appears that the issues raised in the said questions of law are intrinsically interwoven and the crux of the matter is contained in the questions no. (i) and (iii) of paragraph 19. That is, *whether a judgment entered against a dead party is void and a nullity* and if so, *whether the judgement of the High Court of Civil Appeal has no effect in law and is a nullity.*

15. The death of the original Defendant prior to the delivery of the judgment of the Provincial High Court of Civil Appeal means that there was no (live) defendant before the court. As such the judgment of the Provincial High Court of Civil Appeal is a nullity and is *coram non judice*. In ***Ittepana v. Hemawathie*** 1981 1 SLR 319 at page 483, Justice Sharvananda recognized the 'jurisdiction of persons' as one of the three heads of jurisdiction necessary for a judgment to be valid. His Lordship, as he then was, cited **Black on Judgments** at page 261 to explain the 'jurisdiction of persons'; "*It [the court] cannot act upon persons who are not legally before it, upon one who is not a party to the suit… upon a defendant who has never been notified of the proceedings.*" His Lordship further cited Black to illuminate the effect that the lack of jurisdiction would have on a judgment. "*If the court has no jurisdiction, it is of no consequence that the proceedings had been formally conducted, for they are* coram non judice*. A judgment entered by such court is void and a mere nullity.*"

16. In the present case, at the stage of the first appeal, the original Defendant had passed away after the conclusion of the proceedings, but before the delivery of the judgment. As such the Defendant, being alive upto the point of the judgment being reserved, has been present and represented before the High Court. Although there was no live defendant before the court at the time of the delivery of the judgment, the Defendant having been present and represented before the High Court in the abovementioned manner, the judgment, rather than becoming an outright nullity, became abated. Subsequently, it becomes necessary to effect

substitution and repronounce the judgment, allowing the dissatisfied party to appeal against the judgment if it so wishes and the right to sue survives.

17. The Appellants submit that the death or change of status of a party to an appeal makes the case record defective. To support this contention section 760A of the Civil Procedure Code is cited;

"760A. *Where at any time after the lodging of an appeal in any civil action, proceeding or matter, the record becomes defective by reason of the death or change of status of a party to the appeal, the Court of Appeal may in the manner provided in the rules made by the Supreme Court for that purpose, determine who, in the opinion of the court, is the proper person to be substituted or entered on the record in place of, or in addition to, the party who has died or undergone a change of status, and the name of such person shall thereupon be deemed to be substituted or entered of record as aforesaid.*"

18. I would like to refer to a judgment of the Court of Appeal ***Rannaide v. Priyanka*** CA Appeal No 1015/1993(F) decided on 26.10.2007 (2007 Bar Association Law Reports at page 97) where the effect of section 760A was considered. **Black's Law Dictionary** (8th Edition) was cited to state that an 'absolute nullity' is incurable, and that an 'absolute nullity' could be defined as "*an act that is void because it is against public policy, law or order.*" On that basis the decision of the appellate court was held to be an absolute nullity due to being against law as not effecting a substitution was contrary to section 760A.

19. The Appellants relied on the decision of ***Gamaralalage Karunawathie v. Godayalage Piyasena and Others*** (2011) 1 SLR 171 in support of their arguments. As the facts of the case in ***Gamaralalage Karunawathie*** (*supra*) are somewhat similar to the present case, I wish to refer to the facts of that case before discussing the ratio of ***Gamaralalage Karunawathie*** (*supra*). This was a partition action and during the pendency of the case and prior to the delivery of the judgement by the District Court, the 15th Respondent had died and no steps were taken to substitute the said party. Thereafter, the judgement was challenged before the High Court

of Civil Appeals and while the appeal was pending, the 2nd Respondent had passed away, before the judgement was delivered. Again, no substitution was effected before the delivery of the High Court Judgement. Her Ladyship Shirani Bandaranayke CJ, upon analyzing Section 760A of the Civil Procedure Code, and two decisions of the Indian Supreme Court, which I have referred to below, held *"Accordingly, it is evident that both those judgments are ineffective and therefore each judgment would be rejected as a nullity. For the said reason the judgment of the High Court dated 13.10.2009 and the judgment of the District Court of Kegalle dated 20.05.2005 are both set aside".*

20. In the case of ***Gamaralalage Karunawathie*** (*supra*) Her ladyship observed further that; "*When a party to a case has 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.*"

21. Drawing from the Indian case law the Appellants cited the ***State of Punjab v. Nathu Ram*** (AIR 1962 SC 89) judgment to state that after the death of a party, the proceedings against the party abates. Chief Justice Shirani Bandaranayake in ***Gamaralalage Karunawathie*** (*supra*) cited an analysis of the ***State of Punjab v. Nathu Ram*** provided in ***Swaran Singh Puran Singh and another v. Ramditta Badhwa (dead) and others*** (AIR 1969 Punjab & Haryana 216). Two propositions made therein are relevant to the present case. Firstly, "*On the death of a respondent, an appeal abates only against the deceased, but not against the other surviving respondents.*" which specifies that an appeal abates on the death of the respondent. Secondly, that "*the abatement of an appeal means not only that the decree between the appellant and the deceased respondent has become final, but also as a necessary corollary that the Appellate Court cannot in any way modify that decree directly or indirectly. At that stage, the question arises, as to how and what are the steps that have to be taken in order to cure the defect.*"

22. Explaining the steps to take after the abatement of appeal, Her Ladyship referred to the Indian judgments ***Kanailal Manna and Others v. Bhabataran Santra and Others*** (AIR 1970 Calcutta 99) and ***Achhar Singh and Others v. Smt. Ananti*** (AIR 1971 Punjab & Haryana 477). In both these judgments it was held that where an appeal becomes a nullity due to being passed in ignorance of the death of one of the defendants during the pendency of that appeal (as in the present case, subject to the distinction that in the present case the Defendant had passed away only after the judgment was reserved) and when that appeal had abated totally, the proper course is to set aside the decree and to remand the case to the court where the abatement took place. It was further stated in both cases that if there is an entitlement, it could be kept open for the parties concerned to take steps to get the abatement set aside. On the strength of these judgments, the case was sent back to the District Court for the appellant to take steps for substitution.

23. The ***Gamaralalage Karunawathie*** (*supra*) judgment was later declared *per incuriam* by a five-judge bench of the Supreme Court in ***Bulathsinhala Arachchige Indrani Mallika v. Bulathsinhala Arachchige Siriwardane of Dummalasooriya*** SC Appeal 160/2016 [SC minutes 02.12.2022] as the decision was made without considering the applicable provisions of the Partition Act. In the case of ***Bulathsinhala Arachchige Indrani Mallika*** (*supra*), the court observed; "*The judgment of the Supreme Court is based on a series of Indian authorities which* ***are irrelevant in the teeth of our express statutory provisions.*** (emphasis added)" (at page 26). Although the *ratio* in ***Gamaralalage Karunawathie*** (*supra*) may not be applicable to partition actions in view of the domestic statutory provisions exclusively applicable to such actions, I am of the view, however, that the decision in ***Gamaralalage Karunawathie*** (*supra*) is sound law as far as the instant case is concerned.

24. While the position is such, I would like to consider here the contention of the Plaintiff that the provisions of the High Court of the Provinces (Special Provisions) Act No. 54 of 2006 are applicable to the present matter.

25. The Plaintiff contends that by virtue of section 5 of the High Court of the Provinces (Special Provisions) Act No. 54 of 2006, if a party is dissatisfied with a judgment and/or an order of the Civil Appellate High Court the only forum available to them to challenge the said judgment is the Supreme Court. Section 5 of the High Court of the Provinces (Special Provisions) Act No. 54 of 2006 reads as follows;

"5C. (1) *An appeal shall lie directly to the Supreme Court from any judgment, decree or order pronounced or entered by a High Court established by Article 154P of the Constitution in the exercise of its jurisdiction granted by section 5A of this Act, with leave of the Supreme Court first had and obtained. The leave requested for shall be granted by the Supreme Court, where in its opinion the matter involves a substantial question of law or is a matter fit for review by such Court.*

(2) *The Supreme Court may exercise all or any of the powers granted to it by paragraph (2) of Article 127 of the Constitution, in regard to any appeal made to the Supreme Court under subsection (1) of this section.*"

26. The Appellants cited the *ratio* of the judgment of the Court of Appeal in ***Abeysinghe v. Abeysekera*** (1995) 2 SLR 104 to contend that where the judgment entered is void and a nullity "*the person affected can apply to have the same set aside* ex debito-justitiae *in the exercise of the inherent jurisdiction of the court."* However, this *ratio* has to be considered with ***Abeygunasekara v. Wijesekara*** (2002) 2 SLR page 269 on which the Plaintiff relied. In the latter case the court held that where specific provisions have been made, the court cannot exercise its inherent powers contrary to such specific provisions. "*I am inclined to take the view that inherent power of Court could be invoked only where provisions have not been made, but where provision has been made and are provided in s. 754 (2) CPC inherent power of this Court cannot be invoked; inherent powers cannot be invoked to disregard express statutory provisions.*" (Somawansa, J.)

27. I am of the view that the contention of the Plaintiff- Respondent that by virtue of section 5 of the High Court of the Provinces (Special Provisions) Act the Supreme Court is the exclusive forum available to a party dissatisfied with a judgment and/or order of a Civil Appellate High Court pronounced in the exercise of its jurisdiction granted by section 5A, is correct. Section 5A confers Provincial High courts with "*appellate and revisionary jurisdiction in respect of judgments, decrees and orders delivered and made by any District Court or a Family Court within such Province and the appellate jurisdiction for the correction of all errors in fact or in law, which shall be committed by any such District Court or Family Court, as the case may be*." In light of the specific provisions made in that regard by the High Court of the Provinces (Special Provisions) Act, the inherent jurisdiction of the Court of Appeal cannot be invoked.

28. The present case warrants to be dealt with in view of the effect of the above legal provisions. It is unfortunate that the learned Judges of the High Court of Civil Appeals took an easy way out when they were put on notice that the Defendant-Respondent had already passed away at the point they delivered the judgement. It is rudimentary that in such an eventuality the proceedings become abated until such time substitution is effected. The court had only to direct the parties to substitute the deceased party and re-pronounce the judgement which step, regrettably, the learned judges were not bothered to take. Furthermore, as the High Court had overturned the decision of the District Court, the Defendants were deprived of their legal entitlement of pursuing the remedies that were available to them under the law. This case has taken a long and winding path from one Court to another due to the learned High Court Judges lightly brushing aside the application made before it to have the deceased Defendant substituted.

29. I note with dismay the observation made by the learned judges of the High Court in their order in refusing the application for substitution made by the son of the Defendant in spite of the fact that they were put on notice that the Defendant had passed away. The learned judges stated that "*the Registered Attorney-at-Law has represented and taken notice of the judgement on behalf of the Deceased*

Defendant." It is fundamental that with the demise of a party to a case, the proxy granted to an Attorney loses its force and in effect the Defendant could not have been represented by an 'instructing attorney'. Section 27(2) of the Civil Procedure Code clearly stipulates the circumstances under which an appointment of a registered attorney may lose its force. The said subsection makes it clear that, one such instance would be after an appointment under subsection (1) is filed, the appointment of the registered attorney shall only be in force until 'the client dies'.

30. In order to appreciate the arguments placed before us on behalf of the Plaintiff, for ease of reference I shall restate the sequence of the judgements delivered and orders made by different courts;

(i) Judgement delivered by the High Court of Civil Appeals dated 11th March 2010, in favour of the Plaintiff, overturning the judgment of the District Court.

(ii) Order made by the High Court of Civil Appeals dated 11th May 2010 refusing the application to substitute the deceased defendant.

(iii) Order made by the District Court of Badulla dated 6th January 2012 overruling the objection raised by the substituted-Defendants against executing the decree on the basis that there is no valid judgement.

(iv) Order made by the High Court of Civil Appeals dated 6th September 2012, refusing the leave to appeal application of the substituted-Defendants challenging the order of order of the learned District judge referred to (iii) above.

31. The present application was filed challenging the dismissal of the leave to appeal application made before the Provincial High Court of Civil Appeal Badulla [(iv) above] seeking to have the Bench Order by the District Court of Badulla [(iii) above] ordering the execution of writ following the Provincial High Court of Civil Appeal judgment dated 11th March 2010 [(ii) above]. The Plaintiff-Respondent to the present application contends that the instant application should be confined to reversing the said order dated 06th January 2012, and not extend to reversing the said judgment (dated 11th March 2010).

32. The Plaintiff relied on ***Candappa v. Ponnambalampillai*** (1993) 1 SLR 184 to state that a party cannot be permitted to present in appeal a case different from that presented to the lower court. In ***Candappa*** (*supra*) it was held that "*A party cannot be permitted to present in appeal a case different from that presented in the trial court where matters of fact are involved which were not in issue at the trial such case not being one which raises a pure question of law.*"

33. In the matter before us, I do not think the issue of reversing the judgement of the High Court of Civil Appeals (dated 11th March 2010) would arise, and as such there is no necessity to consider the arguments placed before this court on behalf of the Plaintiff, regarding the said issue.

34. For the reasons set out above, I hold that with the death of the original Defendant, the proceedings became abated and what proceeded thereafter has no legal effect. I hold further that a judgment entered against a dead party after the judgment is reserved but prior to the delivery of the same is abated and as such the judgement of the High Court of Civil Appeal dated 11th March 2011 has no effect in law. Accordingly, I answer the questions of law referred to in subparagraphs (i) and (ii) of paragraph 19 of the Petition referred to above in the affirmative. Accordingly, the appeal is allowed.

35. Upon perusal of the proceedings before the High Court of Civil Appeals, it is clear that the written submissions in connection with the appeal challenging the District Court judgement in DC L/752 had been filed on 28th October 2008 and the matter had been taken up for argument on 23rd July 2009. The arguments had been concluded on the same day and judgement was reserved. Not only the original Defendant had been alive but was also represented before the court. Thus, there is no question about his interest in the appeal being adequately safeguarded.

36. In the circumstances I make the following orders;

(a) The order made by the Uva High Court of Civil Appeals holden in Badulla dated 11.05.2010 in case No. UVA/HCCA/BDL/18/2001(F) refusing the application to effect substitution is hereby set aside.

(b) In the event an application for substitution is filed, the Uva High Court of Civil Appeals is directed to take all steps to effect the substitution after satisfying itself that the original Defendant in the case referred to in paragraph (a) above, in fact had passed away before the pronouncement of the judgement.

(c) After effecting the aforesaid substitution of the original Defendant, the Uva High Court of Civil Appeals is directed to repronounce the judgement of the case referred to in paragraph (a) above by the present judges of the Uva High Court of Civil Appeals.

(d) Order made by the Uva High Court of Civil Appeals dated 06.09.2012 in case No. UVA/HCCA/BDL/LA03/2012 is hereby set aside.

(e) With the re-pronouncement of the judgment as per paragraph (c) above, the learned District Judge of Badulla is free to consider according to law, any fresh application for enforcement of the decree.

JUDGE OF THE SUPREME COURT

Murdu N. B. Fernando PC, J.

I agree.

JUDGE OF THE SUPREME COURT

P. Padman Surasena J.

I agree.

JUDGE OF THE SUPREME COURT