

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

In the matter of an application for substitution in accordance with Rule 38 of the Supreme Court Rules, 1990 in place of the now deceased AswaththalageDoisa the 6th Defendant-Respondent-Respondent.

LasanthaSamarasiriAnandaWickremasinghe
of Kurupetta, Ruwanwella

Intervient-Petitioner

SC.HC CALA 73/2013
WP/HCCA/AV/852/2008(F)
Avisawella DC Case No. 19372/P

Vs.

1. ManikuwalageRosalin
2. RanjithAnandaWickremasinghe (Deceased)
- 2.ADharmasiriAnandaWickremasinghe
OfKurupetta ,Ruwanwella

Plaintiffs-Respondents-Petitioners-Respondents

7. AswaththalageJulis
11. ColalmbageDhanapala
12. GalaudageJelin
13. GalaudageGirigoris
14. GalaudageRosalin.

All of
Kurupetta, Ruwanwella

**7th, 11th, 12th, 13th -14th Defendants-Appellants-
Respondents-Respondents**

1. AmbalanpitiyageBrampi (Deceased)
2. AmbalanpitiyageMarthelis
3. Ambalanpitiyage Simon
4. AmbalanpitiyageSelesthina
5. AmbalanpitiyageEmanis
6. AswaththalageDoisa (Deceased)
8. AmbalanpitiyageLeelawathie
9. AmbalanpitiyagePremawathie
10. AmbalanpitiyageSriyawathie
of
Kurupetta, Ruwanwella

1st to 6th and 8th to 10th Defendants-Respondents
Respondents

1. AmbalanpitiyageWasanthiKalyani
2. AmbalanpitiyageRenukaUdayangani
3. Ambalanpitiyage Padma Irangani
4. AmbalanpitiyageManjulaLalithWijesinghe
5. AmbalanpitiyageThilakPushpakumaraWijesinghe
6. AmbalanpitiyageRanjithWarnakulasiriWijesinghe

All of
Kurupetta, Ruwanwella

Party sought to be substituted in place of the
Deceased 6th Defendant-Respondent-Respondent

Before : Chandra Ekanayake, J .
PriyasathDep, PC. J
PriyanthaJayawardana, PC. J

Counsel : ThyshyWeragoda for the 11th Defendant-Appellant-
Respondent-Petitioner.

GaminiPremathilaka for the 2nd Plaintiff-Respondent-
Petitioner- Respondent.

Sunil Wanigatunga for the intervenient Petitioner.

Argued on : 25.01.2016

Decided on : 01.04.2016

Order

Priyasath Dep, PC. J

In this case 6th Defendant-Respondent-Respondent Aswattalage Doisa alias Doia had passed away whilst the appeal was pending in the High Court. However of consent parties agreed to effect substitution in this court.

The 11th Defendant-Appellant-Respondent-Petitioner (hereinafter sometimes referred to as 'Petitioner') by his Petition dated 7th May 2014 move to substitute parties referred to in the Petition as parties sought to be substituted in place of the deceased. The parties sought to be substituted are the heirs of the deceased 5th Defendant-Respondent-Respondent. They were substituted in place of the 5th Defendant-Respondent-Respondent as substituted 5A – F Defendant-Respondent-Respondents. Petitioner is seeking to substitute them on the basis that they are relatives of the deceased 6th Defendant-Respondent-Respondent.

The death certificate of the deceased 6th Defendant-Respondent-Respondent is marked as 6x1. The said deceased Aswaththalage Doisa was also known as Aswaththalage Doiya. She died intestate and issueless. This was confirmed by the Grama Niladari, Kurupetta, Ruwanwella by his letter dated 03-07-2014 which is marked as 6x2.

The Petitioner pleaded that the Plaintiff in his Pleint disclosed inter alia that the said Aswaththalage Doisa was the daughter of Ambalanpitiyage Yaso. The Petitioner further submitted that in the Judgment of the Provincial High Court of the Western Province (exercising its Civil Appellate Jurisdiction) holden at Avissawella, Ambalanpitiyage Yaso was identified as a co-owner of the land in suit and her rights were left unalloted.

The Petitioner further pleaded that the said mother of the deceased Aswaththalage Doisa, alias Doiya, namely Ambalanpitiyage Yaso had three siblings namely, Ambalanpitiyage Siyadoris, Ambalanpitiyage Diyonis alias Piyoris and Ambalanpitiyage Laisa.

The Petitioner further pleaded that Ambalanpitiyage Siyadoris died intestate leaving behind the 4th Defendant-Respondent-Respondent as his heir.

The Petitioner further pleaded that Ambalanpitiyage Diyonis alias Piyoris died intestate leaving behind the now deceased 5th Defendant-Respondent-Respondent. The Petitioner further submits that the Respondents named herein namely Ambalanpitiyage Wasanthi Kalyani, Ambalanpitiyage Renuka Udayangani, Ambalanpitiyage Pathma Irangani, Ambalanpitiyage Manjula Lalith Wijesinghe, Ambalanpitiyage Thilak Pushpakumara Wijesinghe and Ambalanpitiyage Ranjith Warnakulasiri Wijesinghe are the children of the now deceased 5th Defendant-Respondent-Respondent. Birth certificates are marked as 6x3 (a)-(f). The pedigree submitted by the Intervient Petitioner marked annexed IP 8C which is filed of record in DC Avissawella 472/ Partition confirm the above facts submitted by the Petitioner.

The Petitioner further stated that the learned High Court Judges in their Judgment held that Ambalanpitiyage Laisa was married in diga and she lost her rights to paternal inheritance. As the 6th Defendant-Respondent died unmarried, issueless and intestate, the above named substituted 5A- F Defendant-Respondents-Respondents could be considered as close relatives amongst the living.

Interventient Petitioner Lasantha Samarasiri Ananda Wikremasinghe by his Amended Petition dated 6th May 2015 is seeking to intervene in this action and also to substitute him in place of the deceased 6th Defendant- Respondent-Respondent. He states that he is a grandson of the original owner Ambalanpitiyage Peththa, who was the owner of undivided half share of the property and a relation of the deceased 6th Defendant-Respondent-Respondent. The Interventient Petitioner states that he looked after the deceased 6th Defendant-Respondent-Respondent and even in the death certificate his name was mentioned as a close relative. However according to the pedigree submitted by him his relationship to the deceased 6th Defendant –Respondent-Respondent is a distant relationship. Therefore his application for intervention and substitution is refused.

I am of the view that the substituted 5A-5F Defendant-Respondent-Respondent are fit and proper persons to be substituted in place of the deceased 6th Defendant- Respondent-Respondent.

Therefore the application made by the 11th Defendant-Appellant-Respondent-Petitioner to substitute 5a-5f Defendant-Respondent-Respondent in place of the deceased 6th Defendant-Respondent-Respondent is allowed. They will be cited as Substituted 6A- 6F Defendant-Respondent- Respondents. Amended Caption to be filed within one month.

Judge of the Supreme Court.

Chandra Ekanayake, J.
I agree

Judge of the Supreme Court

Priyantha Jayawardena, P.C. J.
I agree

Judge of the Supreme Court

