

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

Karunawathi Palith Liyanage,
No. 283, Pasyala,
Meerigama.

Petitioner-Petitioner-Appellant

SC APPEAL NO: SC/APPEAL/190/2011

SC LA NO: SC/LA/188/2010

HCCA NO: WP/HCCA/GAMP/REV/14/2008

DC GAMPAHA NO: 28140/L

Vs.

Ratna Lakshmi Jayakodi (*nee*
Yatawara),
“Rajagaha” Balagalla,
Divulapitiya.

Plaintiff-Respondent-Respondent

1. Handunweerage Babynona,
No. 283, Pasyala, Meerigama.
(Deceased)
1A. Palith Liyanage Ariyadasa
(Deceased)
2. Palith Liyanage Ariyadasa,
No. 283, Pasyala, Meerigama.
(Deceased)
2A. Yaspali Liyanage,

2B. Chalinda Palitha Liyanage,
Both of No. 45, Sri Sugathawansa
Mawatha, 2nd Division, Maradana,
Colombo 10.
Defendant-Respondent-
Respondents

Before: Hon. Justice E.A.G.R. Amarasekara
Hon. Justice Kumudini Wickremasinghe
Hon. Justice Mahinda Samayawardhena

Counsel: Manohara De Silva, P.C. with Hirosha Munasinghe for the Petitioner-Petitioner-Appellant.
C.E. De Silva with Thilini Wickremasinghe for the Plaintiff-Respondent-Respondent.

Written Submissions:

By the Petitioner-Petitioner-Appellant on 04.01.2012
By the Plaintiff-Respondent-Respondent on 05.03.2012

Argued on: 30.06.2023

Decided on: 07.03.2024

Samayawardhena, J.

The petitioner-petitioner-appellant (appellant) filed this appeal against the judgment of the High Court of Civil Appeal of Gampaha dated 19.06.2009, whereby the revision application filed by the appellant against the order of the District Court dated 13.09.2007 was dismissed. By that order made after an inquiry, the District Court refused to substitute the appellant in place of the deceased 1st defendant.

The appellant stated in the revision application filed before the High Court that she had duly filed an appeal against the order of the District Court, and that appeal was pending in the same High Court. The appellant filed the revision application primarily to stay the proceedings of the District Court and no other reason was given.

The appellant repeated the said facts even before this Court. Let me reproduce paragraphs 18-20 of the petition dated 17.06.2010 filed by the appellant seeking leave to appeal from this Court.

18. At the inquiry, the petitioner's evidence was led and subsequently the parties tendered their written submissions as directed by Court. Thereafter the learned District Judge of Gampaha delivered order dated 13.09.2007 refusing the application of the petitioner to substitute in place of the original 1st defendant and also to vacate the ex parte judgment already entered.

19. Being aggrieved by the order dated 13.09.2007, the petitioner duly filed an appeal against the same and the said appeal is still pending before the Provincial High Court of the Western Province holden in Gampaha.

20. The petitioner states that as she would suffer grave and irreparable damage if writ is executed and she and her family are evicted from the premises in suit, she filed the above-styled application for revision dated 27.08.2008 in the Provincial High Court of the Western Province holden in Gampaha.

The revision application was filed nearly one year after the impugned order of the District Court. The reason given in the petition for the delay, namely that the appellant was seriously ill, was not accepted by the High Court. It was noted that despite the alleged serious illness, the appellant

had managed to file the appeal within time. The appellant was guilty of laches when she filed the revision application in the High Court.

Even if the appellant filed the revision application without delay, it is not a good practice to entertain revision applications to stay the proceedings in the District Court while the appeal is admittedly pending in the same court. The law provides for execution of writ pending appeal. If the appellant thinks that she is not bound by the decree, she will have to advise herself on what lawful action she should take.

There is no necessity to go into the merits of the matter in this appeal filed against the dismissal of the revision application.

This court had granted leave to appeal mainly on the question whether the High Court failed to consider that there was no proper substitution in the room of the deceased 1st defendant when the case was taken up for *ex parte* trial against the 1st defendant.

I answer that question in the negative because there was no necessity for the High Court to deal with that matter when the appeal was pending.

I affirm the judgment of the High Court on the basis that there was no justification for entertaining the belated revision application filed against the order of the District Court, especially when the appeal, according to the appellant herself, was pending in the same court.

The appeal is accordingly dismissed but without costs.

Judge of the Supreme Court

E.A.G.R. Amarasekara, J.
I agree.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.
I agree.

Judge of the Supreme Court