

1903.  
July 10.

DINGIRI APPUHAMY v. SIYATU.

D. C., Kegalla, 1,426.

*Appeal petition—Form of—Civil Procedure Code, s. 758—“ Plain and concise statement of grounds of objection to the decree.”*

Section 758 of the Civil Procedure Code, which directs that a petition shall contain a plain and concise statement of the grounds of objection to the decree appealed against, necessarily implies that there shall also be a sufficient statement of the facts of the case and of the judgment.

The petition of appeal should not plunge in *medias res* and state only the grounds of objection to the decree.

The proctor who prepares such a petition will not be allowed his costs, and the petition itself may be altogether rejected.

**A** GAINST the order of dismissal of the plaintiff's action plaintiff's proctor filed a petition of appeal, which ran as follows:—

“ The petition of appeal of the above-named plaintiff and appellant sheweth—

“ (1) That the appellant was the purchaser of the land and shares of land mentioned in the plaint for a valuable consideration.

" (2) The deed was sought to be impugned on "the ground of fraud.

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" (3) It was, however, proved at the trial that the vendor to plaintiff was perfectly solvent, and the appellant's testimony that he paid valuable consideration for the deed stands uncontradicted.

" Wherefore the appellant prays that your lordships may be pleased to set aside the judgment of the Court below, and to decree the appellant entitled to judgment as prayed for by him in his plaint, with all costs of suit."

*E. W. Jayawardene* appeared for the appellant.

The Supreme Court set aside the judgment of the Court below, and made the following observations on the form of the petition of appeal.

10th July, 1903. WENDT, J.—

We would wish to call the special attention of the plaintiff's proctor to the petition of appeal filed by him. Section 758 of the Civil Procedure Code directs that a "petition shall contain a plain and concise statement of the grounds of objection to the decree appealed against." That necessarily implies that there shall also be a sufficient statement of the facts of the case and of the judgment to render the grounds of objection intelligible. The present petition plunges *in medias res*, and states the grounds of objection to the decree without even mentioning what the subject-matter of the action was.

We direct that the plaintiff's proctor shall not be entitled to make any charge in respect of preparing the petition of appeal.

If a similar petition is again presented to this Court, we may be obliged to exercise the power given by section 759 and reject it altogether.

LAYARD, C.J.—I agree.

