SEELAWATHIE AND ANOTHER

v.

JAYASINGHE

COURT OF APPEAL.
SENEVIRATNE, J. (PRESIDENT) AND JAMEEL, J.
S. C. 158/77 (F).
D. C. GAMPAHA 17397/P.
APRIL 1 AND 2, 1985.

Party giving notice of appeal and taking steps when he has on record a registered attorney-at-law – Sections 323 (1) and 378 (3) – Administration of Justice Law – Sections 27 (2), 755 (3) and (4) – Civil Procedure Code.

When a party to a case has an attorney-at-law on record, it is the attorney-at-law on record alone and not the party who can lodge an appeal and take steps.

Per Seneviratne, J. (President C/A) :

"It is a recognised principle in court proceedings that when there is an attorney-at-law appointed by a party, such party must take all steps in the case through such attorney-at-law".

Cases referred to :

(1) *Silva v. Cumaratunga (1938) 40 NLR 139.*
(2) *Perera v. Perera and Another [1981] 2 SLR 41.*
(3) *Anthonisz v. Derolis (1903) 6 NLR 161.*
(4) *Emmanuel v. Ratnasingham (1932) 34 NLR 126.*

APPEAL from the District Court of Gampaha – Preliminary objection

N. R. M. Daluwatte, P.C. with *Miss. S. Nandadasa* for 4th and 6th defendant-appellants.

J. W. Subasinghe, P.C. with *Miss. E. M. S Edirisinghe* and *A. A. R. Heiyantuduwa* for plaintiff-respondent.

Cur. adv. vult.

June 14, 1985.

SENEVIRATNE, J. (President C/A)

The plaintiff-respondent filed this action to partition a land called Galabodawatta. The 4th and 6th defendants, who are wife and husband respectively were the contesting defendants. They claimed compensation for improvements and some plantations as revealed in points of contest Nos. 1 and 3. Judgment went against them as regards these points of contest, and the 4th and 6th defendants have filed this appeal. The appeal proceedings have been taken under the now repealed Administration of Justice Law No. 44 of 1978, Chap. 4 : Appeals Procedure.

At the hearing of this appeal learned President's Counsel for the respondent submitted that the notice of appeal dated 10.6.77 has been filed by the 4th and 6th defendant-appellants in person, whereas on this date there was on record a registered attorney Tissa Karunaratne, who represented these parties. He submitted that as such the notice of appeal filed on 10.6.77 was bad in law, and the appeal should be rejected. Learned President's Counsel submitted that section 323 (1) of the Administration of Justice Law did not permit the notice of appeal to be signed by the appellant himself, when he had a registered attorney on record.

Section 323 (1) is as follows :

"Every notice of appeal shall contain the particulars prescribed by rules of Court, shall be signed by the appellant or his registered attorney . . . . . ".

The submission of the learned President's Counsel was that the principles accepted by Court pertaining to a registered attorney appearing for a party do not permit a party to sign the petition of appeal when he had a registered attorney on record, as it would create a situation where both the party and his registered attorney are acting in the same case. There is no direct authority regarding the interpretation of section 323 (1) or like sections in the now repealed Civil Procedure Code Chap. 101, and the present Civil Procedure Code Chap. 101 as amended in 1977 and later.

The repealed Civil Procedure Code Chap. 101, section 755 laid down that "all petitions of appeal shall be drawn and signed by some advocate or proctor . . . . . ", and the proviso provided the manner in which a party in person can file a petition of appeal. This

Code has no like section as section 323 (1) of the Administration of Justice Law. The present Civil Procedure Code has like sections. Section 755 (4) provides as follows :

"Every notice of appeal . . . . . shall be signed by the appellant or his registered attorney".

As regards the petition of appeal the present Civil Procedure Code provides in section 755 (3) as follows :

"Every appellant shall . . . . . present to the Original Court a petition of appeal . . . . . which shall be signed by the appellant or his registered attorney".

Thus, the present Code has provisions similar to section 323 (1) of the Administration of Justice Law.

As stated earlier the submission of the learned President's Counsel for the respondent is that even under a provision like this, an appellant cannot personally sign and file a petition of appeal if he has a registered attorney on the record, but if a party does not have a registered attorney, such party can file a petition of appeal signed by him.

Learned Counsel for the appellant submitted that the plain meaning of these phrases is quite clear, particularly in view of the use of the word "or"; on the plain meaning and understanding of the section either the appellant or his registered attorney can file the petition of appeal. Learned Counsel for the appellant goes further and submits that the appellant can sign and file a petition of appeal even though he has a registered attorney in view of the provision – section 323 (1) of the Administration of Justice Law, and as such the notice of appeal was a valid one and should be accepted.

There is an abundance of authority, I should say from time immemorial (1881) up to day, which authorities have been referred to by learned President's Counsel for the respondent which set out the principle that two attorneys (at the time these cases were decided two proctors) cannot act for a party. This principle has been reiterated in the case *Silva v. Cumaratunga* (1). In this case the petition of appeal was not signed by the proctor who was the proctor on the record on the day the appeal was filed, on November 12th 1937. The facts

show that the proctor on record earlier had revoked his proxy on 15th November, 1937, so that at the time the petition of appeal was filed the said proctor was the proctor on record. As the petition of appeal was not signed by the proctor on record on 12.11.37, the date on which the appeal was filed, the Supreme Court rejected the petition of appeal. Maartensz, J. summed up the principle decided in the previous cases as follows :

> "The ratio decidendi in old cases, with which I respectfully agree, was that this Court cannot recognise two proctors appearing for the same party in the same cause".

The learned President's Counsel for the respondent relying on the principle set out above submitted that in the same manner a party and his attorney-at-law on record cannot appear at the same time. The President's Counsel for the appellant submitted that to introduce after the words "shall be signed by the appellant", the words 'who has no attorney-at-law on record' would be contrary to the plain understanding of the section.

I am of the view that section 323 (1) and the like sections in the present Code should be interpreted *firstly* in relation to the principles set out by the long series of authorities, and *secondly* in a manner not to cause disorder in Court proceedings. Permitting either the appellant or the attorney-at-law to sign the petition of appeal would mean that two parties are acting at the same time in the course of the proceedings of a case. Further, permitting such a practice would lead to disorder and confusion in Court proceedings. The words "shall be signed by the appellant or his registered attorney" should be understood and interpreted to mean that the petition of appeal can be signed by the appellant when he has no registered attorney on record. Under the Administration of Justice Law such a situation would have arisen under section 378 (3) of the Administration of Justice (Amendment) Law No. 25 of 1975, if any one of the instances set out in section 378 (3) (*c*) arose between the day of the judgment and the last day of the lodging of an appeal. In the present Code of Civil Procedure section 27 (2) is the like section.

I must now advert to another matter, which is shown in the record. In any event section 323 (1) is limited to the appellant signing the petition of appeal. But in this instance, 4th and 6th defendant-appellants have not only signed the petition of appeal but

they have taken further steps. Judgment was delivered on 6.5.77 and on that day Tissa Karunaratne, their registered Attorney-at-law has been present in Court and taken notice of the judgment. (J. E. 44 of 6.5.77). On 10.6.77 – J. E. 45 –the 4th and 6th defendant-appellants have filed the notice of appeal signed by them and taken further steps, i.e. deposited security Rs. 150 and made the initial deposit for the briefs and moved that the record be forwarded to the Supreme Court. According to the same journal entry the Court has issued notice on the 4th and 6th appellants under section 324 of the Administration of Justice Law to appear on 10.8.77. The appellants have appeared on that notice on 10.8.77, and on journal entry 48 they had undertaken to deposit the required security within one week. On 17.10.77 – J. E. 45 – the appellants have deposited the security and the order *"is forward record to the Supreme Court."* Thus, it is seen that after the judgment was delivered and when the registered attorney-at-law was on record the appellants have in person taken further steps. The appellants were not entitled to take these steps and it appears that the Court itself has not realised that the appellants were taking steps in the case, when there was a registered attorney on record

When a party to a case has an attorney-at-law on record, it is the attorney-at-law on record alone, who must take steps, and also whom the Court permits to take steps. It is a recognised principle in Court proceedings that when there is an attorney-at-law appointed by a party, such party must take all steps in the case through such attorney-at-law. Further, the principle established in a court is that if a party is represented by an attorney-at-law such a party himself is not permitted to address Court. All the submissions of the party must be made through the Attorney-at-law who represents such a party.

In course of the argument reference was made by both counsel to the case of *Perera v. Perera and Another* (2), Judgment of Soza, J. In this case one of the objections taken to the petition of appeal was that it had been perfected by an attorney who was not the registered attorney. Soza, J. held that so long as there was a proxy on record it was only the registered attorney who had the authority to sign the petition of appeal Soza, J. has stated as follows :

> "It is only the registered attorney who has the authority, can sign it so long as his proxy is there on the record The appellant himself can also sign it, but no one else"

Section 755 (3) states that the petition of appeal "shall be signed by the appellant or his registered attorney". The facts in this case were that the appellant had a registered attorney, but the petition of appeal was not signed by that attorney, but was signed by another attorney, who was acting along with the registered attorney. Soza, J. held that the latter attorney had no authority to sign the petition of appeal. It is in that context that Soza, J. has stated as above – "the appellant himself can also sign it, but no one else". In this case Soza, J. did not consider and rule on the point as to whether when there was a registered attorney on record the appellant himself can sign and file the petition of appeal. As such, this case is no authority for the proposition made by learned Counsel for the respondent that the petition of appeal signed by the 4th and 6th defendant-appellants was a valid one even though they had a registered attorney on record.

I hold that the objection taken by the learned President's Counsel for the respondent to the constitution of this appeal is a valid objection. The objection is valid on the plain interpretation of the section and also in the light of the principles set out by the Court from time immemorial.

For these reasons the notice of appeal filed on 10.6.77 is rejected and all other further steps taken by the 4th and 6th defendants in person to perfect the appeal are held to be invalid. For these reasons the appeal is dismissed with costs.

In the cases referred to above, the Supreme Court while dismissing an appeal on the grounds set out above, has considered what relief should be given to such a party. In the case of *Anthonisz v. Derolis* (3) the Court rejected the petition of appeal, but at the same time gave the party the relief to move the Supreme Court in revision if he so desired. In the case of *Emmanuel v. Ratnasingham* (4) Court rejected the petition of appeal, but at the same time reserved the right to the appellant to move in revision if so advised. In this instance there has been no application for such relief in the event of the Court upholding the objection raised by learned President's Counsel for the respondents. Further, I have read the proceedings in this case, and the merits of the case of the 4th and 6th appellants also do not entitle them to such relief

JAMEEL, J. – I agree.

Preliminary objection upheld.
Appeal rejected.