

**IN RE. RULE AGAINST ATTORNEY-AT-LAW**

SUPREME COURT

AMERASINGHE, J.,

ANANDACOOMARASWAMY, J.,

BANDARANAYAKE, J.

S.C. RULE NO. 3/94D

FEBRUARY 06, 07, 28, JUNE 02, 03, 1997

JULY 31ST, 1997, MARCH 27TH, MAY 20, 21, 22, 1998.

*Rule against Attorney-at-Law – Fraudulently misleading and deceiving court – Procedure – After institution of action upto ejectment – Duties/Responsibility of court, Attorney-at-Law – Judicature Act – S. 42.*

The Complainant alleged that the Attorney-at-Law on behalf of one W sought declaration of title in respect of land 'X', thereafter the plaint was amended twice and the 2nd amended plaint (unstamped) contained two schedules, one referred to land X and the other to a new land, the complainant further alleged that the 2nd amended plaint was not served on him. The judgment which was entered *ex parte* was based on the 2nd amended plaint.

It was the position of the complainant that the Attorney-at-Law fraudulently misled and deceived the District Judge and obtained a Writ of Ejectment against him from his land which was not the subject matter of the original action, it was further alleged that ejectment was obtained on the basis of the 2nd amended plaint.

**Held:**

1. The former District Judge in his evidence admitted that, the judgment was based on the 2nd amended plaint, with two schedules, which was tendered in open court, and prior to signing the decree he had perused it.
2. He had emphatically and without hesitation or reservation, stated that he was neither misled nor deceived by anyone and that he entered the decree based on the 2nd amended plaint, although the attorney-at-law drafted the decree no blame could be attached to him, and that he took full responsibility to what had happened.
3. There is no evidence to show that the then District Judge had any intention or motive to eject the defendant or to assist the plaintiff, nor was there any evidence to show that there was any link between the attorney-at-law and the then District Judge.

In the matter of a Rule in terms of s. 42 (2) of the Judicature Act.

*Kolitha Dharmawardane, DSG, with Shavindra Fernando SSC, and Nerin Pulle SC for Attorney-General.*

*Rohan Sahabandu with Athula Perera for BASL*

*Sanath Jayatileke with Upali Jayatileke for the respondent Attorney-at-Law.*

*Cur. adv. vult.*

June 25, 1998

### **SHIRANI A. BANDARANAYAKE, J.**

The complainant, P. B. Siyathu of Polonnaruwa, alleged that Priyantha Samarasinghe, Attorney-at-Law filed DC, Polonnaruwa case No. 5118 on 27.08.1990 on behalf of W. A. Weerawardena seeking a declaration of title against P. B. Siyathu, in respect of a land which is described in the schedule to the said plaint. Thereafter on 20.02.1991 Priyantha Samarasinghe filed an amended plaint in the same case containing the same schedule as in the first plaint filed on 27.08.1990 seeking a declaration of title and an order preventing the defendant from obstructing the possession of the plaintiff. Subsequently, on 10.07.1991, in the same case, Priyantha Samarasinghe filed two amended plaints. One amended plaint was stamped and bore the seal of the court with one schedule describing the same land as that described in the original plaint dated 27.08.1990. The second amended plaint dated 10.07.1991 was unstamped and did not bear the seal of the court. The second amended plaint contained two schedules, one of which related to another land in addition to the land described in the two plaints earlier referred to.

Siyathu, the complainant alleged that Priyantha Samarasinghe, Attorney-at-Law for the plaintiff in DC, Polonnaruwa case No. 5118, fraudulently misled and deceived the District Judge of Polonnaruwa and obtained a writ of ejectment against the said Siyathu from his land, which was not the subject matter of the original action filed in DC, Polonnaruwa case No. 5118. It is alleged that ejectment was obtained on the basis of the second amended plaint which was filed on 10.07.1991.

The observations of Priyantha Samarasinghe were called, for and he failed to satisfactorily explain his conduct to this court. Therefore on 13.09.1994 a Rule was issued directing Priyantha Samarasinghe to show cause why he should not be suspended from practice or be removed from the Office of Attorney-at-Law of the Supreme Court for acts of deceit and/or malpractice he had committed in terms of section 42 (2) of the Judicature Act.

The complainant, P. B. Siyathu and his Attorney-at-Law, M. M. Aponsu were called to give evidence in support of the Rule. The then District Judge, Polonnaruwa, Buddhadasa Vitharige, and the plaintiff in DC, Polonnaruwa case No. 5118, M. A Weerawardena gave evidence for the respondent.

The Rule issued on the respondent stated as follows:

1. The respondent on behalf of M. A. Weerawardena, the plaintiff in case No. 5118 of DC, Polonnaruwa, filed plaint as Attorney-at-Law on 27.08.1990 seeking a declaration of title against P. B. Siyathu in respect of a land which was described in the schedule to the said plaint;
2. On 20.02.1991, the respondent filed an amended plaint in the same case (No. 5118), containing the same schedule describing the same land as in the schedule to the first plaint filed on 27.08.1990 seeking a declaration of title and preventing the defendant from obstructing the possession of the plaintiff;
3. On 10.07.1991, in the same case (No. 5118), the respondent filed two amended plaints, one bearing stamps and the court frank with one schedule describing the same land as described in the plaint dated 27.08.1990 and the amended plaint dated 20.02.1991, and one which does not bear stamps or court frank containing two schedules with an extra land included in addition to the schedule referred to in the other plaints, referred to above and thereby the respondent has fraudulently misled and deceived court to issue a writ of ejectment against the said P. B. Siyathu, the defendant in DC, Polonnaruwa case No. 5118, against property which was not the subject matter of the said action.

According to the submissions made by M. M. Aponsu, the Attorney-at-Law for the respondent in District Court, Polonnaruwa case

No. 5118, the original permit holder for the land in dispute had been one Siriyathi. This was conceded by the plaintiff in case No. 5118. While the plaintiff in case No. 5118 made a claim to this property, the respondent had made an application for substitution on the basis that he was the successor to the original permit holder. When the respondent in case No. 5118 sought substitution, he had been in enjoyment only of the paddy land. An amended plaint was filed on 20.02.1991 (P4) by Priyantha Samarasinghe which included a schedule referring to the paddy land. This had been amended again on 10.07.1991 (P5) and the amendment had one schedule which referred to the paddy land. This amended plaint was stamped and bore the seal of the court. On the same day, viz 10.07.1991, another amended plaint had been filed. This was not stamped and did not bear the seal of the court (P6). However, it contained two schedules: The first schedule referred to the paddy land (P6A) which was in the first amended plaint dated 20.02.1991 (P4); and the second amended plaint dated 10.07.1991 (P5). The second schedule referred to a highland (P6B) with an extent of 4 acres and 2 roods.

The position of M. M. Aponsu was that the first amended plaint (P4) and the stamped amended plaint (P5) not only had one schedule referring to the paddy land but that there was no prayer either for restoration of possession or dispossession. His position was that the amended plaint dated 10.07.1991, which did not bear any stamps or the seal of the court (P6) but had two schedules, contained a prayer for dispossession and restoration of possession. M. M. Aponsu, in his evidence under cross-examination, stated that this document (P6) was never served on him and that this is the document on which his client Siyathu, the complainant in this matter, was ejected from the premises. Aponsu further stated that, although as a practice he always examined the record, he saw P6 only after the judgment had been entered by the District Judge, Polonnaruwa.

According to the record of case No. 5118 of the District Court, Polonnaruwa, Priyantha Samarasinghe had filed the plaint in this case on 12.09.1990. The District Judge had entertained it and had subsequently issued summons returnable on 26.09.1990. The case record and the evidence which was led reveals that the defendant had neither filed his answer nor had he moved for an adjournment. Although the Judge could have fixed this for *ex-parte* trial, since the petition and affidavit were filed, the then District Judge, Mr. Vithanage, had fixed the matter for inquiry. On 31.10.1990 the case was called

for inquiry and as an adjournment was sought by Priyantha Samarasinghe, the inquiry was refixed for 28.11.1990. The matter in question was taken up for inquiry on that day and on 05.12.1990 the then District Judge had stated that his Order would be delivered on 16.01.1991. In his Order the then District Judge, after examining the law and entertaining the plaint, had made the following decisions:

- (a). there were certain defects in the plaint and he therefore directed the plaintiff to file an amended plaint;
- (b). the application made by Aponsu to reject the plaint was disallowed.

The next date given for the purpose of filing the amended plaint was 22.02.1991. The amended first plaint (P4) was filed on that day and the respondent was asked to file his answer on 24.04.1991. On 24.04.1991 the answer was not filed and a further date was given, namely 05.06.1991. On 05.06.1991, as the Attorney-at-Law for the plaintiff was sick, a further date was given by the District Judge. Accordingly, the answer was due on 19.06.1991. On 19.06.1991, the plaintiff, his lawyer, the respondent and his lawyer were present in court. The Journal Entry reads as follows:

“according to the original order ‘for amended plaint’.

A date was given to tender the amended plaint and on 10.07.1991, according to the Journal Entries, it appears that the amended plaint was filed. The then District Judge, Polonnaruwa, Mr. Vithanage, stated in his evidence that, during his tenure at Polonnaruwa, an original plaint was usually filed in the registry. Subsequent answers, amended plaints and replications were either filed in court or in the registry, with a copy issued to the other party. When pleadings were filed in the registry they would be entered in the register, the subject clerk making a minute and sending the record to the registry. When there were amended plaints and answers, the lawyer or his clerk entered them in the register and the subject clerk would enter them in the register and date stamp the record. Thereafter it would be sent to the binder, and finally to the Judge's chamber for Orders. According to Mr. Vithanage, when an amended plaint or any other pleadings were filed in open court, the documents would be minuted and the Mudliyar would send them to the subject clerk. Regarding the amended plaint with two schedules (P6), Mr. Vithanage's evidence was that the document was filed in open court.

Thereafter a date was given for filing the answer. The answer was not tendered on 14.08.1991 and the trial was fixed for 28.08.1991. On the day of the trial all the parties were present and the District Judge had given a date, viz 11.09.1991, for written submissions. Before the trial date, the Attorney-at-Law for respondent, Aponsu, filed his answer in the registry. His written submissions were filed; certain submissions were on the basis that the plaint should be rejected and that his answer should be accepted. The District Judge delivered his judgment on 25.09.1991. Mr. Vithanage conceded that in the first plaint (P2) the plaintiff had asked only for a declaration and that there was no prayer for ejectment. He also conceded that in the amended plaint with two schedules, dated 10.07.1991 (P6), there was a prayer for ejectment.

Mr. Vithanage stated in his evidence that according to the practice during his tenure at the District Court, Polonnaruwa, once judgment was entered, counsel for the plaintiff prepared and tendered the decree. This was done to assist the court and although the court had to draw the decree, the judgment creditor prepared a draft decree and tendered it to the court. The draft was examined by the subject clerk to see whether it was in conformity with the judgment. Mr. Vithanage said that the following were included in his decree:

- (a). the first paragraph recited the events that took place prior to the date of the trial;
- (b). the second paragraph stated that the judgment had been entered for the plaintiff as prayed for;
- (c). in the third paragraph there was a declaratory decree as far as the land in the first schedule was concerned;
- (d). in the fourth paragraph a permanent injunction was issued with regard to the land described in the first schedule, and an order of ejectment in respect of the land described in the second schedule;
- (e). there was an order that the plaintiff be placed in possession and a declaration that the plaintiff had been in undisturbed possession. There was an order of costs.

Mr. Vithange stated that his judgment in case No. 5118 of District Court, Polonnaruwa, was based on the document marked P6: that is, the amended plaint with two schedules filed on 10.07.1991, which he said was tendered in open court. Two months after the judgment was entered, he had entered the decree; prior to signing the decree he had checked it. Mr. Vithange in his evidence emphatically and without hesitation or reservation stated that he was neither misled nor deceived by anyone and that he entered the decree based on P6 according to the documents as the documents were in order. Further, he stated that, although Priyantha Samarasinghe drafted the decree no blame could be attached to him and that he took full personal responsibility for what had happened.

Learned senior state counsel submitted that there was a series of errors committed by the then District Judge at Polonnaruwa, but all those errors were in one direction. In other words, the errors were in favour of the plaintiff in case No. 5118. He further submitted that, taking into consideration the events which took place, it was clear that Priyantha Samarasinghe would have assisted the then District Judge to eject the defendant from his property in case No. 5118. I am not inclined to accept this position. There is not an iota of evidence to show that the then District Judge had any intention or motive to eject the defendant or to assist the plaintiff in this case. Nor was there any evidence to show that there was any link between Priyantha Samarasinghe and the then District Judge, Polonnaruwa. Moreover the charge against Priyantha Samarasinghe is that he had misled and deceived court to issue a writ of ejectment against Siyathu. The evidence led clearly showed that there was nothing to indicate that Priyantha Samarasinghe had either misled or deceived court. Taking into consideration the evidence that was led by the complainant and the respondent, I hold that there was no proof to show that Priyantha Samarasinghe had fraudulently misled and deceived court to issue a writ of ejectment against P. B. Siyathu, the defendant in DC, Polonnaruwa case No. 5118. I hold that the charges against the respondent have not been proved and I make order that the Rule issued against the respondent in these proceedings be discharged.

**AMERASINGHE, J. - I agree.**

**ANANDACOOMARASWAMY, J. - I agree.**

*Rule discharged.*