

CLIFFORD RATWATTE
v.
THILANGA SUMATHIPALA AND OTHERS

COURT OF APPEAL.
EDUSSURIYA, J. (P/CA)
UDALAGAMA, J.
CA/LA 121/99t
D.C. COLOMBO 5305/Spl
1ST SEPTEMBER, 1999.

Affidavit - Christian - Jurat states deponent affirmed - Oaths and Affirmations Ordinance S. 9 - Civil Procedure Code S. 757 (1).

Held :

(i) The deponent states that he is a Christian and makes oath, the jurat clause at the end of the affidavit states that the deponent has affirmed. The affidavit is defective.

Edussuriya J., (P/CA)

"Subsequent explanation cannot be used to correct in any way what is obvious on the face of the affidavit in question and therefore it is not an affidavit which has any legal validity or sanctity and therefore there was no affidavit as required by law filed with the Petition within 14 days, as contemplated in S. 757(1) - C.P.C "it is not a mistake as to formality that can be cured under S. 759(2)."

APPLICATION for Leave to appeal from the order of the District Court of Colombo.

H.L. de Silva PC, with L. C. Senewiratne PC., S.L. Gunasekera and Ronald Perera for Defendant - Petitioners.

Romesh de Silva, PC with Palitha K. Amarasinghe and Harsha Amerasekera for Plaintiff Respondent.

Cur. adv. vult.

September 24, 1999.

EDUSSURIYA, J. (P/CA)

When this application for leave to appeal from the order of the learned District Judge of Colombo came up for support in respect of the interim relief sought by the Petitioners, learned President's Counsel for the Plaintiff-Respondent raised the objection that the "purported affidavit of Franklin Saliya Ahangama filed along with the Petition is not an affidavit in law in view of the fact that, although the deponent ~~o~~ ^oswears by stating that he is a Christian and makes oath, the jurat clause entered by the Justice of the Peace at the end of the affidavit states that the deponent had affirmed and therefore it can not be construed that it was an oath and as such this application cannot be maintained in view of Section 757 (1) of the Civil Procedure Code which requires the petition for leave to appeal to be supported by an affidavit."

Learned President's Counsel for the Petitioners conceded that the affidavit in question is defective and that the jurat clause appears to have been typed in the lawyer's office, but contended firstly that if there be non-compliance then it can be corrected under Section 759 (2) of the Civil Procedure Code, and secondly that it is a defect as to formality and it has not materially prejudiced the Respondent. Learned President's Counsel for the Petitioners also drew the attention of Court to Section 9 of the Oaths and Affirmations Ordinance.

It is my view that Section 9 of the Oaths and Affirmations Ordinance has no relevance in view of the fact that the deponent says he has made oath whereas the Justice of the Peace says that the deponent affirmed and it is not a case where there has been an omission to make any oath, or make any affirmation or the substitution¹¹ of anyone for any other of them has taken place. ~~Now~~ is there a question of any irregularity in the form in which the oath or affirmation was administered.

When one examines the affidavit in question, it is seen that the deponent states that he is a Christian and that he makes an oath (swears) but at the end the Justice of the Peace states in the jurat clause that the deponent affirmed. In addition the Justice of the Peace states that it was "Read over and explained to the deponent and the deponent having understood the contents thereof affirmed thereto in my presence in Colombo on this 19th day of June 1999".

If the contents of the affidavit were read and explained by the Justice of the Peace I cannot fathom how he could have, after having read that the deponent was a Christian and was making oath, at the end in the jurat clause could have stated that the deponent affirmed.

Learned President's Counsel for the Petitioners conceded that "Looking at the document it appears that the jurat was typed in the lawyer's office".

I may add that looking at the document there can be no doubt of that.

Then, how did this contradiction occur?

The Justice of the Peace has signed at the end of the affidavit with a black ink pen. However, the date on the jurat clause has been entered with a black ball point pen. I may also add that the deponent has signed with a blue ball point pen. All this is clear to the naked eye.

In my view the contradiction that has occurred could never have occurred, had the Justice of the Peace (actually) read over and explained to the deponent the contents of the affidavit as he claims he did in the jurat clause or had the deponent (actually) made oath and sworn to the contents of the affidavit in the presence of the Justice of the Peace.

I have also referred earlier to the difference in the ink used by the Justice of the Peace in signing the Affidavit and the ink used in entering the date in the jurat clause.

I therefore hold that the Justice of the Peace did not read and explain to the deponent the contents of the affidavit as he claims he did in the jurat clause, nor did the deponent make oath and swear to the contents of the affidavit in the presence of the Justice of the Peace, but that the Justice of the Peace "blindly" signed an "affidavit" which had been already signed by the deponent in some other place at some other time, without even entering the date.

I may also add that although the deponent has subsequently filed an affidavit stating that he made oath and swore to the correctness of the contents of the affidavit in question there is no affidavit from the Justice of the Peace explaining how the jurat clause reads as "read over and explained" . . . or stating that the deponent made oath. So, the position still remains the same, that is, as the President's Counsel for the Respondent contended, the deponent stating that he made oath whilst the Justice of the Peace contradicts it by stating that the deponent affirmed after it was read over and explained to him.

It is my view that subsequent explanations cannot be used to correct in any way what is obvious on the face of the "affidavit" in question, and therefore it is not an affidavit which has any legal validity and/or sanctity and therefore there was no affidavit as required by law filed with the Petition within the fourteen day period envisaged by Section 757 (1) of the Civil Procedure Code.

Hence, it is not a mistake as to formality that can be cured under Section 759 (2) of the Civil Procedure Code.

In any event, an affidavit filed subsequently, which is outside the fourteen day period contemplated by Section 757 (1) of the Civil Procedure Code, cannot therefore be accepted now.

The application for leave to appeal is therefore rejected with costs fixed at Rs. 10,500/-.

Application refused