

**MANAPERI SOMAWATHIE**  
**v.**  
**BUWANESWARI**

COURT OF APPEAL

A. S. WIJETUNGE, J. and H. W. SENANAYAKE, J.  
C. A. No. 697/82 (F) – D. C. ANURADHAPURA 1044  
NOVEMBER 2, 1990.

*Civil Procedure Code – Registered Attorney – Proxy – Can notice of appeal and petition of appeal be signed by appellant personally when she had registered attorney on record ? – Civil Procedure Code ss. 27 and 28, 754 (3) and (4). 755.*

The notice of appeal and petition of appeal was signed by the appellant herself when she had a registered attorney on record.

**Held :**

(1) When a party gives proxy to an attorney-at-law it remains in force until revoked with leave of Court after written notice to such registered attorney. The proxy so filed is binding on the party until the party dies or until all proceedings in the action are ended and judgment satisfied so far as regards the party.

Once a registered attorney is on record the party could necessarily act only through the registered attorney.

(2) A party appellant who has a registered attorney on record could present only a notice of appeal personally. He can sign the petition also only when there is no registered attorney of his on record at the relevant time.

**Case referred to :**

*Seelawathie v. Jayasinghe 1985 2 Sri LR 266, 270*

OBJECTION to entertainment of appeal from judgment of the District Court of Anuradhapura.

*P. A. D. Samarasekera P. C.* with *Ran Banda Seneviratne* for 1st defendant-appellant.

*S. Mahenthiran* for plaintiff-respondent.

*Cur. adv. vult.*

January 26, 1990.

**H. W. SENANAYAKE, J.**

The plaintiff-respondent instituted this action against 1st defendant-appellant seeking a declaration that he is the legal lessee of premises No. 78B of Jayanthi Mahawatta, Anuradhapura, and to have the first defendant-appellant and her servants and agents ejected from the said premises.

The first defendant-appellant in her answer averred that she had been given possession of the premises in question by the Court of Appeal Order No. 246/80. Therefore she moved that the plaintiff respondent's plaint be rejected.

After trial the learned District Judge gave judgment in favour of the plaintiff-respondent on 25.5.82.

The first defendant-appellant being aggrieved had tendered the notice of appeal on 28.5.82 personally and also filed the petition of Appeal dated 15.7.82 signed by the first defendant-appellant herself in spite of the fact that the first defendant registered attorney's name subsisted in the record.

At the hearing of the Appeal the learned Counsel for the plaintiff-respondent submitted that the notice of appeal and the petition of appeal filed by the defendant-appellant were bad in law and should be rejected as on that date there was a registered attorney holding the defendant-appellant's proxy on record.

In terms of the provisions of section 754 (1) of the Civil Procedure Code any person who shall be dissatisfied with any judgment pronounced by any original court may prefer an appeal to the Court of Appeal against such judgment.

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In terms of the provisions of sections 754 (3) and 754(4) of the Civil Procedure Code, every Appeal to the Court of Appeal shall be lodged by giving notice of appeal to the original Court and such notice of appeal shall be presented to the Court of First Instance for this purpose by the party appellant or his registered attorney.

Thereafter in terms of section 755(3) of the Civil Procedure Code every appellant shall within 60 days present to the original Court a petition of Appeal which shall be signed by the appellant or his registered - Attorney.

A superficial reading of the section may give one the impression that the notice of appeal could be presented and signed by the party - appellant or his registered Attorney. But a correct analysis of these sections shows that a party appellant could present only a notice of appeal personally but he can sign the petition of appeal only when there is no registered attorney of his on record at the relevant time.

Registered attorney is defined in section 5 of the Civil Procedure Code, to mean an attorney - at - law appointed by a party or his recognized agent to act on his behalf.

A consideration of section 27 (1) shows that the appointment of a registered attorney to make any appearance or application or to do any act as aforesaid shall be in writing signed by the client and shall be filed in Court; when filed it shall be in force until revoked with leave of the Court, after notice to the registered attorney by a writing signed by the party and filed in Court. The proxy so filed is binding on the party until the party dies or until all proceedings in the action are ended and judgment satisfied so far as regards the party.

The inactive position of the party is finally demonstrated by section 28 of the Code which states that if any such registered attorney dies or becomes incapable to act any time before judgment no further proceedings shall be taken in the action against the party for whom he appeared until 30 days after notice to appoint another registered attorney has been given to the party either personally or in such other manner as the Court directs. It is therefore clear from these provisions of the Code, that once a registered attorney is on record the party could necessarily act only through the registered attorney. Any other

interpretation would cause confusion in the original Courts and in the administration of justice. If a party is permitted to file legal documents and motions when his registered attorney was on record, this would disrupt the smooth working in Courts. I am of the view that it was not the intention of the legislature to allow the party to personally present the notice of appeal and sign the petition of appeal when the registered attorney was on record. It is my considered view that a party appellant is entitled to present and sign the relevant notice and petition of appeal respectively, only when there is no registered attorney on record at the time tendering the notice of appeal and petition of appeal.

I respectfully agree with Justice Seneviratna, when he stated in *Seelawathie V. Jayasinghe* (1) page 270 "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. It is a recognized 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 Courts is that if a party is represented by an attorney-at-law such a party is not permitted to address court".

I therefore uphold the objections and accordingly notice of appeal dated 28. 5. 82 and the petition of appeal dated 15. 7. 82 are rejected and the appeal is dismissed with costs.

**A. S. WIJETUNGA, J.** - I agree.

*Objections upheld.*

*Appeal dismissed.*

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