

CHANDRASIRI
v.
ABEYWICKREMA

COURT OF APPEAL
ISMAIL, J., (P/CA)
TILAKAWARDENA, J.
C.A.L.A. 168/97
D.C. MATUGAMA NO. 1517/L
OCTOBER 20TH, 1998.

Civil Procedure Code S. 357 (1) – Affidavit supporting Petition – Can it be subscribed to by the Registered Attorney.

Held:

In terms of S. 757 (1) CPC the affidavit which is required to support the petition made by a party for application for leave to appeal cannot be subscribed to by the registered attorney of such party.

APPLICATION for Leave to Appeal.

Sanath Jayatileka for defendant-appellant.

E. S. Edirisinghe for plaintiff-respondent.

Cur. adv. vult.

November 16, 1998

ISMAIL, J. (P/CA)

A preliminary objection to the application of the defendant-appellant for leave to appeal has been taken on the ground that it has been supported by the affidavit of the registered attorney instead of the applicant himself.

The defendant-appellant is K. G. Sanath Chandrasiri and his registered attorney is Mr. C. L. Weerakkody. The petition dated 5th

September '97 has been prepared on behalf of the defendant-appellant and signed by his attorney-at-law Mr. C. L. Weerakkody.

The defendant-appellant sought the following relief:-

1. "that the order disallowing issues 7 and 8 be set aside and the said issues be allowed or issue 6B be deemed to be adequate per se.
2. that all questions overruled on 22.8.97 be deemed to be relevant.
3. that the defendant be permitted to be lead his witnesses.
4. that fresh trial be ordered before another judge and such other relief as to your Lordships Court shall seem meet".

The affidavit annexed to the petition in support of the averments in the petition is that of Mr. C. L. Weerakkody. The relief prayed for in the petition has also been claimed as above in the affidavit. The affidavit is thereby rendered defective.

While the appointment of Mr. Weerakkody has also been annexed, it appears that on the motion dated 5th September '97 filed by the counsel for the petitioner, it has erroneously been stated that it is his appointment.

At the inquiry into the preliminary objection, learned counsel for the defendant-appellant submitted that while section 757 (1) of the Civil Procedure Code specifies that the petition shall be duly signed by the party aggrieved or his registered attorney, it does not specify as to who should support the petition by an affidavit.

Learned counsel has tendered written submissions and has referred to several authorities dealing with affidavits. None of the authorities cited support the position that it would be permissible for the averments in a petition of a petitioner to be supported by an affidavit of his registered attorney.

I am of the view of that in terms of section 757 (1) of the Civil Procedure Code the affidavit which is required to support the petition made by a party for application for leave to appeal cannot be subscribed to by the registered attorney of such party. The preliminary objection is therefore entitled to be upheld.

The application is rejected and it stands dismissed with costs.

TILAKAWARDANE, J. – I agree.

Application dismissed.
