

ANTHONISZ v. DEROLIS.

1903.  
February 27.

D. C., Tangalla, 575.

*Appeal petition—Duty of secretary of court as to drawing such petition—Civil Procedure Code, s. 755—“ Grounds of appeal taken down in writing.”*

The power given by section 755 of the Civil Procedure Code to the Secretary of the District Court to concisely take down in writing, from the mouth of the party desiring to appeal, the grounds of the appeal does not entitle the secretary to draw the petition of appeal.

A petition so drawn was rejected and the appeal dismissed, with liberty given to the defendant, in the circumstances of the case, to move the Supreme Court in revision.

THE plaintiff claimed Rs. 318 for work and labour done as commissioner appointed by the Court in two partition cases between the parties hereto who had been decreed to pay the costs of the suit *pro rata*. The defendant filed answer in person contesting the right of the plaintiff to sue him in this suit, instead of recovering the fees due by summarily proceeding in the partition cases. Defendant also pleaded that he had paid his share of the fees to the plaintiff.

On the trial day the District Judge recorded as follows:—  
“ There is no evidence to be taken. There appears to be sufficient money already deposited in the two partition cases by the plaintiff as his share. It seems to me that the surveyor has the first claim on the amount deposited.” The District Judge then entered judgment for the full amount of the plaintiff’s claim, and ordered the defendant to pay the costs of this case.

The defendant filed his petition of appeal signed by himself, and at the foot of the petition appeared the words “ Drawn by J. R. Moldrech, Secretary.”

*Schneider*, for the appellants.

*Bawa*, for respondent.

27th February, 1903. LAYARD, C.J.—

This petition of appeal purports to be drawn by J. R. Moldrech, “ Secretary.” I presume that means the Secretary of the District Court of Tangalla. Mr. Moldrech has no right to draw a petition of appeal for any suitor in the District Court of Tangalla. It is true that section 755 of the Civil Procedure Code allows any party desirous to appeal to state *vivâ voce* his wish to appeal, together with the particular grounds of such appeal, and the secretary is

1903. authorized by that section to concisely take down in writing from  
February 27. the mouth of the party the grounds given by the party in the  
LAYARD, C.J. form of a petition of appeal. In such case we should be bound  
to accept the petition of appeal.

The Secretary of the Court in this case states that he drew up the petition of appeal. On reading through the written paragraphs of the petition of appeal it is perfectly clear that the secretary has done more than record the grounds which appellant wished to urge before this Court.

The defendant's appeal must be dismissed. But as he may have been led into this error through the Secretary of the District Court, we reserve to the appellant the right by counsel to move for a revision of the order of the District Court should his counsel think that that order is one that ought to be revised by this Court.

MONCREIFF, J.—

I am of the same opinion. I think that it was not the intention of the Legislature to authorize the Secretary of a District Court to draw petitions of appeal. The view which the Court has taken in this case does not conflict with the case *Vengadasalem Chetty v. Rawter* reported in 3 C. L. R. 39, in which Lawrie and Withers, J.J. (Browne, J., dissenting) held that the provisions of the Code had been complied with in the spirit. There the appellants appeared before the secretary and submitted to him the grounds of their appeal in writing (being a draft of a petition of appeal settled by Mr. Advocate Wendt), which were embodied in the form of a petition of appeal and signed by the appellants before the Secretary. Possibly, that decision is not quite in keeping with the letter of section 755 of the Civil Procedure Code, but the majority of the court thought it was in keeping with the spirit of it, and I do not think it is inconsistent with the view we have taken in this case.

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