

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

Rex Parinda Wanagasekara,
Thippalawatta,
Akurassa.

Plaintiff

Vs.

C.A. No. 1246 / 96 F
D.C. Matara No. 7546 / L

1. Devundara Liyanage Chandrasena de Silva,
Walgama, Matara.
2. Sena Ghardiya Punchihewa,
“sagara”
Thotamuna, Matara.
3. Polwatta Gallage Upali,
Pamburana, Matara.
4. Punchihewage Somalatha de Silva,
Kalidasa Road, Matara.
5. Thal pawela Vidane Kankanamge
Dayaratne,
Pamburana, Matara.

Defendant

And Now Between

Rex Parinda Wanagasekara,
Thippalawatta, Akurassa.

Plaintiff-Appellant

Vs

1. Devundara Liyanage Chandrasena de Silva,
Walgama, Matara.
2. Sena Ghardiya Punchihewa,
“sagara”
Thotamuna, Matara.

3. Polwatta Gallage Upali,
Pamburana, Matara.
4. Punchihewage Somalatha de Silva,
Kalidasa Road, Matara.
5. Thal pawela Vidane Kankanamge
Dayaratne,
Pamburana, Matara.

Defendant - Respondents

BEFORE : UPALY ABEYRATHNE J.
COUNSEL : Appellant - absent and unrepresented
 Respondents absent and unrepresented
DECIDED ON : 30.09 2011

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted an action against the 1st, 2nd, 3rd, 4th and 5th Defendant Respondents (hereinafter referred to as the Respondents) in the District Court of Matara seeking for a judgement that the land described in the schedule to the plaint is held by the Respondents on trust in favour of the Appellant. The Respondents filed their answers denying the Appellant's claim and prayed for a dismissal of the Appellant's action. The case proceeded to trial upon 35 issues.

Thereafter on 12.01.1996 whilst the evidence in chief of the Appellant was in progress both parties after a discussion, had informed court that there was a likelihood of a settlement in the case and accordingly the case had been put off for the settlement or trial. On 29.03.1996 since the said settlement was not forthcoming the learned District Judge had proceeded to hear the evidence. At that

stage the Appellant's Attorney on record had made an application to amend the plaint. The learned Counsels for the Defendant Respondents had objected to this application and moved for an order for pre-payment of costs in a sum of Rs.1000/-. The Appellant's Attorney on record had consented to pay a sum of Rs. 1000/- for Counsels and Rs. 500/- for others. Accordingly the learned trial judge had allowed the application for the pre-payment of cost and postponed the trial on the condition that if the costs of the day were not pre-paid before 10.00 a.m. on 16.08.1996 the Appellant's action should be dismissed with costs. On 16.08.1996 when the case was taken up for trial, the Appellant's Attorney on record had informed court that the Appellant was not ready to pay the cost as ordered by the court. Thereafter the learned trial judge has proceeded to dismiss the action of the Appellant.

I have carefully considered the proceedings of the relevant dates. Both parties had been properly represented by their Attorneys at Law. The Appellant's Attorney on record had consented to the pre-payment of costs. Hence the Appellant had no option but to make sure the pre-payment of costs before the next trial date. The Appellant had failed to comply with the said order made by the court.

The Appellant in his petition of appeal has taken up the position that the order for pre-payment of costs had been made without obtaining the consent of the Appellant. I have narrated hereinbefore the sequence of the proceedings of the day in question. It crystallizes the fact that the Appellant's attorney on record has given his express consent to the pre-payment of costs. It is well recognized principle in our 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. (Vide: Seelawathie Vs. Jayasinghe [1985] 2 SLR 266)

In the case of Mohideen Ali Vs. Hassim 62 NLR 457, On 30th April 1959 Counsel who appeared for the defendant obtained postponement on agreeing that if the costs of the day were not pre-paid to the other side before 10 a.m. on the next trial date judgment should be entered for the plaintiff as prayed for. Although the proxy given by the defendant to his Proctor did not give the Proctor authority to consent to judgment in terms of Form No.7 of the Schedule to the Civil Procedure Code, the client, who was in Court, raised no objection when the undertaking and consent to judgment were given by Counsel. Nor did the Proctor take any steps to repudiate the undertaking. On the next trial date, evidence was led for the plaintiff that costs were not paid as agreed. The evidence was not contradicted by the defendant. Thereupon judgment was entered in favour of the plaintiff.

It was contended in appeal that the authority of the Proctor of a party to a suit as limited by the terms of the instrument of appointment and that as section 24 of the Civil Procedure Code provided that an Advocate instructed by a Proctor represents the Proctor in Court the Advocate's authority could never be greater than that given to the Proctor.

It was held that “despite the restricted terms of the proxy, the plaintiff was entitled to judgment in his favour in terms of the consent given by the defendant's Counsel. An extension of the written authority contained in the proxy could be given orally or be inferred from the client's conduct.”

In the said circumstances I see no reason to interfere with the order of the learned District Judge dated 16.08.1996. Therefore I dismiss the appeal of the Appellant with costs.

Appeal dismissed.

Judge of the Court of Appeal