

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

Dhamme Arachcilage Karunaratne,
Dellabada,
Karangoda.

And 05 others

Plaintiffs

C.A. No. 1281 / 2000 F

Vs.

D.C. Ratnapura No. 712 / P

1. Kuruppu Mudiyansele Podimenike,
(Deceased)
- 1a. Wijesundara Mudiyansele
Podibandara,
Ayagama, Paragala.

And 37 others

Defendants

AND NOW BETWEEN

11. Mahadurage Nandina alias Nanda
Palawela,
16. Demalaporuwa Manannalage
Sopiya,
36. Mahadurage Triksine Jayasooriya,
37. Mahadurage Sarathchandra
Jayasooriya,
38. Mahdurage Premachandra
Jayasooriya,

Defendant Appellants

Vs

Dhamme Arachcilage Karunaratne,
Dellabada,
Karangoda.

And 05 others

Plaintiff Respondents

2. Kuruppu Mudiyansele Podimenike,
(Deceased)

1a. Wijesundara Mudiyansele
Podibandara,
Ayagama, Paragala.

And 34 others

Defendant Respondents

BEFORE : UPALY ABEYRATHNE, J.
COUNSEL : 11th 16th 36th 37th and 38th Defendant
Appellants are absent and unrepresented
: A. Kodikara for the 3A and 24th Defendant
Respondents
ARGUED ON : 05.12.2012
DECIDED ON : 05.02.2013

UPALY ABEYRATHNE, J.

The 1A, 2, 3, 4 and 5 Plaintiff Respondents (hereinafter referred to as the Respondents) instituted the said action against the 1st to 38th Defendant Respondents (hereinafter referred to as the Respondents) in the District Court of Ratnapura seeking to partition the land described in the schedule to the plaint. After trial the learned District Judge delivered judgment to partition the land. Being aggrieved by the said judgement dated 28.09.2000 the Appellants have preferred the instant appeal to this court.

At the hearing of this appeal the learned Counsel for the Respondents raising preliminary objections to this appeal submitted that the appeal of the Appellants has not been signed by their Attorney on record.

I have carefully perused the notice of appeal and the petition of appeal filed by the said Appellants. It appears from the said documents that the Notice of Appeal has been signed by the 11th 36th 37th and 38th Defendant Appellants and the Petition of Appeal has been signed by the 11th Defendant Appellant. The Attorney on record of the said Appellants has not signed the said Notice of Appeal and the Petition of Appeal.

The main case record bears the fact that Mr. K.E.D. Dayananda Attorney At Law has filed a proxy on behalf of the said Appellants. The said proxy is still remaining in force. Therefore the said Notice of Appeal and the Petition of Appeal should have been signed by said Attorney At Law of the Appellants. It is well settled law that when the Registered Attorney at Law is alive and his proxy remains on a record without being revoked, the Notice of Appeal and Petition of Appeal must be signed by such Attorney and by no one else.

In the case of Fernando Vs Sybil Fernando and 2 others [1996] 2 SLR 169 (CA) held that "Section 24 of the Civil Procedure Code gives the freedom to a party to make any appearance or application or appear in Court unless the law authorized that he should be expressly represented by an Attorney-at-Law. But once an Attorney-at-Law was duly appointed by the party concerned he foregoes his rights to tender and sign the Notice of Appeal when the Registered Attorney at Law is alive and his proxy remains on a record without being revoked."

Supreme Court in Fernando Vs Sybil Fernando and others [1997] 3 SLR 1 held that “A litigant has a statutory right to act for himself unless the law provides otherwise (section 24 CPC). But so long as an instrument of the appointment (proxy) under section 27(1) CPC of a registered Attorney-at-Law is in force, a litigant who has executed such an instrument must act through his registered attorney until all proceedings in the action are ended and judgment satisfied so far as regards that litigant: while the proxy is in force, he cannot himself perform any act in court relating to the proceedings of the action. When the instrument (proxy) is filed, it shall be in force, unless revoked, or until the client or registered attorney dies or become incapable to act or until all proceedings in the action are ended and judgment satisfied so far as regards the client (section 27(2) CPC). Where therefore there is an attorney on record, the notice and petition of appeal must be signed by such attorney and by no one else; if it is signed by the party himself or by some other attorney, it is not in conformity with the law and must be rejected.

The provision in section 755(1) CPC, that every notice of appeal "shall be signed by the appellant or his registered attorney" must be conferred with reference to the content and other clauses of the Code. Where the notice of appeal is signed by the appellant himself when he had a registered attorney on record, the lapse is fatal and is not curable in terms of section 759(2) CPC.”

In the said circumstances I dismiss the instant appeal of the Appellants with costs.

Appeal dismissed.

Judge of the Court of Appeal