

5

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

Ranjani Hettiarachchi, (Deceased)
No.15, "Sarana Mahal"
Kurunduwatta Lane,
Issadeen Town, Matara.

10th Respondent-Appellant.

- 10A. Sarana Guptha Hettiarachchi Gamage,
- 10B. Indika Kushlani Hettiarachchi Gamage
alias Hettiarachchi Gamage Indika
Kushlani Saranaguptha.
- 10C. Krishan Indika Hettiarachchi Gamage
alias Hettiarachchi Gamage Thishan
Indika Saranaguptha.
- 10d. Buddika Anju Hettiarachchi Gamage
alia Hettiarachchi Gamage Buddika
Anju Saranaguptha.

**10A to 10D Substituted-Respondent
Appellants.**

C.A. Appeal No: 195-196/2000 (F)
D.C.Mt. Lavinia Case No. 89/94/T.

Suranjith Abeysekara
No.224.9, High Level Road,
Nugegoda.

Petitioner – Respondent.

1. Malani Embuldeniya,
Of No. 334D, Papiliyana Mawatha,
Nugegoda.

2. Vinitha Dodangoda.
Of No. 61, Galle Road, Moratu Wella,
Moratuwa.
3. Suvineetha Wijeysekara, (Deceased)
Of No. 183/1, Dutugamunu Street,
Kohuwala, Nugegoda.
- 3A. Kalan Tusitha Wijeysekara,
3.1 Sanjana Samitha Wijeysekara,
3.2 Damitha Kumari Wijeysekara,
3.3 Keerthi Kawantha Wijeysekara,
All of No. 249/3, Quarry Road,
Dehiwala.

Substituted-Respondents.

4. Geetha Nawarathna,
Of "Nawarathna Paya", Kuruvita,
Illuppadeniya, Chilaw,
5. Chitra Kodithuwakku,
Of No. 183/1, Dutugamunu Street,
Kohuwala, Nugegoda.
6. Kanthi Abeysekara,
Of No. 186, Trincomalee Street,
Kandy.
7. Lalitha Perera,
Of No. 235, Hewaheta Road,
Telwatta, Kandy.
8. Latha Abeysekara Perera,
Of No. 7, Bahirawakanda Lane,
Asgiriya, Kandy.
9. Nella Abeysekara,
Of "Suramya" Gamiunu Lane,
Naththandiya.

Respondents- Respondents.

Before : E.A.G.R.Amarasekara, J.

Counsel : Mr.R.Gunarathna for the 10A to 10D Substituted-Respondent Appellants.

Mr. Romesh De Silva P.C. For the Petitioner-Respondent.

Decided : 20.07.2018

E.A.G.R. Amarasekara, J

When this matter was taken up for hearing on 10.05.2018 the learned counsel for the Respondent took up the position that the appeal of the 10th Respondent-Appellant has to be rejected on the ground that the attorney-at-law on record who signed the notice of appeal and the petition of appeal did not have a valid proxy to do so. In this regard the attention of this court was drawn to journal entry 16 and 36 of the brief.

As per the journal entry 16, the 10th Respondent had given a proxy to Ms. Kalyani Karunathilleke - (vide page 36 of the brief.) Later on, an application had been made to file a fresh proxy. The journal entry 39 dated 26.01.98 at page 47 of the brief reads as follows;

“(39) 98.01.26.

10 වන ව/උ නීතිඥ තැන මෙම නඩුවේ 10 වන වගඋත්තරකරුගේ පෙරකලාසිය අවංලභ කිරීමේ ලියවිලි ඉදිරිපත් කරමින් එය පිලිගෙන ගොනු කරනමෙන් ඉල්ලා සිටී. පෙත්/නීතිඥ තැනට ලී.ප.කැ.මගින් දැන්වීම් කර ඇත.

විමසීම

පසුව

10 වන ව/උ කාරියගේ නව පෙරකලාසිය නි/ කංගරාජා මහතා ඉදිරිපත් කරයි. සටහන් බලන්න.
විමසීම 24.03.1998.”

The learned President’s Counsel for the Petitioner- Respondent argues that, as per the aforesaid journal entry no order has been made by the learned District Judge

with regard to the application made by the 10th Respondent and therefore the valid proxy for the 10th Respondent is the proxy given to Ms. Kalyani Karunathilleke. Therefore, the learned President's Counsel further argues that the notice of appeal and the petition of appeal signed by Mr. Thangaraja, attorney-at-law are not valid before the Law.

Both the parties made their oral submissions and have filed their written submissions too, but no party brought the attention of this court to the typewritten proceedings of the same date, i.e.1998.01.26. On the other hand, a careful perusal of the aforesaid journal entry 39 dated 98.01.26 indicates that the learned District Judge has referred to the typewritten proceedings by stating "see the proceedings" (සටහන් බලන්න). The typewritten proceedings dated 1998.01.26 clearly show that the learned District Judge has made an order on the application made by the 10th Respondent in the following manner.

"මෙම නඩුවේ 10 වෙනි වගඋත්තරකරුගේ පෙරකලාසිය අවලංගු කර නව පෙරකලාසිය භාර ගන්න. පෙත්සම්කරු වෙනුවෙන් නීතිඥ නීල් රාජපක්ෂ මහතා පෙනී සිටී. 10 වෙනි විත්තිකරු වෙනුවෙන් නීතිඥ රාජේෂ්වරන් තංගරාජා මහතා පෙනී සිටී."

The aforequoted typewritten proceedings in Sinhala without any doubt establish that the learned District Judge revoked the proxy given to Ms. Kalyani Karunathilleke and accepted the new proxy of Mr. Rajeshwaran Thangaraja.

In the aforesaid circumstances the stance taken by the learned President's Counsel for Petitioner- Respondent on the ground that there is no valid notice of appeal and or petition of appeal has no base to stand.

In his written submissions the Petitioner Respondent has stated an additional ground indicating that the purported revocation has not been signed by the original proxy holder Ms. Kalyani Karunathilleke but at page 367 and 368 of the brief this court finds the application to revoke the proxy as well as the revocation of the appointment, both signed by the 10th Respondent's attorney-at-law and the 10th Respondent. If the signature of the 10th Respondent lawyer is not genuine, the Petitioner- Respondent should have challenged it in the original court. As per the brief this court cannot find any complaint made by Ms. Kalyani Karunathilleke, attorney-at-law stating that she did not sign the revocation papers.

In the aforesaid circumstances, I decline to accept the stance taken up by the learned President's counsel for the Petitioner-Respondent and hold that the notice of appeal and the petition of appeal are valid and effectual.

.....
E.A.G.R. Amarasekara.
Judge of the Court of Appeal.