

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

Madduma Achariyage Dayaratna
alis Paulis,
No: 6, Mihiri Pedesa,
Asiri Uyana, Katubedda.

Presently at:

No: 945, Aluth Mawatha Road,
Colombo 15.

Plaintiff

Vs.

Henrita Hettiarchchi,
No: 852/1, Aluth Mawatha Road,
Colombo 15.

Case No: CA 726/98 (F)

Defendant

AND NOW BETWEEN

**DC Colombo Case
No:158732/L**

Madduma Achariyage Dayaratna
alis Paulis,
No: 6, Mihiri Pedesa,
Asiri Uyana, Katubedda.

Presently at

No: 945, Aluth Mawatha Road,
Colombo 15.

Plaintiff – Appellant

Vs.

Henrita Hettiarchchi,
No: 852/1, Aluth Mawatha Road,
Colombo 15.

Defendant - Respondent

Before : P.R. Walgama, J
: L.T.B. Dehideniya, J

Council : A. K. S. Sumanasuriya with P.C. Ilapperuma
Arachchi for Plaintiff - Appellant.
: Hussain Ahamed for Defendant - Respondent.

Argued on : 03.03.2016

Decided on : 31.08.2016

CASE-NO- CA-726/98 (F)- ORDER- 31.08.2016

P.R. Walgama, J

The instant appeal lies against the judgment of the Learned District Judge dated 11th August 1998, by which judgment the Plaintiff - Appellant's case was dismissed.

Being aggrieved by the said judgment the Plaintiff - Appellant appealed to this Court to have the said order set aside or vacate.

The Plaintiff -Appellant instituted action against the Defendant -Respondent bearing Case No. 15873/L in

the District Court of Colombo , for the following relief inter alia;

For a declaration of title and ejection of the Defendant from the premises morefully described in the schedule to the plaint thereto.

By filing the afore said action the Plaintiff- Appellant has averred thus;

That he became the owner of the premises in suit by virtue of Deed No. 849 dated 10.07.1981 attested by R.A.D. Idrasiri, Notary Public.

That the Defendant without any right or title to the said premises bearing No. 852/ is in unlawful occupation of the said premises.

That the Plaintiff- Appellant has suffered a sum of Rs. 500/ per day due to the unauthorised occupation of the Defendant, in the subject premises.

The stance of the Defendant was that she was in uninterrupted and undisturbed possession of the subject premises from or about 1978 and she has acquired prescriptive title to the said premises, and moved for a declaration that she has acquired prescriptive title to the premises in suit.

The Learned District Judge after evaluating the evidence placed before her, arrived at the conclusion that the Plaintiff- Appellant has not proved her title

to the disputed land and had dismissed the plaintiff action accordingly.

Being aggrieved by the said judgment the Plaintiff-Appellant appealed to this Court.

At the very outset the Defendant -Respondent raised a preliminary objection as to the maintainability of this appeal, viz a viz

That the signature appears in the notice of appeal differs from the signatures of the following documents purported to have been signed by the Registered Attorney for the Plaintiff- Appellant.

That the signature found in the plaint, 1st witness to the Power of Attorney bearing No. 1358, list of witnesses of the Plaintiff, motion dated 1.06.1995 and the Petition of Appeal dated 07.September 1998. Therefore it is alleged by the Counsel for the Defendant -Respondent that the notice of appeal has not been signed and filed by the Registered Attorney and thus the notice of Appeal dated 19th August 1998 is not a valid notice in law.

At the very outset this Court observed the above difference of the signatures of the Registered -Attorney of the Plaintiff- Appellant.

It is trite law that when a proxy is given to an Attorney at-Law is in operation and no other person is entitle in law to file or sign a Notice of Appeal

on behalf of that person. A cursory glance at the afore said signatures display a difference, of the same.

The applicable Section in the Civil Procedure Code in dealing with the afore said issue is Section 27(2) which states thus;

“ when so filed, it shall be in force until revoked with the leave of the Court and after notice to the Registered Attorney by a writing signed by the client and filed in court or until the client dies or until the registered attorney dies, is removed , or suspended or otherwise becomes incapable to act, or until all proceedings in the action are ended judgment satisfied so far as regards the client”.

Therefore it abundantly clear that the proxy which has been filed by the Registered Attorney will be in force till it is revoked of the afore said circumstances had occurred.

The Section 755 of the Civil Procedure Code recognises and had given validity to the documents filed therein which are signed by the applicant or his Registered Attorney.

Therefore in the matter in hand it is ostensible that the signature in the notice of appeal varies in comparing with the signatures of the other documents tendered by the Registered Attorney for the

Plaintiff- Appellant, for which the Plaintiff did not proffer an explanation as to the said discrepancy.

Nevertheless it is contended by the Plaintiff- Appellant that by the afore said error no material prejudice has been caused to the Defendant -Respondent and as such technical error should not over ride the rights of the parties.

The Counsel for the Plaintiff- Appellant thrust on many judicial pronouncement which has mainly dealt with the technicalities and the effect thereto.

When considering the legal matrix in relation to the core issue to be resolved as a preliminary issue this Court is of the view that the said objection should be upheld and appeal should be dismissed in limine.

Accordingly objection is upheld , and appeal is dismissed, without costs.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J

I agree.

JUDGE OF THE COURT OF APPEAL