

Present ; De Sampayo A.C.J. and Porter J.

1923.

ARUMUGAM CHETTY *et al.* v. SILVA.

46—D. C. Badulla, 3,713.

Proxy sent from India stamped with Ceylon stamps—Not restamped by the Commissioner of Stamps within three months—Objection that proxy was invalid.

Plaintiffs, who were away in India, sent a proxy from there to their proctor stamped with Ceylon stamps. The proxy was not sent to the Commissioner of Stamps within three months for him to stamp it as required by the Stamp Ordinance (sections 17 and 42). Objection was taken to the proxy at the trial, and defendant moved that the action be dismissed. The Supreme Court allowed the plaintiffs to give a proper and sufficient proxy ratifying, if necessary, what the plaintiff's proctor had so far done in the action.

THE facts appear from the judgment.

H. V. Perera, for the defendant, appellant.

Bartholomeusz (with him *Schokman*), for the respondents.

May 31, 1923. DE SAMPAYO A.C.J.—

In this appeal we have to deal with an extremely technical point. The plaintiffs, who are Chetties resident in India, brought this action in the District Court of Badulla on a promissory note. Mr. A. P. Bartholomeusz, a proctor of that Court, filed a proxy, and took all the usual steps with regard to the action. The defendant is shown to have made attempts to evade service of summons, and finally the District Court had to order substituted service to be effected. Then the defendant came, and he was allowed to file answer. In the answer he included this objection. The fourth paragraph of the answer was : "The plaintiffs cannot maintain the above action, inasmuch as they have not legally authorized their proctor to do so." This is not only unnecessary, but a wrong allegation in the answer. It has no meaning as it is read, and the paragraph in question might well have been struck out. But it appears that the object of the plea, wrapped up in this form, was to raise the question that the proxy given to the proctor was not properly stamped. It appears that the plaintiffs in India drew up a proxy in favour of Mr. Bartholomeusz, and stamped it with the Ceylon stamps for the value required for the purpose of this action. The objection is founded on the

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provisions of sections 17 and 42 of the Stamp Ordinance, No. 22 of 1909, the effect of which is to require that an instrument such as this, when executed abroad, should, within three months of their arriving in Ceylon, be sent to the Commissioner of Stamps, and he should stamp the instrument with the stamps required. The objection, if it is to be dealt with, is a good one so far as it went. But the defendant wishes to have the whole action dismissed, with costs, because of the imperfection in the stamping of the proxy of the proctor. I think it was possible for the District Judge to have made a proper order to put matters straight. But the actual order he made was that a certain person, who appears to hold a power of attorney from the plaintiffs, should sign the proxy and put on a new set of stamps, and thus enable the proctor to continue the action. I think the proper course would have been to allow the plaintiffs, through their attorney, to give a proper and sufficient proxy to the proctor, ratifying, if necessary, what the plaintiffs' proctor had hitherto done in the action. I refer to this matter of ratification, because up to the date of trial when the objection was argued, the defendant's proctor did nothing to prevent the action going on. I think it is unjust now to put the plaintiffs to the expense of bringing a fresh action.

I would, therefore, modify the order of the District Judge, and make the order of the kind I have just indicated. Of course, if the plaintiffs do not follow that course, the Court will have sufficient authority to deal with the case, and dispose of it in the best way it can. Though this modification has been made here, the appeal has practically failed, because the appellant's counsel had strenuously argued the same objection as was presented to the District Court. In that argument he has failed. Consequently, the appeal as taken should be dismissed, but with the modification of the order of the District Judge which I have mentioned. The defendant must pay the costs of this appeal.

PORTER J.—I agree.

Appeal dismissed.

