

**ELARCA S. A. OF MONROVIA, LIBERIA & ANOTHER
v.
OILBORNE SHIPPING CO. INC. OF LIBERIA**

SUPREME COURT
SAMERAWICKRAME, J., THAMOTHERAM, J. AND ISMAIL J.
S.C. APPEAL NO. 19/79
JUNE 11, 12, 13, 1979

*Admiralty Courts--Jurisdiction in respect of such matters vested in High Court--
Whether express provision giving right of appeal required--No such provision made
in any law then in force--Whether right of appeal exists--Civil Procedure Code, as
amended by Act No. 19 of 1977, section 754--Administration of Justice Law,
sections 23, 317.*

By an Order made under the provisions of the Administration of Justice Law, No. 44 of 1973, Admiralty jurisdiction was vested in the High Court of Colombo. Prior to this such jurisdiction had been vested in the Supreme Court as then constituted. Chapter IV of the Administration of Justice Law dealing with Appeals Procedure ceased to have effect by virtue of the provisions of Act No. 19 of 1977 which also brought into force the provisions of the Civil Procedure Code as amended by that law. At the time of the argument the Judicature Act which by section 13(3) made express provisions for such an appeal had not come into force. The defendants appealed from a judgment of the High Court in the exercise of its Admiralty jurisdiction relying on section 754 of the Civil Procedure Code, sub-section 1 of which read:

"Any person who shall be dissatisfied with any judgment pronounced by any original Court in any civil action proceeding or matter to which he is a party may prefer an appeal to the Supreme Court against such judgment for any error in fact or in law."

Sub-section (5) of the same section read as follows:-

"notwithstanding anything to the contrary in this Ordinance for the purpose of this Chapter 'judgment' means any judgment or order having the effect of a final judgment made by any civil Court."

Held :

There was no right of appeal from a judgment of the High Court in an action brought under its Admiralty jurisdiction. Section 754 of the Civil Procedure Code did not constitute express provision giving such a right of appeal.

Cases referred to :

- (1) *Shanmugam v. Commissioner for Registration of Indian and Pakistani Residents*, (1962) 46 N.L.R. 29 (P.C.); (1962) A.C. 515; (1962) 2 All E.R. 609.
- (2) *Tennekoon v. Duraisamy* (1958) 59 N.L.R. 481 (P.C.); (1958) A.C. 354; (1958) 2 All E.R. 479; (1958) 2 W.L.R. 994.

APPEAL from a Judgment of the Court of Appeal.

V.S.A. Pullenayagam, with *I. Mohamed*, *Miss B. Fernando*, *Mrs. S. Gnanakaran* and *N.Y. Casie Chetty*, for the added defendant appellants.

S.J. Kadirgamar, Q.C., with *K. Thevarajah*, *Mano Devasagayam* and *Miss D. Kadirgamar*, for the plaintiff respondent.

Cur. adv. vult.

July 19, 1979.

SAMERAWICKRAME, J.

This is an action that was brought in the High Court of Colombo under its Admiralty jurisdiction and the question that has arisen is whether the defendant-appellant had a right to appeal against the judgment of the High Court. The Court of Appeal has held that he did not have a right of appeal and the defendant-appellant has

appealed against the decision of the Court of Appeal. Learned counsel for the defendant-appellant, Mr. Pullenayagam, submitted that his client had a right of appeal derived from section 754 of the Civil Procedure Code enacted into that Code by Act No. 20 of 1977.

Learned counsel for the plaintiff respondent, Mr. Kadirgamar, submitted that Admiralty jurisdiction is a very special jurisdiction and that specific provision has always been made in respect of an appeal from a judgment given under that jurisdiction. By the Charter of 1833, Admiralty jurisdiction had been conferred on the Supreme Court and under section 6 (1) of the Colonial Courts of Admiralty Act 1890, express and specific provision had been made for an appeal to the Privy Council. When appeals to the Privy Council were abolished and the Ceylon Court of Appeal was established the court held that the provision for appeals from the Supreme Court provided only for appeals given by the Supreme Court in appellate jurisdiction and that there was, therefore, no right of appeal from the Supreme Court exercising admiralty jurisdiction which was original jurisdiction. Thereupon the Legislature by Law No. 3 of 1972 enacted express provision for an appeal. Mr. Kadirgamar further submitted that after the Administration of Justice Law was enacted there was no right of appeal from an order made under Admiralty jurisdiction. He further submitted that the position was the same after the re-introduction of the Civil Procedure Code and pointed to the fact that under the Judicature Act, No. 2 of 1978, which was yet to come into force at the time of the argument, there was express provision in section 13 (3) for an appeal against a final judgement given in the exercise of Admiralty jurisdiction. He submitted further that in principle express statutory provision is required to confer a right of appeal.

Mr. Pullenayagam contended that under section 317 of the Administration of Justice Law, there was a right of appeal in respect of a judgment or order made under Admiralty jurisdiction and he further contended that under the provisions of section 754 of the Civil Procedure Code enacted by Act No. 20 of 1977 such a right of appeal was given. Mr. Pullenayagam conceded that express provision was required for conferring a right of appeal but he submitted that express provision did not mean specific provision and that there need not be specific reference to the particular right as long as the language of the provision was broad enough to include it. He relied on the dictum of the Privy Council in *Shanmugam v. Commissioner for Registration of Indian and Pakistani Residents* (1).

"to be 'express provision' with respect to something it is not necessary that that thing should be specially mentioned; it is sufficient that it is directly covered by the language however broad the language may be which covers it so long as the applicability arises directly from the language used and not by inference therefrom."

Mr. Pullenayagam contended that there is an express provision for an appeal in Admiralty matters in section 754 of the Civil Procedure Code. Section 754 (1) reads:

"any person who shall be dissatisfied with any judgment pronounced by any original Court in any civil action, proceeding or matter to which he is a party may prefer an appeal to the Supreme Court against such judgment for any error in fact or in law."

Sub-section (5) of that section reads:

"notwithstanding anything to the contrary in this Ordinance for the purpose of this Chapter--

'judgment' means any judgment or order having the effect of a final judgment made by any civil Court."

"Civil Court" is defined in the Civil Procedure Code to mean a court in which 'civil actions' may be brought and was one which had a wide connotation and he relied on the dictum of the Privy Council in the case of *Tennekoon v. Duraisamy* (2) which dealt with the term 'civil suit or action' in the Charter of 1833. The dictum was as follows:

"Their Lordships did make the general observation that section 52 of the Charter was granting to a subject labouring under a sense of grievance a fundamental right of appeal to the Sovereign and that, though it would be natural to exclude from the range of permissible appeals cases of insufficient importance, it would be difficult to imagine an intention to exclude cases differentiated by reference to the form of proceedings regardless of the gravity of the result occasioned by them."

It appears to me that the considerations referred to in the dictum of the Privy Council have little application when one is dealing with the term 'civil action' as found in the Civil Procedure Code; in that context the form of the action would be very relevant. This is,

however, not of much importance as Mr. Pullenayagam submitted further that it was not necessary for him to rely on the wide connotation given to the term 'civil suit or action' but that it was sufficient for him to contend that an Admiralty action fell within the basic notion of a civil action. He referred to the statement of the Privy Council in the same case at page 492:

"it was argued before the Supreme Court and Their Lordships that a civil suit or action means a proceeding in which one party sues for or claims something from another. No doubt the conditions are properly applicable to such cases and they are the cases to which the words are most frequently applied."

If this were a case in which there was a claim by one citizen against another and nothing more, the matter would be clear. But Admiralty jurisdiction provides for action *in rem* against a ship, against cargo or against freight. It is a very special jurisdiction and it enables actions to be filed against persons who would not come within the jurisdiction of the ordinary courts. It is, therefore, to say the least not clear whether an action under Admiralty jurisdiction is a civil action within the meaning of the Civil Procedure Code. The words 'civil action', though appearing in the definition of the term 'Civil Court' have not themselves been defined. Accepting that for a provision to be express provision with regard to something it is not necessary that it should specifically refer to that thing, yet I think that the language of the provision should clearly and definitely cover that thing. Having regard to the language of section 754 of the Civil Procedure Code, I am unable to take the view that it constitutes express provision that there is a right of appeal from the judgment in an action brought under Admiralty jurisdiction. It is not without significance that the Legislature has thought it fit to provide expressly for such an appeal under the new Judicature Act.

The learned Judge of the Court of Appeal took the view that an appeal under section 754 lies only in respect of a judgment delivered in terms of section 184 (1) of the Civil Procedure Code. I do not think there is sufficient justification for taking such a view. In fact the words at the beginning of sub-section (5) of section 754-notwithstanding anything to the contrary in this Ordinance for the purpose of this Chapter-seem to indicate that the term 'judgment' in section 754 may have a different connotation than it has in any other provision.

For the reasons I have given, I hold that there was no right of appeal from the judgment of the High Court and accordingly the present appeal to this Court fails and is dismissed with costs.

THAMOTHERAM, J — I agree

ISMAIL, J — I agree.

Appeal dismissed.