

1958

Present : Basnayake, C.J., and de Silva, J.

SELLATHURAI, Appellant, and RAJA and another, Respondents

*S. C. 309—D. C. Colombo, 36064/M**Appeal—Notice of appeal—Requirement that it should be addressed to the respondent personally—Civil Procedure Code, s. 756.*

Section 756 of the Civil Procedure Code requires that notice of appeal must be addressed to the respondent personally, although it may be served on his Proctor.

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *V. A. Kandiah*, for Defendant-Appellant.

E. B. Wikramanayake, Q.C., with *S. Sharvananda*, for 1st Plaintiff-Respondent.

2nd Plaintiff-Respondent in person.

March 17, 1958. BASNAYAKE, C.J.—

A preliminary objection to the hearing of this appeal has been taken on the following two grounds :—

(1) That the petition of appeal does not satisfy the requirements of section 755 of the Civil Procedure Code, and

(2) that the notice of appeal has not been given to the 1st plaintiff-respondent personally.

The first objection is sound and must be upheld. A petition of appeal cannot be received unless it is drawn and signed by an advocate or proctor, or in the manner prescribed by the proviso to section 755 of the Code. The present petition of appeal does not satisfy the requirements of either that section or its proviso, and should not have been received.

The second objection is that notice of appeal has not been addressed to the 1st respondent but to her proctor. Learned counsel for the 1st respondent submits that section 756 of the Civil Procedure Code requires that notice of appeal must be addressed to the respondent personally but that it may be served on his proctor. He relies on the case of *Sivagurunathan v. Doresamy et al.*¹ This objection too is entitled to succeed for the reasons given in the judgment cited by learned counsel. We therefore reject the appeal with costs.

Learned counsel for the appellant has invited us to deal with this case by way of revision. He submits that important questions of law arise in the appeal and that in the interests of justice this Court should satisfy itself as to the legality of the judgment and has invited us to proceed to do so at this hearing itself. He cites the case of *Abdul Cader v. Sittinisa et al.*² in support of his submission. We are not disposed to

¹ (1951) 52 N. L. R. 207.

² (1951) 52 N. L. R. 536.

accede to the learned counsel's request for an immediate hearing. But in view of the submissions of learned counsel that important questions of law are involved in this appeal we are prepared to deal with the case in revision under section 753 of the Civil Procedure Code after the party dissatisfied with the judgment of the learned District Judge has lodged proper papers with the Registrar of this Court.

DE SILVA, J.—I agree.

Appeal rejected.

