

JAYARATNE VS. CHANDRARATNE AND ANOTHER

COURT OF APPEAL
BASNAYAKE, J.
CALA 196/2004 (LG)
DC NEGOMBO 4747/L
SEPTEMBER 3, 2010

Civil Procedure Code – Section 169 – Evidence of witnesses – Procedure of taking down evidence – Application to correct proceedings – Could Court refuse such an application? – Role of the lawyer is to assist Court?

Held:

- (1) Evidence of witnesses shall be taken down in writing by the Judge or in his presence and hearing and under his personal direction and superintendence.
- (2) However for convenience, evidence of witnesses is taken down by stenographers in shorthand and typed later. While typing stenographers may make mistakes and what is typed may not be what the witnesses said in evidence – therefore it is the duty of Court to correct proceedings.

Held further:

- (3) When an application is made by a lawyer for the Court to correct proceedings the Court cannot refuse that application for the reason that the lawyer is only assisting Court with regard to the function of Court.

The Judge has erred by refusing to correct proceedings.

LEAVE TO APPEAL from an order of the District Court of Negombo with leave being granted.

Muditha Premachandra for plaintiff-petitioner.

Rohan Sahabandu for defendant-respondent.

Cur.adv.vult.

September 03rd 2010

ERIC BASNAYAKE, J.

Both Counsel were heard in support of their respective cases.

The Plaintiff-Petitioner filed this application to have the order dated 20.05.2004 of the learned District Judge of Negombo set aside. By this order the learned Judge had refused to correct proceedings of 13.05.1999 as the defence objected to the proceedings being corrected. I am of the view that it is the duty of Court to maintain a proper record. Sometimes proceedings may not be correctly recorded and unless Counsel mentions that proceedings are not correctly recorded, it may remain uncorrected. By so informing Counsel only assists Court to maintain a proper record.

The evidence of witnesses shall be taken down in writing by the Judge, or in his presence and hearing and under his personal direction and superintendence (Section 169 of the Civil Procedure Code). However for convenience, evidence of witnesses is taken down by stenographers in shorthand and typed later. While typing stenographers may make mistakes and what is typed may not be what the witness said in evidence. Therefore it is the duty of Court to correct proceedings.

When an application is made by a lawyer for the Court to correct proceedings the Court cannot refuse that

application for the reason that the lawyer is only assisting Court with regard to the function of Court. Therefore I am of the view that the Judge has erred by refusing to correct proceedings and I set aside the order dated 20.05.2004 marked 'L'. I direct the learned District Judge to inquire into this and rectify the record with the necessary correction. In the event proceedings cannot be conveniently corrected, the witnesses may be recalled to ascertain what was said in evidence. The Court is further directed to proceed with the case without further delay. The appeal is allowed. No costs.

Appeal allowed.

District Court directed to proceed with the case.