

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

1923.

RAMANATHAN CHETTY *v.* NATCHIYA *et al.*

363—*D. C. Galle, 19,488.*

*Principal and agent—Proxy signed by two attorneys of the principal—
Death of one attorney before trial—Does proctor's authority cease?—
Registration of Business Names—Contracts entered into before the
Ordinance came into force.*

One of the two attorneys of the plaintiff who granted a proxy to the plaintiff's proctor died before the date of trial.

Held, that the authority of the proctor was not thereby affected. The appointment by the attorneys continue to operate as long as the principal (the party to the action for whom the proctor was appointed) is alive ; the death of one of the attorneys has no effect on the act already done in the appointment of the proctor for the plaintiff.

Section 9 of Ordinance No. 6 of 1918 (Registration of Business Names) does not apply to contracts entered into before the Ordinance came into operation.

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THE plaintiff P. R. M. Ramanathan Chetty sued the defendants on a mortgage bond for Rs. 3,500. The proxy in favour of plaintiff's proctor was signed by two attorneys of the plaintiff. Thereafter one of the attorneys died. The plaintiff had not registered his *vilasami*. The following issues, *inter alia*, were framed :—

- (1) Has the power of attorney given by the plaintiff to Adakappa Chetty and Cassie Chetty lapsed by reason of the death of the latter ?
- (2) Can the plaintiff maintain this action in view of his not having complied with the requirements of Ordinance No. 6 of 1918 ?

The District Judge dismissed plaintiff's action. The plaintiff appealed.

Samarawickreme, for appellant.

Soertsz, for respondents.

May 30, 1923. DE SAMPAYO A.C.J.—

The plaintiff P. R. M. Ramanathan Chetty brought this action on a mortgage bond granted on September 27, 1917. At the trial two legal objections were taken, and the District Judge upheld both of them and dismissed the plaintiff's action with costs. I do not think that either of the objections is sustainable, the first objection is that so much of the name as consists of the initials indicate that it was a business name, and required to be registered under the provisions of the Ordinance No. 6 of 1918, and there having been no registration the plaintiffs by reason of the provisions of section 9 of the Ordinance is not able to maintain this action. It would be noticed that the bond was granted to the plaintiff long before the passing of the Ordinance itself, which came into operation on November 7, 1918. In my opinion section 9 of the Ordinance does not apply to contracts entered into before the Ordinance came into operation. This view is supported by the decision of *Jamel Mohideen & Co. v. Meera Saibo*.¹

The other objection is that one of the two attorneys of the plaintiff who had granted a proxy to the plaintiff's proctor died before the date of the trial, and for that reason the authority of the proctor ceased. I am unable to hold that this result followed. When the proxy was granted the attorneys had full authority, and the proctor was appointed not as proctor for the attorneys, but as proctor of the plaintiff who is still alive. I think appointment by the attorneys must have continued to operate while the principal, the party to the action for whom the proctor was appointed, is alive, and

¹ (1920) 22 N. L. R. 268.

that the death of one of the attorneys has no effect on the act already done in the appointment of a proctor for the plaintiff. I think the District Judge should have tried the action on the other issues in the case and decided it after consideration of those issues.

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I would set aside the judgment appealed from and send the case back for trial in due course. The plaintiff is entitled to the costs of the discussion in the District Court and also of this appeal.

PORTER J.—I agree.

Set aside.

