

Present: Schneider A.J. and Loos A.J.

1919.

17—D. C. Galle, 15,764.

SATHASIVAN v. CADIRAVEL CHETTY.

*Appeal—Failure to supply stamps fatal.*

Failure to supply stamps for judgment of the Supreme Court and for the certificate in appeal, together with the petition of appeal, is fatal to the whole appeal.

*Don Mathes Bandara v. Babun Appu*<sup>1</sup> followed.

THE facts appear from the judgment.

*Bartholomeuss* (with him *Oorloff*), for defendant, appellant.

*J. S. Jayawardene*, for purchaser, respondent.

*Zoysa* (with him *Arulanandan*), for plaintiff, respondent.

June 12, 1919. SCHNEIDER A.J.—

This is an appeal by the judgment-debtor. The respondents to the appeal are the purchaser and the plaintiff. The petition of appeal was filed in the lower Court, according to the journal entry in the case, on January 17, 1919, and there is an entry on the record that no stamps were tendered for judgment of the Supreme Court and for the certificate in appeal. On the record there is a certificate in appeal stamped and dated February 18, 1919. There is nothing to show that stamps for the copy of the Supreme Court judgment have been supplied up to date. A preliminary objection was taken that the appeal should not be heard, because of the omission to supply the stamps for the certificate and for the copy of the Supreme Court judgment, together with the petition of appeal. This objection was raised upon the provision in the Stamp Ordinance, Schedule B in Part II., head "Miscellaneous": "Provided also, that in appeals to the Supreme Court the appellant shall deliver to the Secretary of the District Court or Clerk of the Court of Requests, together with his petition of appeal, the proper stamp for the decree or order of the Supreme Court and certificate in appeal which may be required for such appeal."

The question, therefore, is whether the omission to supply the stamps was so fatal as to wreck the whole appeal. There is no direct authority either in the Stamp Ordinance or in the provisions of the Civil Procedure Code for the proposition that the omission to supply the stamps would entail as a consequence the dismissal of the appeal; but our attention was invited to two cases, *Cornelis v. Ukku*,<sup>2</sup> decided in 1867, where it was held that the omission to supply stamps for the decree or order of the Supreme Court within

<sup>1</sup> (1892) 1 *Matara Cases* 203.

<sup>2</sup> (1867) *Ram.* 1863-1868, 278.

1919.

SCHNEIDER  
A.J.

Sathasivan  
v. Oadivavel  
Chetty

the time limited by the rules for perfecting an appeal was fatal to the appeal. The reason given for that decision was that otherwise injustice would be caused to the respondent by his being kept out of his judgment. The other case was that of *Don Mathes Bandara v. Babun Appu*,<sup>1</sup> which we ascertain by a reference to the minutes of this Court had been decided by the Full Court in 1892, where it was held that the stamps for the decree of the Supreme Court and certificate in appeal not having been furnished till the day after the petition of appeal was filed was fatal to the appeal, and the appeal was on that account rejected, with costs. We are bound by the decision of the latter case, and for the reasons given in that case we reject the appeal in this case, with costs.

Loos A.J.—I agree.

*Appeal rejected.*

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