MERRYL PERERA
v.
ABEYSURIYA AND OTHERS

SUPREME COURT
SAMARAKOON C. J., RATWATTE, J. AND VICTOR PERERA, J.
S.C.L.A. No. 62/82, S.C. APPEAL No. 48/82 S.C.
C.A. APPLICATION No. 697/82
D.C. COLOMBO No. 2146/8/5
07 MARCH 1983.

Contempt — Can jurisdiction of Appeal Court be invoked where the District Court had jurisdiction?

Held—

The Court of Appeal and District Court had parallel jurisdiction to punish for contempt for disobedience to an injunction. The appellant had the right to make the application to the Court of Appeal and the Court being clothed by the Constitution to make the order prayed for had a duty to make the order if the facts were established to its satisfaction. It could not have refused to entertain the petition.

Cases referred to :

1. *Sheffield Corporation v. Lusford* 1929 2KB 180

2. *Perera v. Perera* 4 NLR 282

APPEAL from order of Court of Appeal

H. L. de Silva, S.A. with *J. P. de Almeida* for appellant.

K. N. Choksy, S.A. with *K. Kanag-Iswaran,* for respondents.

Cur. adv. vult

22 March, 1983
SAMARAKOON, C.J.

The Appellant and the Respondents are members of a Club known as the Otter Aquatic Club. The Appellant applied for, and obtained from the District Court of Colombo, an interim injunction restraining the Respondents from acting upon the

"purported amendment to or repeal" of Clause 12(f) of the Club's Constitution and from permitting persons disqualified by the original Clause 12(f) "to contest at any election as an office bearer of the said Otter Aquatic Club". The Appellant made an application to the Court of Appeal under the provisions of Article 105(3) of the Constitution of the Republic of Sri Lanka alleging that the Respondents had disobeyed the injunction and praying that the Respondents be dealt with for contempt of the District Court. The Court of Appeal has refused to entertain the application. Seneviratne, J. was of the view that though there was parallel jurisdiction in the Court of Appeal and the District Court to take cognisance of this matter, the Court of Appeal would only do so if the Appellant showed special reason why in the first instance the jurisdiction of the Court of Appeal should be invoked without resort to the District Court under the provisions of Section 663 of the Civil Procedure Code. He stated that the jurisdiction of the Court of Appeal should be invoked only when there is a contumacious and persistent disregard of the authority of the District Court. His reasons for this conclusion are as follows :—

1. The resulting overburdening of the Court of Appeal with numerous applications,

2. Heavy expense and inconvenience to Respondents, and

3. If encouraged it will end in the Court of Appeal performing the functions of the original Court on the basis that the Court of Appeal has parallel jurisdiction.

The reasons no doubt merit consideration and the conclusion is not unreasonable. However Counsel for the Appellant submitted that the Court of Appeal had no alternative but to entertain the application. The history of this power in the Superior Courts to deal with offences of contempt of other Courts is relevant. Section 47 of the Courts Ordinance (Cap.6) gave the Supreme Court or any Judge thereof power to take cognisance of and try in

a summary manner any offence of contempt committed against or in disrespect of the authority of itself "or in disrespect of the authority of any other Court and which such Court has no jurisdiction under Section 57 to take cognisance of and punish .....". This power was conferred on the High Court by the provisions of the Administration of Justice Law No. 44 of 1973. Section 41(2) reads thus —

> "(2) Every High Court may take cognizance of and try in a summary manner any offence of contempt committed against or in disrespect of its authority or any offence of contempt committed within its jurisdiction against or in disrespect of the authority of any other court or other institution established by law which such court or institution has not the jurisdiction to take cognizance of and punish, and on conviction impose a sentence of imprisonment not exceeding five years or a fine not exceeding five thousand rupees or both such imprisonment and fine."

These two provisions impose a limit on the power conferred by stating that in respect of the offence of contempt of any other Court, the power can be exercised only if that other Court has no jurisdiction to take cognizance of such contempt. The Constitution of 1978 conferred this power on the Court of Appeal but placed no limitation as in the Courts Ordinance and the Administration of Justice Law. Article 105(3) of the Constitution reads as follows :—

> "(3) The Supreme Court of the Republic of Sri Lanka and the Court of Appeal of the Republic of Sri Lanka shall each be a superior court of record and shall have all the powers of such court including the power to punish for contempt of itself, whether committed in the court itself or elsewhere, with imprisonment or fine or both as the court may deem fit. The power of the Court of Appeal shall include the power to punish for contempt of any other court, tribunal or institution referred to in paragraph 1(c) of this Article, whether committed in the presence of such court or elsewhere:

> Provided that the preceding provisions of this Article shall not prejudice or affect the rights now or hereafter vested by any law in such other court, tribunal or institution to punish for contempt of itself."

The proviso is significant. It saves similar jurisdiction of other Courts. In the result the Court of Appeal and the District Court had parallel jurisdiction in respect of the offence of contempt as alleged in this case.

Counsel for the Respondents submitted that Article 105(3) was only an enabling provision and was comparable to the provisions of Article 140 of the Constitution. He stated that this latter Article contained an enabling power, but the Courts had a discretion to refuse the issue of a Writ. He referred to the fact that Courts refused to issue a Writ when the Petitioner was guilty of laches or when the equities were not within the Petitioner. This is no doubt correct but Article 140 provides that the grant and issue of Writs should be done "according to law". "Law" here means written and unwritten laws that were in force immediately before the commencement of the Constitution (Vide Article 168(1)). The two instances of refusal by the Courts referred to by Counsel for the Respondents were part of the unwritten law of the land. Article 140 is therefore no guide to the interpretation of the provisions of Article 105(3). Counsel also submitted that the Court of Appeal must have a discretion for the reasons given by Seneviratne, J. Perhaps it is good policy, but policy cannot justify the modification of a provision of law.

Article 105(3) of the Constitution does not confer any discretion on the Court of Appeal. The Appellant had the right to make this application to the Court of Appeal and the Court being clothed by the Constitution to make the order prayed for had a duty to make the order if the facts were established to its satisfaction. It could not have refused to entertain the petition. *Sheffield Corporation v. Lusford* (1). A similar situation arose at a time when the District Court and the Court of Requests had concurrent jurisdiction over certain matters. In the case of *Perera v. Perera* (2) the District Court dismissed an action under the provisions of Section 247 of the Civil Procedure Code because

the land which was seized, and was the subject matter of the action was under Rs. 300/- in value. The District Court had jurisdiction in this matter under the provisions of Section 74 of the Courts Ordinance and the Supreme Court held that it could not dismiss the action merely because it might have been brought in the Court of Requests. All it could do was to deprive the successful plaintiff of his costs.

There is another aspect to this case. We are dealing with a Constitutional provision and not with ordinary Statute Law. The former must command the greater respect. The Court of Appeal erred in refusing to grant the application for the issue of summons and in dismissing the application. This appeal is therefore allowed with costs.

RATWATTE, J. — I agree.

VICTOR PERERA, J. — I agree.

Appeal allowed.