

YOGARATNAM
v
NAHEEM AND OTHERS

COURT OF APPEAL
GAMINI AMARATUNGA.J
CALA 92/2003
DC KANDY 14958/P
AUGUST 26, 2003
SEPTEMBER 25, 2003
OCTOBER 2, 2003

Affidavit – Validity – Attested by a Justice of Peace who has no authority to attest affidavits within the Judicial District of Colombo

Held (1) De facto status held out to the public by a Justice of Peace is not sufficient to confer validity to an affidavit, which that Justice of Peace has in law no authority to attest.

Gamini Amaratunga. J:

“There is no proper valid affidavit supporting the averments set out in the leave to appeal application”.

APPLICATION for leave to appeal from an order of the district Court of Kandy.

Cases referred to:-

1. *Ceylon Workers Congress v S. Sathasivan and another* – CALA 86/2002 – CAM 16.10.2002
2. *Foreign Employment Bureau of Sri Lanka v Suraj Dandeniya* – CALA 324/2003 – CAM 12.01.2004

L.C. Seneviratne PC with Ranil Prematileke for the petitioner.

Gamini Marapana PC with Reza Muzni and Navin Marapana for 1st defendant-respondent.

Cur.adv.vult.

March 3, 2004

GAMINI AMARATUNGA, J.

This is an application for leave to appeal against the order of the learned District Judge of Kandy refusing to grant an interim injunction sought by the plaintiff-petitioner in the course of a partition action. At the stage of the inquiry relating to leave to appeal the learned President's Counsel for the 1st defendant-respondent raised a preliminary objection in limine to the validity of the leave to appeal application on the ground that the affidavit filed along with the leave to appeal application in support of the averments set out therein is not a proper affidavit and that accordingly there is no proper leave to appeal application before Court. The basis upon which the learned President's counsel challenged the validity of the petitioner's affidavit is that it has been attested by one Wijesurendra Lokuge who has no authority to attest an affidavit within the Judicial District of Colombo.

In support of this contention, the learned President's Counsel cited the case of *Ceylon Workers Congress v. S. Sathasivam and another*.⁽¹⁾ In that case objection was taken to the validity of an affidavit, which was relevant to that application, attested by Wijesurendra Lokuge in Colombo, on the basis that he was a Justice of the Peace appointed for the Judicial District of Homagama and accordingly the said Wijesurendra Lokuge had no authority to attest an affidavit within the Judicial District of Colombo. The Gazette Notification showing the appointment of Wijesurendra Lokuge as a Justice of the Peace for the Judicial District of Homagama was produced before this Court.

Balapatabendi, J. for the reasons set out in his judgment, (with Amaratunga, J. agreeing) held that an affidavit attested by Wijesurendra Lokuge, Justice of the Peace within the Judicial District of Colombo had no validity in law.

The affidavit filed in this case in support of the present leave to appeal application has been attested by Wijesurendra Lokuge, who according to the decision of this Court in C.A.L.A. Application 86/2002 (*supra*) had no authority to attest an affidavit in the Judicial District of Colombo, The affidavit, which is challenged in these proceedings has been attested in Colombo on 25/3/2003. 30

The learned President's Counsel for the plaintiff-petitioner in the written submissions filed has contended that when Justices of the Peace display their name boards proclaiming that they are Justices of the Peace, the affirmants who wish to have their affidavits attested have no way of checking whether a particular Justice of the Peace is in fact a Justice of the Peace and therefore an affidavit attested before a Justice of the Peace, who held out to the public that he has authority to function as a Justice of the Peace in a particular locality, should be accepted as a valid affidavit. In short, the argument of the learned President's Counsel is that the de facto status held out to the public by the so called Justice of the Peace is sufficient to give validity to the affidavit even though that Justice of the Peace was not de jure a Justice of the Peace for that particular locality. 40

With great respect, I am unable to agree with this line of argument. If a person, who is in fact is not a Registrar of Marriages, displays a signboard indicating that he is a Registrar of Marriages and an innocent couple, in the honest belief that such person has the authority to register a marriage, get their marriage registered before him, is such marriage valid in law? The obvious answer is in the negative. Accordingly I am not persuaded to accept the argument that the de facto status of a Justice of the Peace is sufficient to confer validity to an affidavit, when that Justice of the Peace has in law no authority to attest such affidavit. 50

The only answer to the learned Presidents Counsel's (for the 1st defendant-respondent) submission that Wijesurendra Lokuge had no authority to attest an affidavit in the Judicial District of Colombo 60

is the Gazette Notification which shows that he is appointed to function as a Justice of the Peace for All Island or for the Judicial District of Colombo.

The petitioner has not produced any such Gazette Notification before this Court. Therefore in order to ensure the consistency of the decisions of this Court, I with approval follow the ruling given by this Court in C.A.L.A. Application 86/2002 (*supra*) to the effect that Wijesurendra Lokuge has no authority in law to attest an affidavit within the Judicial District of Colombo. In the result I uphold the preliminary objection raised by the learned President's Counsel for the 1st defendant-respondent and hold that there was no proper affidavit presented to this Court supporting the averments in the leave to appeal application of the plaintiff-petitioner. 70

This Court in the case of *Foreign Employment Bureau of Sri Lanka v Suraj Dandeniya*,⁽²⁾ has decided that an affidavit supporting the averments set out in a leave to appeal application has to be filed within the fourteen days stipulated by law for the filing of a leave to appeal application. In the present case, after I ruled out the plaintiff-petitioner's affidavit dated 25th March 2003, purportedly attested by Wijesurendra Lokuge, there is no valid affidavit supporting the averments set out in the leave to appeal application. In the result there is no proper leave to appeal application before this Court. Accordingly the purported leave to appeal application is hereby rejected and dismissed without costs. 80

Application dismissed.