

1912.

Present: Lascelles C.J. and Wood Renton J.DINGA *v.* SINDA *et al.*

203-205—D. C. Negombo, 8,098.

Appeal—Appellant must tender security for costs of all respondents.

Where a party dissatisfied with a judgment appeals, he should give security for the costs of all the respondents.

THE facts material to this report are stated in the following judgment of the District Judge (R. G. Saunders, Esq.):—

The facts are as follows. Plaintiff instituted this action for partition, making a large number of parties defendants, and allotting them certain shares; this they agreed to, as they filed no statement of claims. Meantime the twenty-seventh defendant came into the case, had himself added as a party, and claimed a share, and the case went to trial as between him and plaintiff only on August 24, 1911. I say as between plaintiff and twenty-seventh defendant only, for although there were other parties present, twenty-eighth defendant's share was admitted by plaintiff, and the fifteenth, twenty-fifth, and twenty-sixth defendants, though present, took no part in the contest. I gave judgment adverse to twenty-seventh defendant, and he is now appealing. The twenty-seventh defendant has tendered security for plaintiff's costs in appeal, but now four of the defendants—fourth, first, third and twentieth defendants—who up to this have taken no real part in the action, also come forward and demand security for their costs. Their case is admittedly the same as plaintiff's, with whom they are in the "same boat," and, presumably, if their motive is not to harass the twenty-seventh defendant, they should be content to leave their case in the hands of the counsel who will appear for plaintiff; but they desire the luxury of special "counsel of their own." To this, of course, they are entitled if they so desire, but I do not think they can reasonably expect twenty-seventh defendant to deposit security for their costs. As I have pointed out, their case is one with plaintiff's, and anything argued on his behalf is in their interest, and they stand or fall with him. There are no less than twenty-nine defendants in this case (in many partition actions there are often a considerably larger number), and if all the parties who never even contested the case were allowed to claim security in the event of an appeal under circumstances similar to this case, it would simply mean that in many instances an appeal would be out of the question, and beyond the means of many would-be appellants, which, however desirable some of us might think, it is not, I take it, what the law intends.

In this particular case the application of the four defendants asking for security for their costs in appeal appears to me unreasonable, and put forward, I fancy, with the intention of unduly harassing the appellant, and I disallow the same.

As regards plaintiff's contention that the sum offered (Rs. 58.50) is not sufficient, I would raise the security to Rs. 100.

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I accept the affidavit as regard the parties who are said to be dead or are not to be found. Twenty-eighth defendant's share is admitted, and he is not affected by the appeal.

The fourth, first, third, and twentieth defendants appealed against this order.

A. St. V. Jayewardene, for appellant in appeal No. 203.

H. A. Jayewardene (with him *E. G. P. Jayatilleka*), for appellants in No. 205.

E. W. Jayewardene, for appellant in No. 204.

February 6, 1912. LASCELLES C.J.—

In this case there are three appeals before us, Nos. 203, 204, and 205. The first appeal is by the twenty-seventh defendant, and is an appeal on the merits of the case. The appeals Nos. 204-205 are respectively brought by the fourth and the first, third, and twentieth defendants, and are based upon a technical ground. They allege that the appeal has not been perfected, inasmuch as the appellant in No. 203 has not given security for the costs of the first, third, fourth, and twentieth defendants. I have no doubt at all but that appeals Nos. 204-205 are well grounded. These defendants—first, third, fourth, twentieth—were respondents to the appeal, and the District Judge was in error in deciding that the appellant was not obliged to tender security for their costs. The result of this is that appeals Nos. 204-205 succeed, and that appeal No. 203 must be dismissed. But we think that the appellant in No. 203 should have an opportunity of applying for leave to appeal, notwithstanding lapse of time. Our order then will be that the appeal No. 203 be dismissed, liberty being reserved to the appellant to apply for leave to appeal, notwithstanding lapse of time, after he has furnished security for the costs of the appellants in appeals Nos. 204-205 to the satisfaction of the District Judge. We think that the appellants in Nos. 204-205 are entitled to the costs of this appeal.

WOOD RENTON J.—I agree.

Appeal No. 203 dismissed.

Appeals Nos. 204 and 205 allowed.