1936 *Present:* **Dalton S.P.J., Akbar and Poyser JJ.**

SAMYNATHAN *v.* REGISTRAR-GENERAL.

9—D. C. (Inty.) Colombo, 1,951.

Registration of Births and Deaths—Rectification of entry—Application to District Court—Power of Court to award costs—Civil Procedure Code, Chapter XXIV.—Births and Deaths Registration Ordinance, No. 1 of 1895, s. 22.

In an application for the rectification of an entry in a register of births under section 22 of the Births and Deaths Registration Ordinance, the Court has power to grant costs.

The application is governed by the summary procedure provided by Chapter XXIV. of the Civil Procedure Code.

An appeal from an order in proceedings under the section should be heard by one Judge. A disputed question of paternity should not be decided in a summary way under the section.

THIS was an application to revise an order for costs made by the District Court in proceedings under section 22 of the Births and Deaths Registration Ordinance to rectify an entry in the register of births. The application to the District Court was originally made by one Velu Samynathan to have his name entered as the father of an illegitimate child. After his death the present applicant was substituted. The respondents opposed the application on the ground that it was not made by Samynathan and that he was not the father of the child. The learned District Judge held that Samynathan was the father of the child but that the application had not been made by him. In dismissing the application he directed the substituted petitioner, the present applicant to pay the costs of the inquiry. From this decision the present applicant appealed and the appeal was dismissed on a preliminary objection. Thereupon the applicant moved the Supreme Court to revise the order for costs made against him by the District Court.

H. V. Perera (with him *M. T. de S. Ameresekera* and *C. R. de Silva*), for petitioner.—The District Court has no power to award costs in view of the fact that section 22 of Ordinance No. 1 of 1895 is silent with regard to costs. Proceedings under this section are not governed by the Civil Procedure Code. Where costs are to be granted in analogous cases the legislature has expressly so provided in the Ordinance itself.

The remedy by way of revision is open to the petitioner. This is not an effort to cause the Supreme Court to set aside its own decree, as the appeal in this case was not dismissed but only rejected. The appeal was not heard on its merits. The Supreme Court simply refused to entertain the appeal as the civil appellate rules had not been complied with. The decree of the Supreme Court has been drawn up wrongly. The decree of the District Court still stands as originally made and there is no decree of the Supreme Court into which it can be said to have merged.

Although a remedy by way of appeal was available, the Supreme Court will not refuse to exercise its powers of revision in appropriate circumstances. The circumstances of this case are such that the Supreme Court would exercise its powers of revision.

N. Nadarajah (with him *J. R. Jayewardene* and *Panditha Goonewardene*), for respondent.—Even if the Court had no power to award costs, the matter cannot now be canvassed by way of revision. The Supreme Court dismissed the appeal and affirmed the judgment of the District Court. It is too late now to apply to this Court by way of revision. After the Appeal Court decision has passed the seal of the Court, the District Court decree is merged in the Appeal Court decree. The petitioner is therefore seeking to set aside an order of the Appeal Court. See *Rikhawdas et al. v. Gujor et al.*[1] and *Deonis v. Samarasinghe*[2]. The Supreme Court will not now consider the application in revision (*Mudalihamy v. Ran Menika*[3]).

The District Court had the power to award costs. This was an application by way of summary procedure under the Civil Procedure Code. The Court was asked to interfere and give relief. As such, the provisions of the Civil Procedure Code would apply and the Court has the power to give costs under section 209. A Court has inherent power to give costs when it has been set in motion wrongly. See *Pringle v. Secretary of State for India*[4].

January 30, 1936. DALTON S.P.J.—

This application arises out of a proceeding in the District Court, made under the provisions of section 22 of the Births and Deaths Registration Ordinance, No. 1 of 1895.

One Velu Samynathan is alleged to have petitioned the District Court for a direction on the Registrar-General to rectify an entry in the registration of the birth of an illegitimate child, called Girlie, by the insertion of his name as the father of the child. After the petition was filed, before any further action was taken thereon, Velu Samynathan died, and his brother Velu Suntheralingam Samynathan, the present applicant, was substituted as petitioner in his place.

The two respondents to the present application are the sister of the petitioner and her husband. They applied to the lower Court and were allowed to intervene, opposing the application, taking up the position that their brother was not the father of the child, and that the original petition had not been signed by Velu Samynathan at all.

There was a very lengthy inquiry lasting over twenty days, with a volume of evidence, in fact a formal trial, in the lower Court on the issues raised, going, in my opinion, far beyond anything contemplated by the Ordinance under which the proceedings were taken, resulting in the application being dismissed, the Judge holding that Velu Samynathan was the father of the child, but that he had not signed the petition to the Court, and that he had in fact made no application to the Court. He held further that the original petition had been signed by Velu Suntheralingam Samynathan, the substituted petitioner and the present applicant. In dismissing the application he directed that the substituted petitioner do pay to the respondents the costs of the inquiry.

[1] *18 Bombay 203.*
[2] *15 N. L. R. 39.*
[3] *4 T. L. R. (Ceylon) 183.*
[4] *40 Ch. D. 288.*

From this decision the present applicant appealed to this Court, setting out in his petition of appeal that the District Judge was wrong on the facts, that his application should be allowed, and asking for his costs against the respondents.

This appeal came before this Court on July 23 last. A preliminary objection was taken by counsel for the respondents. He argued that the procedure in regard to appeals under section 22 of Ordinance No. 1 of 1895 is regulated by the rules in respect of appeals to this Court from the District Court in its criminal jurisdiction. That is provided for in the last four lines of section 22. In that event, it was pointed out that the petition of appeal did not comply with section 340 (3) of the Criminal Procedure Code, in that it was not stamped as provided by that section. This objection was upheld and the appeal was dismissed with costs. The formal order of this Court, under the seal of the Court, states that the order of the District Court is affirmed and the appeal is dismissed.

The applicant did not let the matter rest there. On November 4 last he presented the present petition to this Court, not questioning therein the findings on the facts in the lower Court, but questioning the power of the District Court to make any order in respect of costs in proceeding under section 22 of the Ordinance. It will be remembered that in his appeal he had asked for costs in the lower Court in his own favour. In his present petition he asks this Court, in the exercise of its powers of revision, to set aside the order of the District Court for costs against him, on the ground that the Court had no power to make the order, and to give him the costs of these proceedings in revision.

When this petition came before two Judges of this Court on November 13 last, an order was made referring the petition to a Bench of three Judges on the ground that the question, one of costs, was one of great importance to the legal profession.

The question reserved for this Court is whether the District Court has power to award costs, in view of the fact that section 22 of Ordinance No. 1 of 1895, under which the proceedings are taken, is silent with regard to costs. The Court referring the matter also asked this Court to decide whether appeals under section 22 should be listed before a Bench of two Judges or before one Judge.

The bill of costs presented by the respondents' proctors for payment by the petitioner amounted to the sum of Rs. 6,813.58; this bill was taxed on October 5, 1935, by the taxing officer in the sum of Rs. 3,874.08. It is clear that the petitioner did not question the power of the lower Court to make an order for costs until he was requested to pay this sum. The sum is certainly a most extravagant one, when one contemplates the nature of the summary proceedings provided for in section 22, but as I have pointed out, all the parties seem to have made use of that section to have a formal trial on important issues, one of which was, in my opinion, proper for determination in a properly constituted action only. A disputed matter of paternity, for example, should not be decided in a summary proceeding under section 22, but the parties should have been referred to any remedy they might have by instituting a properly constituted action.

When this petition was opened before us, counsel for the respondents took a preliminary objection to the petition being heard. He had taken this objection also when the matter came before the Appeal Court on November 13. On that occasion, whilst not dismissing the objection, the Court decided to hear the petition on its merits. We decided, in view of the terms of the question submitted to us, to take the same course, leaving it open to counsel for the respondents to deal with his objection when arguing the case for his clients.

Section 22, under which the proceedings originated, gives a remedy to parties interested in the registration of a birth to apply for the rectification of the registration, if they feel aggrieved by any entry made under the Ordinance in the registers. That application must be made to the District Court of the district within which the Registrar holds office. The section does not provide for the procedure to be followed, nor does it say anything about the costs of the proceedings. One would, however, not ordinarily expect such provisions to be enacted in section 22, unless some exception were being made to the ordinary rule of practice governing applications to the Court. I agree with Mr. Nadarajah when he argues that the question of procedure is governed by the Civil Procedure Code. This application is a matter of summary procedure, to which, so far as they are applicable, the provisions of Chapter XXIV. of the Civil Procedure Code apply. It is provided *inter alia* that every application to the Court of summary procedure must be by petition, and the Court has no other guide but this chapter to govern its procedure in respect of this application. Section 209 of the Code further provides that when disposing of any application of summary procedure made under the Ordinance, the Court may give to either party the costs of such application. Other rules in the Court governing the question of costs also apply. I see no difficulty in the matter.

It has been urged before us that because there are instances, in which Ordinances have created special powers in the District Court and in creating those powers have added that the Court has power to grant costs also, therefore if the section creating the power is silent on the question of costs, there is no power in the Court to grant costs. It is not suggested that there is any other reason whatsoever why costs should not be allowed to a successful party whose application has been opposed. Of the Ordinances to which our attention was called, some such as the Trade Marks Ordinance, 1925, section 52, and the Housing Ordinance, 1915, section 84, constitute the District Court as a special tribunal of appeal. Such proceedings could hardly be said to fall under Chapter XXIV. of the Code or under any other provision of the Code unless it is specially provided. The same remark applies to proceedings under the Insolvency Ordinance, and the Land Acquisition Ordinance, 1876. The latter Ordinance sets out special procedure to be followed in the case of a reference to the District Court. The Marriages Ordinance, 1907, in proceedings under section 31 of that Ordinance, empowers the District Court to impose a fine. It is possible therefore that the legislature regards proceedings under that section in the nature of *quasi*-criminal proceedings. It must not be taken, however, that in proceedings under that section I hold that the District Court has no power to grant costs. That question

does not arise here, and will be decided when it arises. I can find nothing in the Ordinances referred to that can be made use of to support the argument that in proceedings under section 22 of the Births and Deaths Ordinance, the Court has no power to grant costs.

In answering the question referred to us therefore I am of opinion that the Court has power to grant costs in proceedings under section 22, the procedure being started by an application of summary procedure, governed by the Civil Procedure Code, 1889.

On the supplementary question as to whether appeals under section 22 should be listed before a Bench of one or two Judges, the proper course to follow, in my opinion, is to list it before a Bench of one Appeal Judge. The section provides that, so far as the procedure in regard to appeals is concerned, the appeals are to be treated as appeals from the District Court in its criminal jurisdiction. Appeals in proceedings under this section, in my opinion, cannot be more important than ordinary criminal appeals from the District Court involving a person's liberty sometimes for a considerable period. For the purpose of listing appeals also in my opinion, they should be placed in the same category as appeals from the District Court in its criminal jurisdiction and should therefore be heard before a Court of one Judge. He has the power given by the Ordinance of course of referring any important case or question to a fuller Bench.

Although the application in revision must, in my opinion, be dismissed for the reasons I have given in answering the question referred to this Court, it is desirable to say something about the preliminary objection taken by the respondents to the hearing of the application. That objection, in my opinion, is well founded.

The order which it is now sought to revise is in effect the order of this Court, which affirmed the order of the lower Court. Even if one were to accept Mr. Perera's argument that the order of the Appeal Court was wrongly drawn, seeing that the appeal was not heard on the merits, the applicant had a right of appeal from the decision of the lower Court, which right he has in fact exercised. A proceeding in revision is invoking an extraordinary remedy, which the Court is required to exercise with great care, otherwise there would be no end to litigation once commenced. It is well established that an application by way of revision will not generally be entertained when proceedings by way of appeal lie—*per* Shaw J. in *Alles v. Palaniappa Chetty* [1]. Wood Renton J. in *Bandulahamy v. Silva* [2], also points out that, though there is no hard and fast rule which precludes the Court from doing so in proper circumstances, the Supreme Court will not generally deal in revision with decisions which could have been brought before it by way of appeal.

No satisfactory reason has been advanced why the applicant did not seek in his appeal to have the order for costs against him set aside on the ground he now puts forward that the order was made without authority in the Court to make it. He was acting on legal advice then. It was apparently the size of the bill he was asked to pay that made him subsequently question the validity of the order and start these proceedings in

[1] *19 N. L. R. at p. 338.*

[2] *2 Cur. Law Reports at 68.*

revision. He could have brought the decision of the lower Court on this question before this Court in his appeal, and having failed to do so, I see no proper or sufficient circumstance put forward entitling him to proceed now in revision.

The application in revision must be refused with costs.

AKBAR J.—I agree.

POYSER J.—I agree.

Application refused.