

1968 *Present : Abeyesundere, J., and Samerawickrame, J.*

W. L. FERNANDO, Appellant *and* W. J. FERNANDO,
Respondent

S. C. 2 (Crim.)/1967—D. C. Negombo, 621/P

Contempt of Court—Summary procedure in a District Court—Requirement of proper charge at commencement of trial—Civil Procedure Code, ss. 793, 796—Courts Ordinance, s. 36.

In proceedings in a District Court for contempt of court for disobeying an interim injunction in a partition action, no charge was read out to the accused and her plea as to whether or not she admitted the truth of the charge was not taken and recorded.

Held, that the conviction of the accused was not valid. The provisions of section 796 of the Civil Procedure Code are imperative provisions which must be complied with for a trial to commence.

APPEAL from a judgment of the District Court, Negombo.

H. W. Jayewardene, Q.C., with *A. Sambandan* and *I. S. de Silva*, for the 3rd defendant-appellant.

C. Ranganathan, Q.C., with *A. J. F. Fonseka*, for the Plaintiff-Respondent.

March 22, 1968. ABEYESUNDERE, J.—

The appellant in this case is the 3rd defendant in partition action No. 621/P of the District Court of Negombo. The District Court issued in that action an interim injunction restraining the appellant, her agents and her servants from constructing a building on the land proposed to be partitioned till the determination of that action. The plaintiff in that action complained to the District Court that the appellant had disobeyed the interim injunction and on that ground asked for summons under section 793 of the Civil Procedure Code requiring the appellant to appear before the District Court to answer the charge. The summons that was issued by the District Court stated that the appellant had failed and neglected to obey the interim injunction served on her on 24th December, 1964 restraining her and her agents and servants from constructing a building on the said land till the determination of the partition action. After trial the learned District Judge held that the appellant had disobeyed the interim injunction and imposed on her a fine of Rs. 750/- and, in default of payment of the fine, sentenced her to four months' simple imprisonment. The appeal is from the conviction and sentence.

It is clear from the record of the case that on the day appointed for the hearing of the charge against the appellant, no charge was read out to her and her plea as to whether or not she admitted the truth of the charge was not taken and recorded. Counsel appearing for the respondent to the appeal drew the attention of this Court to the fact that the counsel for the appellant at the trial in the District Court had stated that the appellant denied the charge. The proceedings being in the nature of criminal proceedings, it was the person charged who should have been asked whether or not she admitted the charge and it was her plea that should have been recorded. The learned District Judge has therefore failed to comply with the provisions of section 796 of the Civil Procedure Code.

Counsel for the respondent submitted that at the trial the appellant was aware of the charge as she gave evidence to repel the charge. On a reference to the record we find that the circumstances in which the appellant got into the witness-box were that, when her counsel expressed the desire to lead some medical evidence to prove that she was ill on the day on which the plaintiff in the partition action alleged that summons had been served on her, the learned District Judge indicated to her

counsel that the stage at which such medical evidence could be adduced was after she gave evidence, and then her counsel called her into the witness-box and she gave her evidence. We are therefore unable to agree with the submission of counsel for the respondent that the fact that the appellant gave evidence at the trial indicates that she was aware of the charge.

Counsel for the respondent also submitted that, under section 36 of the Courts Ordinance, this Court should not on appeal reverse or alter the conviction entered in this case against the appellant unless any substantial right of the appellant had been prejudiced. We are satisfied that a substantial right of the appellant has been prejudiced. She has been denied the substantial right of being properly charged at the commencement of the trial and of pleading to the charge. We are therefore unable to agree with counsel for the respondent that section 36 of the Courts Ordinance prevents the conviction of the appellant from being reversed.

We hold that the provisions of Section 796 of the Civil Procedure Code are imperative provisions which must be complied with for a trial to commence. We also hold that in this case there has been no trial according to law and accordingly the conviction of the appellant and the sentence passed on her must be reversed.

For the aforesaid reasons we set aside the conviction and sentence and discharge the appellant.

SAMERAWICKRAME, J.—I agree.

Conviction set aside.
