

[IN THE COURT OF APPEAL OF SRI LANKA]

1972

Present : Fernando, P., Samerawickrame, J.,
and Siva Supramaniam, J.

MOTOR TRAWLER "MEEGAMUWA", Applicant, and
E. THILAGARATNAM, Respondent

APPLICATION No. 5 OF 1971

*Action in rem No. 1 of 1971 in the Colonial Court of Admiralty
of Ceylon—M. T. "Meegamuwa"*

*Admiralty Court—Judgment delivered by it—Whether appeal lies therefrom to the
Court of Appeal—Ceylon Courts of Admiralty Ordinance (Cap. 9), s. 2—
Court of Appeal Act, No. 44 of 1971, s. 8 (1).*

An application does not lie to the Court of Appeal for leave to appeal from a judgment delivered by the Colonial Court of Admiralty of Ceylon. The jurisdiction exercised by the Colonial Court of Admiralty in the present case was original and at no time appellate.

APPPLICATION for leave to appeal from a judgment delivered by the Colonial Court of Admiralty of Ceylon.

*E. R. S. R. Coomaraswamy, with Sinha Basnayake, H. Devanayagam
and S. C. B. Walgampaya, for the applicant.*

M. Kanagasunderam, for the respondent.

Cur. adv. vult.

July 24, 1972. FERNANDO, P.—

The defendant sought leave to appeal to this Court from a judgment delivered by the Colonial Court of Admiralty of Ceylon on 23rd November, 1971 ordering the applicant to pay to the plaintiff-respondent a sum of Rs. 25,000 by way of reward for salvage services rendered together with certain costs of suit.

Section 8 (1) of the Court of Appeal Act, No. 44 of 1971, enables a person aggrieved to apply to this Court for leave to appeal from any judgment of the Supreme Court given in the exercise of its appellate jurisdiction. While Section 2 of the Ceylon Courts of Admiralty Ordinance (Cap. 9) declares that the Supreme Court of Ceylon shall be a Colonial Court of Admiralty, the question does arise whether a judgment given by the latter Court is itself a judgment of the Supreme Court within the meaning of that expression as it appears in Section 8 (1) (d) of the Court of Appeal Act. There is no need, however, to consider this question as the judgment sought to be appealed from, whether it be considered to have been given by the Colonial Court of Admiralty or by the Supreme Court, is not one given in the exercise of appellate jurisdiction. The jurisdiction exercised by the Colonial Court of Admiralty in the present case was original and at no time appellate.

Mr. Coomaraswamy informed us that he has been instructed that it is proposed to enact legislation to enable this Court to exercise appellate jurisdiction over matters such as the present suit, and that a bill for that purpose has been published in the *Gazette* six days ago preparatory to it being tabled in the National State Assembly. He requested that the hearing of this application be adjourned for about six weeks. Mr. Kanagasunderam, for the respondent, objected strongly to a postponement of the hearing, urging that this application was filed so long ago as 10th December 1971. He argued that by the presentation of this application the respondent has been deprived since 23rd November 1971 of an opportunity of effecting execution, that the application could not have been lawfully made, and should now be decided according to the law as it stands. Shortly put, his contention was that the respondent should not be prevented from obtaining the fruits of his judgment because of a possibility that at some future date an appeal may be permitted against this judgment delivered eight months ago.

There is, in our opinion, merit in the respondent's argument that our duty today is to determine the application before us according to the law in its existing form. We have therefore rejected the application, but without costs.

Application rejected.