

1951

*Present : Dias S.P.J. and Gratiaen J.*GUNASEKERA, Appellant, and DE ZOYSA *et al.*, Respondents*S. C. 385—In revision, C. R. Balapitiya, 24,741**Revision—Civil case—Proctor in Supreme Court proceedings may be different from Proctor in original Court—Civil Procedure Code, s. 753.*

An application made to the Supreme Court to exercise its revisionary powers in a civil case can be initiated by a proctor other than the proctor whose proxy was filed in the lower Court.

THIS was a matter which was referred by Dias S. P. J., under section 48 of the Courts Ordinance.

S. W. Jayasuriya, with C. Jayasinghe, for the plaintiff petitioner.

O. S. M. Seneviratne, for the defendants respondents.

Cur. adv. vult.

May 3, 1951. GRATIAEN J.—

This matter comes before us on a reference by my brother Dias under section 48 of the Courts Ordinance.

The petitioner has made an application, supported by his petition and affidavit, asking the Supreme Court, in the exercise of its revisionary

¹ *Gout and another v. Cimitian, (1922) 1 App. Cases 105.*

powers under section 753 of the Civil Procedure Code, to call for and examine the proceedings in C. R. Balapitiya No. 24,741 and to quash an allegedly irregular order made to his prejudice by the learned Commissioner of Requests on 29th March, 1950. Mr. Jayasuriya appeared in support of the application before my brother Dias instructed by Mr. P. K. de Silva, Proctor, whose letter of appointment to act on behalf of the petitioner has been filed in this Court. Mr. de Silva had not represented the petitioner in the proceedings in the Court below, where the petitioner's proctor was another proctor, Mr. H. S. de Silva, whose proxy was duly filed of record in the Court of Requests and admittedly still stands unrevoled.

The question for our decision is whether, so long as Mr. H. S. de Silva remains the proctor who alone has authority in that capacity to represent the petitioner in the action in the Court of Requests of Balapitiya, it was competent for another proctor, Mr. P. K. de Silva, to initiate the present proceedings in this Court relating to the same action, and to retain counsel to appear before us in support of this application. In my opinion the answer to this question is in the affirmative. The reasons for my decision are as follows :—

(1) The present application inviting the Court to exercise its revisionary powers under Section 753 of the Civil Procedure Code is in no sense a step in the proceedings in the Court of Requests of Balapitiya in which Mr. H. S. de Silva was the duly authorised proctor representing the petitioner ; on the contrary, the present application " by way of revision "—if I may employ that phrase—constitutes an entirely independent proceeding in a different Court of competent jurisdiction in which the petitioner could not be represented by a pleader other than an advocate duly instructed by a proctor whose proxy or letter of appointment had to be filed in this Court. (*Fernando v. Fernando*, (1900) 2 *Leader Law Reports*, 66) ;

(2) Even if the petitioner had decided to avail himself of the professional services of Mr. H. S. de Silva for the purposes of the present application, it would have been necessary for him to make a fresh appointment in writing for this special purpose, and that appointment would have had to be filed in this Court by Mr. H. S. de Silva ;

(3) Finally, as far as these proceedings are concerned, there is really no possibility of any complication arising from a situation where a litigant is represented by two separate proctors in the same *lis*. (*Rositer v. Elphinstone* (1881) 4 *S. C. C.* 53 and *Letchemanan v. Christian* (1898) 4 *N. L. R.* 323). Mr. P. K. de Silva is the only proctor with authority to act in that capacity for the petitioner in these proceedings, and similarly Mr. H. S. de Silva is at present the only proctor empowered to act for him in the Court below. Apart from the circumstances to which I have already referred (namely, that Mr. H. S. de Silva has not filed any letter of appointment from the petitioner in this Court) I find that his proxy filed in C. R. Balapitiya No. 24,741 does not even

purport to confer upon him any power, express or implied, to initiate proceedings "by way of revision" in this Court on the petitioner's behalf.

I would therefore in answer to the matters referred to us for our decision; hold that Mr. P. K. de Silva's proxy in these proceedings is a valid proxy which empowers him to instruct counsel to appear in this Court in support of the petitioner's application. The application should now, I think, be listed for argument in due course before a single Judge of this Court. I would make no order as to the costs of the argument on this preliminary matter.

DIAS S.P.J.—I entirely agree.

I wish to state that when I suggested that this case should be dealt with by a fuller Bench, it was not fully appreciated that an application in revision to the Supreme Court in a civil case is not a continuation of the proceedings in the lower Court and which needed the filing of a fresh proxy. This fact distinguishes this case from all the cases where it has been held that there cannot be two proxies on the record of a civil case at the same time. This case will now go back before a single Judge for final disposal.

Application to be listed in due course.
