

1969

*Present : Samerawickrame, J.*V. ARUMUGAM, Appellant, *and* S. VALLIAMMA, Respondent

S. C. 63/67—C. R. Colombo, 77635

Civil Procedure—Power of attorney—Proof of execution.

Once it is admitted that a power of attorney bears the signature of the party who authorised it, it is not necessary for the court to be unduly critical in its examination of the document.

APPEAL from an order of the Court of Requests, Colombo.

W. D. Gunasekera, for the applicant-appellant.

D. R. P. Goonetilleke, with *C. Dahanayake*, for the defendant-respondent.

Cur. adv. vult.

December 21, 1969. SAMERAWICKRAME, J.—

This is an appeal from an order made in an inquiry into an application for the withdrawal of a sum of about Rs. 700 lying in deposit to the credit of the case. The application was made by an attorney of the plaintiff. The defendant-respondent challenged the validity of the power of attorney on the grounds that it was not a genuine document and that it had not been duly executed. He obtained an examination of the document by a handwriting expert but at the inquiry, the allegation that the power of attorney did not contain the genuine signature of the plaintiff was abandoned and counsel for the defendant-respondent challenged the document on the sole ground that the power of attorney was not duly executed. Once it was admitted that the power of attorney bore the signature of the plaintiff, I do not think that it was necessary for the court to have been unduly critical in its examination of the power of attorney. The learned Commissioner of Requests states that the signature of the Sub-Divisional Magistrate, Tuticorin, does not contain under it the designation of his office. The power of attorney however bore a seal in Tamil which was apparently the seal of the Magistrate's Court and the Attache of the High Commission of India in Ceylon has attested to the fact that it has been signed by the Sub-Divisional Magistrate, Tuticorin.

I am of the view that the power of attorney was sufficient authority for the application made by the attorney on behalf of the plaintiff. I set aside the order of the learned Commissioner and make order allowing the application for the withdrawal of the money.

I find that there was an earlier abortive application which failed for want of proof of the power of attorney which was then put forward. There also appears to have been further proceedings and the time of the court appears to have been applied to this matter of the withdrawal of the sum of money on several occasions. The time of the court as well as expense to parties could have been avoided if the plaintiff had, when he decided to have his elder brother appointed to act for him as attorney for the purpose of this case, furnished him with a power of attorney duly executed in accordance with the provisions of the law applicable thereto which are not very intricate. In the circumstances, I make no order as to costs in respect of either the appeal or the inquiry in the Court below.

Application allowed.