

1933

*Present : Dalton S.P.J. and Drieberg J.**AMMAL et al, v. MOHIDEEN et al.**193—D. C. (Inty.) Colombo, 27,656.*

Appeal—Some respondents made parties to appeal—Notice of appeal and security not given—Powers of Supreme Court to issue notice to respondents—Civil Procedure Code, ss. 756 and 770.

Where an appellant had made some of the parties respondents to the appeal but had failed, in regard to them, to comply with the requirements of section 756 of the Civil Procedure Code,—

Held, that the Supreme Court would not exercise its powers under section 770 of the Civil Procedure Code by directing notice to issue on the said respondents.

A PPEAL from a judgment of the District Judge of Colombö.

Hayley, K.C. (with him *Nadaraja*), for plaintiffs, appellant.

H. V. Perera (with him *Nagalingam*), for fifth, tenth, and eleventh defendants, respondent.

May 18, 1933. DALTON S.P.J.—

This is an appeal by the plaintiffs-appellants. But objection has been taken that certain of the respondents to the appeal are not before the

Court and that the appellants have failed to comply with the provisions of section 756 of the Civil Procedure Code and to bring them before the Court. There are fifteen respondents to this appeal of whom only three have been given notice of appeal.

The order appealed from is an order, amongst other things, dismissing the plaintiffs' action, and it is quite clear that if the appeal is allowed that the respondents who are not before the Court would be materially affected by any order allowing the appeal.

It has been urged on behalf of the appellants that they should now have an opportunity of giving notice of appeal to the twelve respondents who are not here, under the provisions of section 770 of the Civil Procedure Code, but it would appear that certain steps which are required to be taken before that notice of appeal is issued have not been taken by the appellants, the first step being notice to tender security and to deposit the sum covering the costs of serving notice of appeal. The appellants, in other words, seem to have done nothing except make these other twelve defendants, respondents to the appeal, as apparently necessary parties to the appeal, but have not complied with any of the further provisions of the Civil Procedure Code in respect of notices or otherwise. Section 770 therefore, even if notice of appeal was allowed to be served upon the missing respondents, would not be sufficient to comply with the further requirements of section 756 of the Code. Section 770 does not appear to apply to such a case as this where no notice to tender security has been given. In that event the application under 770 will not cure the defects in the constitution of the appeal and the result is that the appeal must be dismissed with costs.

DRIEBERG J.—I agree.

Appeal dismissed.

