

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application for leave to appeal in terms of Section 5(C)(1) of
The High Court of the Provinces (Special Provisions) Act No.54 of 2006.

LVC Kuruppu

Administrator of the estate of DBH Kuruppu
Plaintiff

SC Appeal 54/2011
High Court L.A Application
No.WP/HCCA/Col.42/10 LA
DC Colombo 6063/RE

Vs

B Carolis Perera
Defendant

HA Charlot Nonna
Substituted Defendant

AND BETWEEN

HA Charlot Nonna
Substituted Defendant-Petitioner

Vs

Obrey Orvil Carrol Kuruppu
Substituted-Plaintiff-Respondent

AND NOW BETWEEN

HA Charlot Nonna
Substituted Defendant-Petitioner-Appellant

Vs

Obrey Orvil Carrol Kuruppu
Substituted-Plaintiff-Respondent-Respondent

Before : Chandra Ekanayake J
Sisira J De Abrew J
Anil Gooneratne J

Counsel : Mhanama de Silva with N Samarasinghe for the Substituted
Defendant-Petitioner-Appellant
Maura Gunawansa for the Substituted
Plaintiff-Respondent-Respondent

Argued on : 4.3.2015
Decided on : 17.6.2015

Sisira J De Abrew J.

This is an appeal against the judgment of the Civil Appellate High Court (hereinafter referred to as the High Court) dated 3.12.2010 wherein the said High Court dismissed the application for leave to appeal filed by the substituted Defendant-Petitioner-Appellant (hereinafter referred to as the Defendant-Appellant) on the ground that there was no specific prayer for leave to appeal. This Court, by its order dated 5.5.2011, granted leave to appeal on questions of law set out in paragraphs 23(a) and 23(b) of the petition of appeal dated 16.12.2010 which are reproduced below.

1. Is a specific prayer for leave to appeal necessary in an application for leave to appeal, if not, has the said Civil Appellate High Court erred in law in

dismissing the petitioner's application on the basis that there was no specific prayer for leave?

2. In any event in as much as in both the petition dated 2.7.2010 and in the supporting affidavit filed in the said High Court, the petitioner had stated that she was seeking leave to appeal and in as much as the caption had stated it was an application for leave to appeal, was a specific prayer for leave to necessary and if not has the said High Court erred in law in dismissing the said application purely for lack of a specific prayer to that effect?

I now advert to the facts of this case. The Defendant-Appellant filed an application for leave to appeal (petition of appeal) in the High Court seeking leave to appeal against the order of the District Court dated 12.5.2010. On 17.6.2010 when the case was called in the High Court learned counsel for the Substituted Plaintiff-Respondent-Respondent (hereinafter referred to as the Plaintiff-Respondent) raised a preliminary objection and submitted that the application for leave to appeal should be dismissed on the ground that it did not contain a prayer for leave to appeal. The inquiry into this objection was fixed for 9.7.2010. Before the commencement of the inquiry, the Defendant-Appellant, on 3.7.2010, filed an amended petition including a specific prayer for leave to appeal. The Defendant-Appellant however did not obtain permission of the High Court to file an amended petition. It appears from the judgment that the High Court has refused to consider the amended petition. In my view the High Court was right when it refused to consider the said amended petition since the Defendant-Appellant did not obtain permission of court to file the same.

The preliminary objection raised by the Plaintiff-Respondent in the High Court was that the petition of appeal should be dismissed as it did not contain a specific prayer for leave to appeal. The learned High Court Judges considering the

judgment in the case of Sirinivaso Thero Vs Sudassi Thero 63 NLR 31 upheld the objection and dismissed the petition of appeal. This Court is invited to consider the correctness of the said judgment. I would like to state here that the judgment in the case of Sirinivaso Thero Vs Sudassi Thero 63 NLR 31 did not consider the question that has arisen in this case. I have read the said judgment and in my view it is not relevant to the question that must be considered in this case.

In order to consider the question that must be decided in this case it is necessary to consider Section 757(1) of the Civil Procedure Code (CPC) which reads as follows:

Every application for leave to appeal against an order of court made in the course of any civil action, proceeding or matter shall be made by petition duly stamped, addressed to the Court of Appeal and signed by the party aggrieved or his registered attorney. Such petition shall be supported by affidavit, and shall contain the particulars required by section 758, and shall be presented to the Court of Appeal by the party appellant or his registered attorney within a period of fourteen days from the date when the order appealed against was pronounced, exclusive of the day of that date itself, and of the day when the application is presented and of Sundays and public holidays, and the Court of Appeal shall receive it and deal with it as hereinafter provided and if such conditions are not fulfilled the Court of Appeal shall reject it. The appellant shall along with such petition, tender as many copies as may be required for service on the respondents.

Section 757(1) of the CPC specifies particulars that should be included in an application for leave to appeal (petition of appeal). It further states that such petition should contain particulars required by section 758 of the CPC. Section 758 of the CPC states that a petition of appeal should, inter alia, contain “a demand in the form of relief claimed”

It is true that in the petition of appeal dated 12.5.2010, there is no specific prayer to grant leave to appeal. What is necessary to consider is whether the said

petition of appeal contains a demand in the form of relief claimed. In paragraph 18 of the petition of appeal dated 12.5.2010, the Defendant-Appellant had clearly prayed that leave to appeal be granted. The same facts are considered in paragraph 19 of her affidavit. Thus in my view the Defendant-Appellant, in the petition of appeal dated 12.5.2010, has clearly moved the High Court to grant her leave to appeal.

To dismiss a petition of appeal on the ground that there is no specific prayer for leave to appeal in such petition when it contains a specific paragraph praying for leave to appeal is highly technical. Supreme Court is not an academy of law but a Court of Justice and it should not be trammled by technicalities. This view is supported by the judgment of Abrahams CJ in the case *Vellupillai Vs Chairman Urban District Council* 39 NLR 464 Wherein His Lordship remarked thus: “Supreme Court is a Court of Justice, it is not an Academy of Law”

In my view, the petition of appeal dated 12.5.2010 filed in the High Court contains a demand that leave to appeal be granted. I am therefore of the opinion that the said petition of appeal has complied with Section 757(1) and 758 of the CPC. In these circumstances the fact that the Defendant-Appellant filed an amended petition cannot be considered to construe that she had abandoned her petition of appeal dated 12.5.2010 (the original petition).

For the above reasons I hold that the High Court was wrong when it dismissed the petition of appeal of the Defendant-Appellant. In my view, absence of a specific prayer for leave to appeal cannot be considered as a ground to dismiss an application for leave to appeal (petition of appeal) when such petition contains a paragraph moving court to grant leave to appeal.

In view of the conclusion reached above, I answer the questions of law raised by the Defendant-Appellant in his favour.

For the above reasons, I set aside the judgment of the High Court dated 3.12.2010 and direct the High Court to consider the Petition of Appeal filed by the Defendant-Appellant.

Judgment set aside

Judge of the Supreme Court.

Chandra Ekanayake J

I agree.

Judge of the Supreme Court.

Anil Gooneratne J

I agree.

Judge of the Supreme Court.