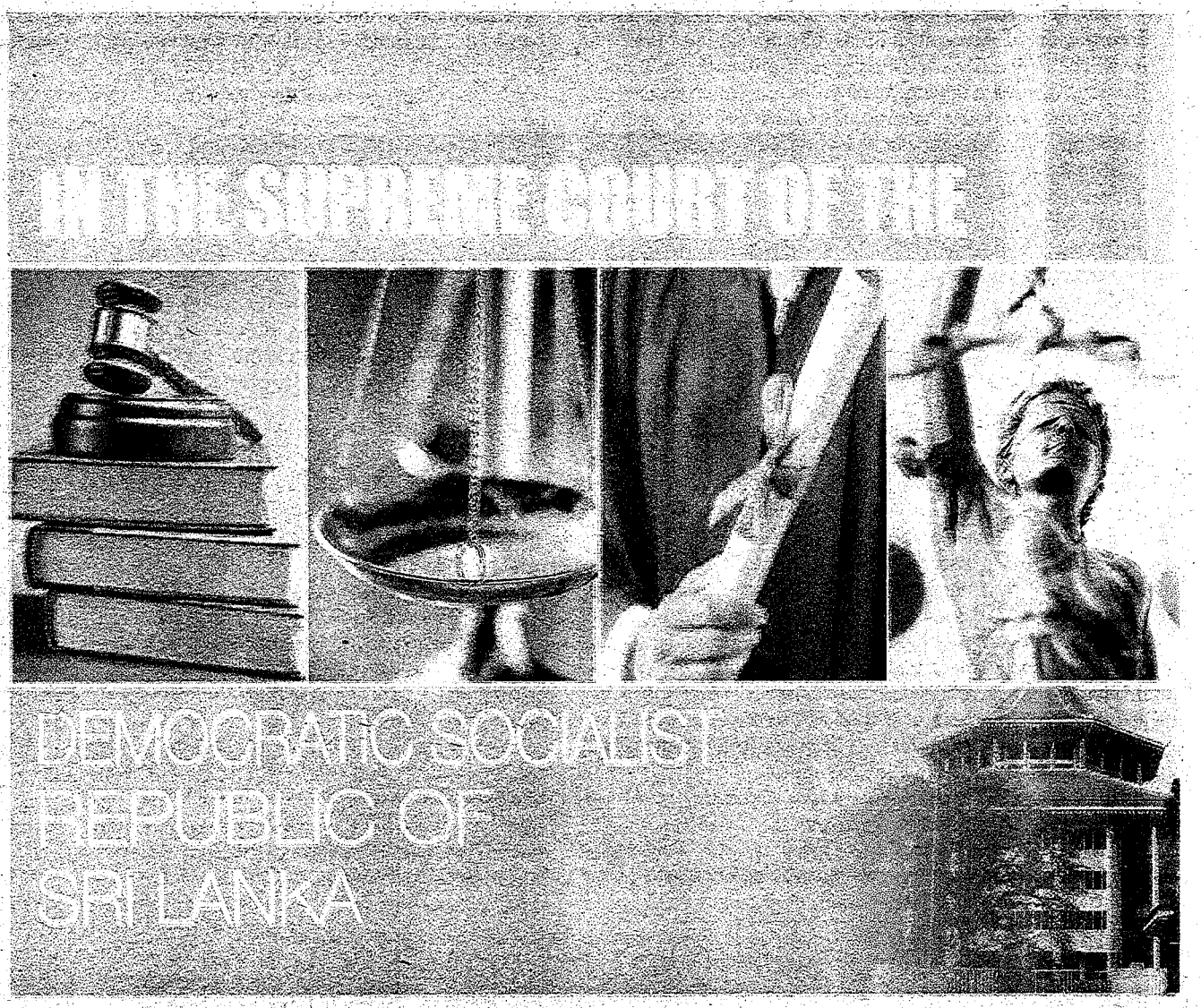
Necessary parties a must in SC/LA Applications



In the matter of an application for Leave to Appeal to the Supreme Court under and in terms of Section 5 (c) 1 of the Provinces (Special Provisions) Act No. 19 of 1990 as amended by Act No. 54 of 2006.

Illangakoon Mudiyanselage
Gnanathilaka Illangakoon,
Bulupitiya, Uhumeeya, Kurunegala.

Plaintiff-Respondent-Petitioner

S.C.H.C. C.A. L.A. 277/11 Vs.
C.P/HC/CA/15/2009
D.C. Matale Case No. 3773/L.

Anula Kumarihamy
Lenawela, Lenawela

Defendant-Appellant- Respondent

BEFORE : K. Sripavan, J.
S. Hettige, P.C.,J.
P. Dep, P.C., J.

COUNSEL : S.K. Sangakkara for the Plaintiff- Respondent-Petitioner
Riad Ameen for the Defendant- Appellant-Respondent

ARGUED ON : 21.01.2013

WRITTEN SUBMISSIONS FILED : By the Plaintiff on 05th February 2013
By the Defendant on 12th February 2013

DECIDED ON : 05.04.2013

SRIPAVAN, J.

The Plaintiff-Respondent- Petitioner (hereinafter referred to as the "Plaintiff") being dissatisfied with the judgment pronounced by the High Court established by Article 154P of the Constitution preferred a leave to appeal application dated 21.07.11 to this Court to have the said judgment set aside on various grounds set out in paragraph 12 of the Petition of Appeal.

When the said leave to appeal application was taken up for support, the Learned Counsel for the Defendant-Appellant-Respondent (hereinafter referred to as the "Defendant") took up a preliminary objection to the maintainability of the application on the basis that the Plaintiff has failed to comply with the mandatory requirements set out in Rules 28(2) and / or 28(5) of the Supreme Court Rules, 1990 and therefore the application filed by the Plaintiff should be dismissed in limine.

The Plaintiff filed his Plaint dated 21.04.86 in the District Court naming the following four Defendants :

Illangakone Mudiyanselage Gnanathilaka Illangakone

Plaintiff

Vs.

1. Kalinga Seneviratne Kumarasinghe Bandaranayake Mudiyanse Ralahamilage William Bandara Lenawala,
2. Kalinga Seneviratne Kumarasinghe Bandaranayake Mudiyanse Ralahamilage Thilakaratne Bandara Lenawala
3. Anula Kumarihamy Lenawala
4. Hetitiarachchige Don Lootus Leelartne

Defendants

When this application came up for hearing before this Court on 25.05.2012, Learned Counsel for the third Defendant informed Court that he would be taking up a preliminary objection that the leave to appeal application should be rejected in limine for failure to make the necessary parties as Defendants. The inquiry into the preliminary objection was fixed for 18.09.2012. However, on 07.09.2012, the written submissions of the Plaintiff was filed and he took up the following matters, moving that the preliminary objections be rejected.

1. Paragraph (2) -
The first and the second defendants died after filing the answers, but before the trial and their legal representatives were substituted as 1A and 2A Defendants.

2. Paragraph (3) -
On the date of the trial the second and the third Defendants were alive. Only the 3rd Defendant appeared at the trial; the Court ordered ex-parte trial against all the other Defendants and entered judgment against the 3rd Defendant.

3. Paragraph 4 -
Before the appeal was heard by the High Court and after the ex-parte decree was served on the 4th Defendant H.D.L. Leelaratne, he met the Plaintiff and requested him to execute Deed No. 264 dated 19th January 2011 in order to avoid ejectment from the portion he occupied pertaining to the decree in the case.

4. Paragraph 6 -
As the Court had already ordered ex-parte trial against the 4th Defendant H.D.L. Leelaratne and no final judgment has been entered against him he will not be bound by the Order of this Court. Thus, there was no need to make the 4th Defendant as a party respondent to this leave to appeal application.

5. Paragraph 7(a)
The Provincial High Court failed to issue any notice on the substituted Defendants thereby deprived their rights to be present at the hearing and to exercise their rights under Section 772 of the Court Procedure Code.

6. Paragraph 7(b)
The judgment of the Provincial High Court does not bind the substituted Defendants and the Defendants who have died. It is on the abovementioned basis the Plaintiff submitted that except Anula Kumarihamy Lenawala, others had not been made parties in the appeal preferred to the Supreme Court.

The petition of appeal dated 21.07.11 filed in this Court did not contain any of the matters now referred to in the written submissions . Rule 28(2) mandatorily requires that the appeal should contain, inter alia, a plain and concise statement of the facts and the grounds of objection to the judgment appealed against. The Plaintiff has now produced Deed No. 264 dated 19th January 2011 and other evidence of fact for the first time along with the written submissions. The aforesaid Deed was not even produced in evidence before the District Court. The position now taken up in the written submissions of the Plaintiff is irrelevant and cannot be considered at this stage. It is also noted that the written submission filed is teamed with mistakes and irregularities. While in paragraph 2, the Plaintiff states that the second Defendant died after filing the answer, in paragraph 3, he states that the second Defendant was alive, on the date of the trial.

Learned Counsel for the Defendant argued that in the application for leave to appeal, only the Plaintiff and the Defendant were made parties whereas the proceedings before the High Court indicate the following three more parties as Defendants-Defendants:

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