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

Auriya Vinothini Yogaraja nee Poopalarathnam,
No. 543/2/B, Galle Road,
Wellawatta.
and now
3037, Shorepine CT,
Riverside, CA 92504, USA.
(through her Power of Attorney Weerakkody Arachchilage Sampath Seenadeera of No. 41, Darmarama Road, Rathmalana)
Plaintiff-Respondent-Appellant

SC/APPEAL/33/2020
WP/HCCA/MT/19/18/LA
DC/MOUNT LAVINIA/2993/16/L

Vs.

Riyal Mohomed Riswan,
No. 28, 13th Lane, Kollupitiya,
Colombo 03.
and
No. 151/3, Galle Road, Dehiwala.
6th Defendant-Appellant-Respondent

And

1. Parwathi Pragash alias Madoona Damayanthi,

No. 151/3, Galle Road, Dehiwala.

2. Wijesooriya Arachchige Don Gunapala,
   No. 6/61, Hill Street, Dehiwala.
3. Mohamed Subathir Mohomed Abhu Yaseed,
   No. 45, Hamden Lane,
   Walawatte.
4. Nimaleshwaree Edward Yaseed,
   No. 45, Hamden Lane,
   Wellawatte.
5. Niroshan Company (Pvt.) Ltd,
   No. 65, Stock Place,
   Colombo 10.

   Defendants-Respondents-Respondents

Before: Hon. Justice P. Padman Surasena
Hon. Justice Mahinda Samayawardhena
Hon. Justice Arjuna Obeyesekere

Counsel: Charith Galhena with Piyahasi Dias for the Plaintiff-Respondent-Appellant.

Niranjan Arulpragasam with Lasika Udayangani for the 6th Defendant-Appellant-Respondent.

Argued: 04.10.2024

Written Submissions:

The Plaintiff-Respondent-Appellant and the 6th Defendant-Appellant-Respondent on 04.11.2024

Decided: 02.12.2024

Samayawardhena, J.

The plaintiff filed action in the District Court of Mount Lavinia through a power of attorney holder against six defendants seeking several reliefs including a declaration of title to the land in suit and the ejectment of the defendants. The 6th defendant took up a preliminary objection to the maintainability of the action on the basis that the said power of attorney is invalid as it had been attested by a notary in Colombo despite the notary holding the licence to practice within the judicial zone of Gampaha. By order dated 26.03.2018, the District Court overruled this objection, but on appeal, by judgment dated 04.12.2018, the High Court of Civil Appeal of Mount Lavinia upheld the objection and dismissed the plaintiff's action. This Court granted leave to appeal on the question of law as to whether the High Court erred in law by holding that a defective power of attorney vitiates the plaintiff's action in toto.

Section 31(22) of the Notaries Ordinance, No. 1 of 1907, as amended, states:

> *31(22). [The notary] shall not authenticate or attest any deed or instrument in any area other than that in which he is authorized to practice, nor in any language other than that in which he is authorized to practice nor authenticate or attest any deed or instrument drawn in any language other than that in which he is authorized to practice.*

If a notary violates the above provision/rule or any other provision/rule set out in section 31, he commits a punishable offence under section 34 but the instrument attested does not become invalid, as expressly stated in section 33 of the Ordinance.

> *33. No instrument shall be deemed to be invalid by reason only of the failure of any notary to observe any provision of any rule set out in section 31 in respect of any matter of form:*
>
> *Provided that nothing hereinbefore contained shall be deemed to give validity to any instrument which may be invalid by reason of non-compliance with the provisions of any other written law.*

When the wording of a statute is clear, there is no need for interpretation; the words speak for themselves. The Judge cannot introduce new words or disregard existing words to give a different interpretation in a manner the Judge thinks serve the ends of justice. The words, phrases, and sentences must be construed according to their ordinary, natural, and grammatical meanings. This principle, known as the primary or literal rule, constitutes the foundational tenet of statutory interpretation. (*Maxwell on The Interpretation of Statues,* 12th Edition (1969), pages 28-32; *N.S. Bindra Interpretation of Statutes*, 13th edition (2023), pages 328-336) In general terms, the Judge may resort to other canons of interpretation, such as the golden rule, the mischief rule, and harmonious construction, if he is fully convinced that the literal meaning is inconsistent with the clear intention of the legislature or leads to absurdity or repugnancy.

In *Miller v. Salomons* (1853) 7 Ex. 475, Pollock C.B. stated at 560:

> *If the meaning of the language used by the legislature be plain and clear, we have nothing to do but to obey it—to administer it as we find it, and I think, to take a different course is to abandon the office of Judge, and to assume the province of legislation.*

The High Court in its order stated "*it is not the contention of the learned counsel [for the plaintiff] that section 33 of the Notaries Ordinance applies to the matter in hand.*" On that basis, the High Court disregarded section

33 of the Notaries Ordinance. This approach by the High Court is not correct. The appeal before the High Court was filed by the 6th defendant, not the plaintiff. The plaintiff was defending the District Court order, which overruled the preliminary objection. In that order, at pages 7-8, the District Court clearly referred to section 33 of the Notaries Ordinance and the relevant case law when it overruled the preliminary objection. Hence the observation/finding of the High Court that the plaintiff's counsel did not make submissions on section 33 is immaterial. Even if neither the District Court nor the plaintiff's counsel referred to section 33, there was no bar for the High Court to take cognizance of that section and affirm the District Court order.

According to section 24 of the Civil Procedure Code, an appearance in Court may be by a party in person, his recognized agent, or Attorney-at-Law. Section 25(b) of the Civil Procedure Code states that a power of attorney holder is a recognized agent. On this basis, the High Court concluded that the proxy filed in the case was invalid, as the alleged power of attorney holder was not a recognized agent of the plaintiff due to the said defect in the power of attorney. The High Court cited *William Silva v. M.D. Sirisena* (1965) 68 NLR 206 and *Udeshi v. Mather* [1988] 1 Sri LR 12 in support.

In *William Silva's* case decided in 1965, it was held:

> *A proxy given by a person to a proctor must be signed only by that person himself or by a recognized agent as defined by section 25 of the Civil Procedure Code. A person holding a power of attorney as the agent of a party is debarred by section 25(b) from appointing a proctor on behalf of his principal if the principal is resident within the jurisdiction of the Court at the time when the action is instituted there.*

In *William Silva's* case, the plaintiff was residing within the jurisdiction of the Court when the action was filed through a power of attorney holder. According to section 25(b), a case can be filed through a power of attorney holder if the party resides outside the local limits of the jurisdiction of the Court where the case is to be filed. The Court stated that it is a statutory requirement that only a party or a recognized agent can sign a proxy authorizing a proctor to appear and act in the action, and as there was no valid proxy, there was no valid action filed on behalf of the plaintiff. The Court observed at page 209 that "*M.D. Gunasena [the plaintiff] died without ratifying the action commenced on a proxy given by M.D. Sirisena [the power of attorney holder].*" In other words, had the plaintiff ratified the action commenced on the defective proxy before his death, the action could not have been dismissed.

This was clearly explained by Atukorale J. (with the agreement of Sharvananda C.J. and Alwis J.) in *Udeshi v. Mather* (supra) at pages 20-21 in the following manner:

> *In William Silva v. M. D. Sirisena (1965) 68 NLR 206 a preliminary objection was taken in the lower court that the plaintiff was not properly before court. At the time the action was instituted by the proctor upon a proxy signed by the attorney, the plaintiff was resident within the limits of the jurisdiction of the court. Shortly after its institution the plaintiff died without taking part at the trial. The attorney then applied for probate of the last will of the deceased plaintiff and moved to have himself substituted as the legal representative of the deceased plaintiff which was allowed. In appeal the court upheld the finding of the learned District Judge that the plaintiff was not properly before court. In overruling the finding of the learned District Judge that the substituted plaintiff had ratified the steps taken since the institution of the action, the court*

> *held that as the original plaintiff had died without ratifying the action commenced on the proxy given by the attorney there was no valid action pending and as such there can be no substitution. The court seems to have taken the view that as the original plaintiff did not bring the action and as he died without ratifying the action brought on his behalf there could not be a valid substitution or ratification. In short there was no valid action brought or pending in court. The action was therefore dismissed.*

It is important to note that what matters is not whether the proxy filed initially is defective, but whether the party ratifies the acts done by the lawyer on the defective proxy. If he does, the Court need not dismiss the action on the basis that there is no valid proxy or there is no valid action filed on a defective proxy. Defects in the proxy are curable, not incurable. This principle was expressed by Atukorale J. at page 21 in the following manner:

> *[I]n matters of this nature the question appears to be whether the proctor had in fact the authority of his client to do what was done on his behalf although in pursuance of a defective appointment. If in fact he had his client's authority to do so, then the defect is one which, in the absence of any positive legal bar, could be cured. On the contrary if in fact he did not have such authority of his client, the acts done and the appearances made on his behalf by the proctor would be void and of no legal effect.*

It is unfortunate that the High Court referred to *Udeshi v. Mather* but did not apply the *ratio decidendi* to the facts of the instant case. In the instant case, it is not the position of the plaintiff that her power of attorney holder or the Attorney-at-Law who filed the proxy in Court acted without authority. Her position is that, they acted with authority, and she should

not be penalized for the lapse of the notary who attested the power of attorney.

Chief Justice J.A.N. de Silva in *Gunatilake v. Sunil Ekanayake* [2010] 2 Sri LR 191 removed all doubts when he held (with the agreement of Sripavan J. and Ekanayake J.) at page 202 that "*even in the case of an Attorney when he is incapable of appearing or making application due to the total failure to file the proxy, such default should not in any way affect the validity of the proceedings*", if the Attorney had in fact the authority of his client to do what he did without a proxy. In *Gunatilake's* case, there was no proxy at all, not that the proxy was defective, although the Attorney appeared for the client nonetheless. The Supreme Court clarified that a proxy could be filed subsequently to ratify prior actions taken.

Learned counsel for the respondent argues that, "*for example, a Notary with a warrant to practice in the judicial zone of Jaffna cannot execute an instrument in the judicial zone of Colombo and claim cover under section 33 of the Notaries Ordinance*", and if this were permitted, it would have far-reaching consequences, effectively rendering the warrant granted by the Minister nugatory. The short response to this concern is that the notary cannot claim cover under section 33 of the Notaries Ordinance, but a party can.

I answer the question of law on which leave was granted in the affirmative and unhesitatingly set aside the judgment of the High Court of Civil Appeal dated 04.12.2018 and restore the order of the District Court dated 26.03.2018. The plaintiff is entitled to costs in all three Courts payable by the 6th defendant.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

Arjuna Obeysekere, J.

I agree.

Judge of the Supreme Court