LETTERS PATENT APPEAL

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and Mr. Justice Dunkley.

1938

July 22.

SAWARMAL AND OTHERS

v.

KUNJILAL AND ANOTHER.*

"*Act*" *of a pleader—Presentation of memorandum of appeal or plaint—Memorandum or plaint signed by a duly authorized pleader—Presentation by another person on his behalf—Personal skill of pleader—Delegation of duty—Presentation a ministerial act—Civil Procedure Code, O. 3, r. 4* (1) ; *O. 4, r. 1* ; *O. 41, r. 1.*

When a plaint or memorandum of appeal has been drawn up and signed by a pleader duly authorized under O. 3, r. 4 of the Civil Procedure Code there is nothing contrary to the provisions, or the intention, or the spirit of that rule in the mechanical act of handing over the papers to the Court, or the officer appointed, being performed by a clerk or another pleader, to whom the duty of performing that act has been delegated by the duly authorized pleader.

The Code contemplates that certain functions of a ministerial nature may be delegated. The presentation of a plaint or appeal is a ministerial act which does not require the personal skill or attention of the duly appointed pleader and can be done without consideration of facts or circumstances.

Filing of powers by an Advocate, In the matter of, I.L.R. 4 Ran. 249, distinguished.

Fuzzle Ali, In re, 19 Suther. W.R. Cr. 8 ; *Kali Kumar Roy* v. *Nobin Chunder*, I.L.R. 6 Cal. 585 ; *Maung Kyaw* v. *Maung Po Thaing*, 3 Bur. L.T. 131 ; *Muruga Chetty* v. *Rajasami*, 22 M.L.J. 284 ; *Queen-Empress* v. *Karuppa*, I.L.R. 20 Mad. 87 ; *Sattaya* v. *Soundarathachi*, I.L.R. 47 Mad. 312 ; *Thakur* v. *Hari Das*, I.L.R. 34 All. 482, referred to.

P. K. Basu for the appellants. The advocate who was engaged by the appellants in the District Court and who held the power of attorney from his clients drew up the memorandum of appeal and signed it. It was presented to the Court by another advocate on his behalf. Objection has been raised that the appeal papers could not be filed except by the advocate who was duly authorized.

*Letters Patent Appeal No. 3 of 1938 from the judgment of this Court in Civil Second Appeal No. 175 of 1937.

Reliance was placed on the decision of this Court in *In the matter of filing powers by an Advocate* (1). Neither the provisions of Order 4, rule 1 of the Civil Procedure Code, nor those of Order 41, rule 1, require that a plaint or memorandum of appeal shall be filed in Court by the advocate who holds a power of attorney from his client. Presentation of a plaint or an appeal is a ministerial act and can be performed by another person on behalf of the advocate engaged in the case. It is a common practice in the districts for one pleader to file papers in Court on behalf of another pleader, and in the High Court authorized clerks of advocates file the plaints, applications and appeals. If it were otherwise business in Courts would be greatly hampered. When something is to be done by a person himself, the Code expressly states so, *e.g.* the presentation of an application by a person for leave to sue as a pauper. There is nothing in the provisions of Order 3, rule 4 (1) of the Code to suggest that an authorized pleader could not delegate his duty to file a plaint or an appeal to another pleader. *In the matter of filing powers by an Advocate* is distinguishable. There an advocate not only presented but also signed a memorandum of appeal without any authority from the appellant.

Irvine-Jones for the respondents. A pleader either acts or pleads for his client. Pleading means addressing the Court on behalf of his client. Every other function of the pleader comes within the word "act" as used in Order 3, rule 4 (1) of the Code, and such a function cannot be delegated. The filing of a memorandum of appeal is an "act." See *Fuzzle Ali's* case (2); *In the matter of filing powers by an Advocate* (1); *K. K. Roy* v. *N. C. Chuckerbutty* (3); *Desram* v. *Bawa Singh* (4);

(1) I.L.R. 4 Ran. 249.
(2) 19 W.R. Cr. 8.
(3) I.L.R. 6 Cal. 583, 589.
(4) I.L.R. 8 Ran. 290, 293.

1938

SAWARMAL v. KUNJILAL.

Amir Shah v. *Abdul Aziz* (1) ; *Gauba* v. *Indo-Swiss Trading Co.* (2).

Basu in reply. One cannot put an interpretation as regards a statute that leads to absurdity. A plaint or appeal can be presented at the Judge's house and after Court hours. See *Thakur Din Ram* v. *Hari Das* (3) ; *Sattaya* v. *Soundarathachi* (4).

DUNKLEY, J.—This Letters Patent Appeal, on a certificate granted by a single Judge of this Court in Second Appeal No. 175 of 1937, raises a point of great importance to the legal profession of this country.

The appellants are the legal representatives of Ram Gopal, deceased, who brought a suit in the Subdivisional Court of Mandalay against the defendants-respondents. The suit was unsuccessful, and he appealed to the Assistant District Court of Mandalay. For the purpose of this appeal he engaged an advocate named B. M. Sarkar, to whom he granted a power of attorney in the usual form. Mr. Sarkar drew up and signed the memorandum of appeal, but it was presented on his behalf by another advocate named Mr. Ganguli. When the appeal ultimately came on for hearing, on behalf of the respondents a preliminary objection was taken that the memorandum of appeal had not been properly presented and that, therefore, the appeal could not be entertained. The argument for the respondents was based on the provisions of Order III, rule 4, sub rule (1), of the Code of Civil Procedure, which says :

"No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power of attorney to make such appointment."

(1) I.L.R. 13 Lah. 775.
(2) I.L.R. 17 Lah. 610.
(3) I.L.R. 34 All. 482.
(4) I.L.R. 47 Mad. 312.

The argument was that the presentation of the appeal amounted to "acting" for the appellant, and that as the presentation was made by Mr. Ganguli, who had not been duly appointed to "act" for the appellant under Order III, rule 4 (1), the appeal must be dismissed. This argument found favour with the learned Assistant District Judge, and the appeal was therefore dismissed. This decision has been upheld on second appeal, but a certificate has been granted for further appeal to a Bench. The learned Judge who heard the second appeal considered that he was bound by the judgment in *In the matter of filing powers (Documents of appointment) by an advocate or pleader* (1), and that, as in that case it was held that an advocate "acts" when he files a memorandum of appeal and therefore in all such cases a power of attorney is necessary, the appeal was not presented in accordance with law to the Assistant District Court, and hence there was no proper appeal before the Court. The second appeal was therefore dismissed.

As presented by learned counsel for the respondents before us, the point is that the provisions of Order III, rule 4, contemplate that a pleader either acts or pleads and has no other function, it being said that the origin of the distinction between acting and pleading is the distinction between the functions of a solicitor and a barrister in England. It is then urged that "to plead" means to address the Court as an advocate on behalf of either party, and therefore that all the other functions of a pleader must be included within the verb "to act." This argument may, on a very strict view, be correct, but I am unable to accede to the further argument that no delegation of the power to act is permitted under Order III, rule 4. There is nothing in the terms of the rule to prohibit such delegation. The judgment in

(1) (1926) I.L.R. 4 Ran. 249.

1938

SAWARMAL v. KUNJILAL.

DUNKLEY, J.

In the matter of filing powers (Documents of appointment) by an advocate or pleader (1) is distinguishable from the present case, because in that case the memorandum of appeal was not only handed over to the Court by an advocate who had no written authority but was signed by the same advocate ; and for the appellants it is not contended that another pleader may sign a memorandum of appeal on behalf of the pleader who has been duly appointed under Order III, rule 4.

So far as India (and Burma) are concerned the classic definitions of the expression " to act ", as used in forensic parlance, are contained in *In re Fuzle Ali* (2) and *Kali Kumar Roy* v. *Nobin Chunder Chuckerbutty* (3). In the earlier case Phear J. said (at page 9)

" I think that the word ' act ' there means the doing of something as the agent of the principal party, which shall be recognized or taken notice of by the Court as the act of that principal ; such for instance as filing a document."

In the later case White J. said (at page 590)

" To act for a client in Court is to take on his behalf in the Court, or in the offices of the Court, the necessary steps that must be taken in the course of the litigation in order that his case may be properly laid before the Court."

With the greatest respect, I am prepared to adopt these definitions ; but, in my opinion, there is nothing in Order III, rule 4, which prohibits a pleader from delegating some of his functions, and the Code plainly contemplates that certain functions of a ministerial nature may be delegated. A ministerial act, in relation to this matter, is an act which does not require the personal skill or attention of the pleader and which can be done without consideration of facts or circumstances.

(1) (1926) I.L.R. 4 Ran. 249. (2) 19 W.R. (Cr.) 8.
(3) (1880) I.L.R. 6 Cal. 585.

To hold otherwise would result in complete chaos in the administration of justice and would, within a short time, bring about a state of affairs which would render it impossible for the Courts of law to carry on their work. For, the payment of Court-fees, translation and copying fees, and the like merely ministerial acts, are "acting", just as much as the presentation of a plaint or memorandum of appeal is "acting"; and if the judgments of the Assistant District Court and this Court on second appeal are correct, the result would be that officers of the Courts could receive such payments only from the hands of the parties themselves or their pleaders duly appointed, obviously an impossible state of affairs. It is conceded, and no doubt it is correct, that the drafting of a plaint or memorandum of appeal, or acts of the same nature, which can only be done upon consideration of facts and circumstances, must be done by the duly appointed pleader, and, therefore, such documents must be signed by him, and such acts cannot be done or such documents cannot be signed on his behalf by another pleader. But the same consideration does not apply to acts which are merely mechanical, such as handing over a bundle of papers. To such acts, in my opinion, the maxim *qui facit per alium facit per se* must be held to apply, and the presentation of the plaint or appeal must be taken to be that of the signatory thereto, although the actual handing over may be performed by a servant or agent.

In *Maung Kyaw* v. *Maung Po Thaing* (1) Parlett J. said :

"Reference is made in the arguments to the practice whereby, owing to the inability which barristers share with other people to be in two places at once, one advocate gets another to represent him when his case is called. In the vast majority of instances

(1) 3 Bur. L.T. 131

1938

SAWARMAL v. KUNJILAL.

when this occurs the business is of a merely formal character, and it is for the advantage and convenience of all concerned, Court, counsel and client, that this should be allowed."

DUNKLEY, J.

The learned Judge went on to say that an advocate could not, without his client's consent, hand over the whole conduct of the case to another advocate. With this view I respectfully concur.

That such delegation is permissible is, to my mind, clear on the plain provisions of Order IV, rule 1, which refers to the presentation of plaints, and Order XLI, rule 1, which refers to the presentation of appeals. Order IV, rule 1, sub-rule (1), says that every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf. There is nothing in the rule to show that the presentation must be at a particular place or at a particular time or by a particular person, so long as it is a presentation to the Court or to the officer appointed by the Court. Order XLI, rule 1, sub-rule (1) is even more explicit. It says :

" Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf."

The rule lays down that the memorandum must be signed by the appellant or his pleader, but it expressly refrains from stating that it must be presented by the appellant or his pleader. In *Thakur Din Ram and another* v. *Hari Das* (1) and *Sattayya Padayachi and six others* v. *Soundarathachi* (2) it has been held that a plaint or memorandum of appeal may be presented at any time or at any place. It follows as a necessary inference, from the wording of Order IV, rule 1 and Order XLI, rule 1, that it may be presented on behalf

(1) (1912) I.L.R. 34 All. 482. (2) (1923) I.L.R. 47 Mad. 312.

1938

SAWARMAL v. KUNJILAL.

DUNKLEY, J.

of the plaintiff or appellant, or his pleader, by any person to whom this duty has been delegated.

In *Queen-Empress* v. *Karuppa Udayan and others* (1) a Bench of the Madras High Court held that a presentation of an appeal petition by the clerk of the appellant's pleader is equivalent to a presentation by the pleader himself when the petition is signed by the pleader and he is duly authorized. Although this was a criminal case the same principle is applicable to civil cases. And in *Muruga Chetty and others* v. *Rajasami and others* (2), where the question of the delegation by a pleader to his clerks of the duty of paying on behalf of his client the various dues of the Court was fully considered, it was not suggested that such delegation was in itself improper. If these functions may be performed by the clerks of pleaders, it would indeed be strange to hold that they cannot be performed by one pleader on behalf of another.

In my opinion, when a plaint or memorandum of appeal has been drawn up and signed by a pleader duly authorized under Order III, rule 4, there is nothing contrary to the provisions, or the intention, or the spirit of that rule in the mechanical act of handing over the papers to the Court, or the officer appointed, being performed by a clerk or another pleader, to whom the duty of performing that act has been delegated by the duly authorized pleader.

This appeal must therefore be allowed, and the judgments and decrees of the Assistant District Court of Mandalay on first appeal and of this Court on second appeal must be set aside, and the first appeal must be remanded to the Assistant District Court of Mandalay for disposal on the merits. As the first appeal was dismissed on a preliminary point, the appellants are

(1) (1896) I.L.R. 20 Mad. 87. (2) 22 Mad. L.J. 284.

1938

SAWARMAL v. KUNJILAL.

DUNKLEY, J.

entitled, under section 13 of the Court Fees Act, to a refund of the Court-fees paid on the memoranda of second appeal and of this Letters Patent Appeal. The costs of the second appeal, advocate's fee two gold mohurs, and of this Letters Patent Appeal, advocate's fee three gold mohurs, will be costs in the first appeal before the Assistant District Court.

ROBERTS, C.J.—I agree and have nothing to add.