

Nuzha Bint El-Haj Suleiman Abu Khadra - - - Appellant

v.

Haj Ibrahim Saleh El-Helou and others - - - Respondents

FROM

THE SUPREME COURT OF PALESTINE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 20TH APRIL, 1948

Present at the Hearing :

LORD SIMONDS

LORD MORTON OF HENRYTON

SIR MADHAVAN NAIR

[Delivered by SIR MADHAVAN NAIR]

This is an appeal from a judgment of the Supreme Court of Palestine sitting as a Court of Appeal, Jerusalem, dated 30th January, 1945, dismissing the appellant's appeal from a judgment of the Land Court, Jaffa, dated 23rd July, 1944.

The appeal arises out of an action for the specific performance of a contract for the sale of land entered into between the appellant and the first respondent.

The Land Court, Jaffa, ordered specific performance of the contract in favour of the first respondent.

The Supreme Court dismissed the appellant's appeal on the ground that it was filed out of time.

The only question arising for consideration before the Board is whether the appellant's appeal was filed out of time.

The Civil Procedure Rules, 1938, applicable to the case provide as follows:—

Rule 207.—The decree shall bear the date on which the judgment was pronounced or entered.

Rule 321.—The period within which notice of appeal against any decree . . . may be lodged shall be—

(a) 30 days from the date of the decree if judgment delivered in the presence of the appellant, or from the date of service upon him of notification in the form No. 32 in Schedule I hereof, if in his absence;

Provided that an appellant may lodge an appeal before the service upon him of such notifications respectively.

The judgment of the Land Court was delivered on 23rd July, 1944. The notice of appeal to the Supreme Court was lodged on 26th August, 1944. It is common ground that no notification of the judgment in the form No. 32

in Schedule I was served on the appellant. Accordingly if the first alternative in Rule 321 (a) applies, the appellant's appeal was filed 3 days too late, and is barred by time. The question is whether the first alternative in Rule 321 (a) applies to the case. The appellant's contention is that the rule does not apply as the judgment was not "delivered in the presence of the appellant."

It is admitted that the appellant was not personally present when judgment was delivered in the Land Court. The concluding portion of the Land Court's judgment which bears on this point is as follows:—

" Judgment delivered on 23rd July, 1944, in the presence of the plaintiff in person and absence of the attorney of the Defendants, who did not appear but sent his clerk."

The Supreme Court inferred from the above statement,

" that the Judge satisfied himself that the clerk was authorised to represent the attorney for the purpose of hearing judgment, and in accordance with the usual courtesy extended by the District Court Bench to a busy lawyer, who was probably engaged in another Court, he accepted that representation."

And then concluded as follows:—

" We are satisfied that the Rule was sufficiently complied with."

The learned counsel for the appellant contends that to comply with the first alternative in the Rule the judgment should be delivered in the personal presence of the appellant, or having regard to Rule 24 of the Civil Procedure Rules, 1938, it should be delivered in the presence of the appellant's advocate duly appointed on his behalf.

Rule 24 of the Civil Procedure Rules, 1938, provides:—

" Any application to or appearance or act in any Court required or authorised by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person or by an advocate duly appointed to act on his behalf: Provided that any such appearance shall, if the Court or Judge so directs, be made by the party in person."

The respondents' learned counsel replies that to fall within the Rule, it is enough if, in case the appellant is absent, the judgment is delivered in the presence of a person who, the Judge is satisfied, will report it to the appellant, thus making him aware of it without the necessity of the service on him of the notification. This according to him being the meaning of the Rule, the learned counsel contends that there is a concurrent finding by the learned Judges of the two Courts, that they were satisfied that the required information in this case would reach the appellant in time, and that the Board should accept the concurrent finding and dismiss the appeal.

Their Lordships are unable to accept the interpretation put on the Rule by respondents' learned counsel. It is easy to see that the Rule thus interpreted may lead to all kinds of difficulties, and result in denial of justice to the party concerned. Even though the learned judges are satisfied of the bona fides of the person supposed to be representing a party, it may well happen that such a person, however well meaning he may be, may misunderstand the judgment, may altogether forget to communicate it or may communicate it to the person concerned after the time limit is over. It is with a view to avoiding difficulties of this nature that under the first alternative of Rule 321 (a) judgment must be delivered in the presence of the appellant personally, though, having regard to Rule 24 of the Civil Procedure Rules, the language of the Rule may be stretched to include within its scope the advocate of the appellant duly appointed on his behalf also. Their Lordships were taken through the various rules which regulate the proceedings in Courts under the Palestine rules and regulations and are satisfied that a lawyer's clerk has no official standing and is not a representative of the master or of the client for the purposes of Rule 321 (a).

For the above reasons, their Lordships will humbly advise His Majesty that this appeal should be allowed and the judgment of the Supreme Court be set aside with costs, and the case be remitted to the Supreme Court to be disposed of according to merits including the point raised by the appellant that the learned Judge Daoudi had no jurisdiction to sit as a Land Court. The first respondent must pay the appellant's costs of this appeal.

In the Privy Council

NUZHA BINT EL-HAJ SULEIMAN ABU
KHADRA

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AND OTHERS

DELIVERED BY SIR MADHAVAN NAIR

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