
MADURAPPERUMA

Vs.

WIJESUNDARA AND OTHERS

COURT OF APPEAL
GOONERATNE, J.
SAMAYAWARDHENA, J.
CALA/459/2006
DC AVISSAWELLA 421/P
SEPTEMBER 20, 2019

Partition Law, No. 21 of 1977, sections 25, 48, 49, 69, 79 — Finality of the Interlocutory Decree—Default proceedings in Partition Law—Jurisdiction of the District Court to set aside Partition Decrees

The plaintiff filed this appeal against the Order of the District Judge whereby, upon the application of the 3A defendant, the Judgment and

Interlocutory Decree entered by his predecessor were set aside and trial de novo was ordered on the basis that the case had been taken up for trial without due notice to the new registered Attorney of the 3rd defendant. The District Judge relied on *Umma v. Zubair* [2002] 3 Sri LR 169 to arrive at this decision.

Held:

1. Section 48(1) of the Partition Law invests Interlocutory and Final Decrees of partition with finality notwithstanding any omission or defect of procedure (subject to sub-sections (4) and (5) of section 48; and any decision on any appeal which may be preferred).

2. The law regarding default proceedings in Partition Law may be summarised as follows:

Before the Judgment is delivered, a party in default can, in terms of section 25(3) of the Partition Law, make an application to the District Court to participate at the trial.

Before the Judgment is delivered, a non-party can, in terms of section 69 of the Partition Law, make an application to the District Court to be added as a party in order to participate at the trial.

After the Judgment, a party can make an application to the District Court to set aside the Judgment and the Interlocutory Decree entered only upon the limited grounds and circumstances set out in section 48(4) of the Partition Law.

After the Judgment, a non-party can make an application to the District Court to set aside the Judgment/Interlocutory Decree/Final Decree under section 48(5) only on the ground that the Decree has been entered by a court without competent jurisdiction.

3. Save and except the instances mentioned above, the District Court has no jurisdiction to set aside Judgments/Interlocutory Decrees/ Final Decrees by purportedly invoking the inherent jurisdiction of the court.

4. *Umma v. Zubair* [2002] 3 Sri LR 169 does not represent the correct position of the law.

5. The default proceedings spelt out in the Civil Procedure Code are inapplicable in partition actions.

6. After the Judgment, those who do not come under section 48(1) may seek relief from the Court of Appeal by way of revision or restitutio in integrum. The aggrieved party may also file an action for damages under section 49 of the Partition Law.

7. The entering of the Decree is a purely ministerial act and the Interlocutory Decree once entered relates back to the date of the Judgment: section 48 becomes applicable from the date of the Judgment.

Cases referred to:

1. Umma v. Zubair [2002] 3 Sri LR 169
2. Somawathie v. Madawala [1983] 2 Sri LR 15
3. Koralage v. Marikkar Mohamad (1988) 2 NLR 299
4. Perera v. Adline [2000] 3 Sri LR 93
5. Navaratne Manike v. Padmasena [2010] 2 Sri LR 165.
6. Jayaratne v. Premadasa [2004] 1 Sri LR 340
7. Petisingho v. Ratnaweera (1959) 62 NLR 572
8. Ariyaratne v. Lapie (1973) 76 NLR 221
9. Dissanayake v. Elisinahamy [1978- 79] 2 Sri LR 118
10. Koralage v. Marikkar Mohomed [1988] 2 Sri LR 299
11. De Fonseka v. Dharmawardena [1994] 3 Sri LR 49
12. Jeyaraj Fernandopulle v. Premachandra [1996] 1 Sri LR 70
13. Anthony Appu v. Margret Fernando [1999] 3 Sri LR 85

APPEAL from the Judgment of the District Court of Avissawella.

Rohan Sahabandu, P. C., with Hasitha Amarasinghe for the Plaintiff-Appellant.

M. U. M. Ali Sabry, P. C., with Sanjeeva Dasanayake for the 3A Defendant-Respondent.

cur. adv. vult.

October 3, 2019

SAMAYAWARDHENA, J.

The plaintiff filed this appeal with leave obtained against the Order of the learned District Judge of Avissawella dated 03. 11. 2006 whereby, upon the application of the 3A defendant, the Judgment and Interlocutory Decree entered by his predecessor in 2002 was set aside and trial de novo was ordered on the basis that the case had been taken up for trial

without due notice to the new registered Attorney of the 3rd defendant. The learned District Judge did so relying on the Judgment of the Court of Appeal in *Umma v. Zubair*.¹

It is the submission of the learned President's Counsel for the plaintiff that in a partition case, once the Interlocutory Decree is entered, the District Court can set it aside upon application by a party to the case only if that party can satisfy the requirements of section 48(4) of the Partition Law, No. 21 of 1977, as amended, and that as the 3A defendant admittedly did not and could not make the application under that section, the District Court had no jurisdiction to set aside the Interlocutory Decree, which could only be done by this Court by way of revision. The learned President's Counsel further submits that *Umma v. Zubair* has been wrongly decided and therefore need not be followed.

In *Umma v. Zubair*, the District Judge set aside the Interlocutory Decree entered by his predecessor and allowed a new party to file the statement of claim on the basis that non-compliance with sections 12 and 14 of the Partition Law renders the entire proceedings void ab initio. On appeal to this Court, this order of the District Judge was affirmed by Udalagama J. (with the concurrence of Nanayakkara J.) on the following reasons.

It is submitted by the learned counsel for the petitioner citing Somawathie v. Madawala [1983] 2 Sri LR 15 that the learned District Judge had no power to allow intervention after the entry of the interlocutory decree and further that the petitioner-respondent could have his remedy by way of revision or restitutio in integrum. Although the above submission is not without merit I am inclined to the view that even if this application is dismissed the petitioner respondent would not be precluded from moving in revision and would only result in further delay in concluding this matter before the original court. (at page 171)

The finality of the interlocutory decree as contemplated in section 48(3) of the Partition Act in my view could not prevent or preclude a District Judge even to act underinherent powers to make right a miscarriage of justice occasioned. (at page 171)

I would further hold that section 48(4) of the Partition Act No. 21 of 1977 could not bar a court from holding that in the event summons had not been even issued in an action for partition from coming to a finding that such non-issue was improper or that the court

in such instance had no jurisdiction to proceed. Besides, section 48(4) referred to above could not suppress the rights of parties to claim their due rights in partition actions which are decrees in rem. (at page 171- 172) (emphasis mine)

To decide whether the argument of the learned President's Counsel for the plaintiff is entitled to succeed, it is necessary to understand the relevant statutory provisions of the Partition Law, which govern the powers of the District Judge to set aside Partition Judgments delivered by the District Court.

Section 48(1) of the Partition Law gives final and conclusive effect to the Interlocutory and final Decree of Partition, subject to: (a) sub section (5) of that section; (b) the decision on any appeal which may be preferred; and (c) sub section (4) of that section, notwithstanding any omission or defect of procedure, including failure to serve summons, failure to make substitutions upon the death of parties, and failure to make all necessary parties defendants to the partition action.

Let me reproduce section 48(1) to better understand this unique feature of this special piece of legislation.

48(1) Save as provided in subsection (5) of this section, the interlocutory decree entered under section 26 and the final decree of partition entered under section 36 shall, subject to the decision on any appeal which may be preferred there from, and in the case of an interlocutory decree, subject also to the provisions of subsection (4) of this section, be good and sufficient evidence of the title of any person as to any right, share or interest awarded therein to him and be final and conclusive for all purposes against all persons whomsoever, whatever right, title or interest they have, or claim to have, to or in the land to which such decree relates and notwithstanding any omission or defect of procedure or in the proof of title adduced before the court or the fact that all persons concerned are not parties to the partition action; and the right, share or interest awarded by any such decree shall be free from all encumbrances whatsoever other than those specified in that decree.

In this subsection "omission or defect of procedure" shall include an omission or failure-

(a) to serve summons on any party; or

(b) to substitute the heirs or legal representatives of a party who dies pending the action or to appoint a person to represent the estate of the deceased party for the purposes of the action; or

(c) to appoint a guardian ad /item of a party who is a minor or a person of unsound mind.

In this subsection and in the next subsection “encumbrance” means any mortgage, lease, usufruct, servitude, life interest, trust, or any interest whatsoever howsoever arising except a constructive or charitable trust, a lease at will or for a period not exceeding one month.

(2) Where in pursuance of the interlocutory decree a land or any lot thereof is sold, the certificate of sale entered in favour of the purchaser shall be conclusive evidence of the purchaser’s title to the land or lot as at the date of the confirmation of sale, free from all encumbrances whatsoever except any servitude which is expressly specified in such interlocutory decree and a lease at will or for a period not exceeding one month.

(3) The interlocutory decree and the final decree of partition entered in a partition action shall have the final and conclusive effect declared by subsection (1) of this section notwithstanding the provisions of section 44 of the Evidence Ordinance, and accordingly such provisions shall not apply to such decrees.

Although section 48(1) states in peremptory terms that the Interlocutory Decree and Final Decree of Partition entered in a partition action shall have final and conclusive effect despite inherent shortcomings, section 48(4) allows a party to the action who (a) has not been served with summons or (b) being a minor or a person of unsound mind, has not been duly represented by a *guardian ad Item* or (c) being a party who has duly filed his statement of claim and registered his address fails to appear at the trial, to make an application to the District Court for “special leave” within the stipulated period stated therein to establish his right, title or interest in respect of the land, notwithstanding that the Interlocutory Decree has already been entered.

Section 48(4) reads as follows:

48(4)(a) Whenever a party to a partition action-

(i) has not been served with summons or

(ii) being a minor or a person of unsound mind, has not been duly represented by a guardian ad /item, or

(iv) being a party who has duly filed his statement of claim and registered his address, fails to appear at the trial,

and in consequence thereof the right, title or interest of such party to or in the land which forms the subject” matter of the interlocutory decree entered in such action has been extinguished or such party has been otherwise prejudiced by the interlocutory decree, such party or where such party is a minor or a person of unsound mind, a person appointed as guardian ad/item of such party may, on or before the date fixed for the consideration of the scheme of partition under section 35 or at any time not later than thirty days after the return of the person responsible for the sale under section 42 is received by court, apply to the court for special leave to establish the right, title or interest of such party to or in the said land notwithstanding the interlocutory decree already entered.

(b) The aforesaid application shall be by petition, supported by an affidavit verifying the facts, which shall conform to the provisions of paragraph (a) of subsection (1) of section 19 and shall specify to what extent and in what manner the applicant seeks to have the interlocutory decree amended, modified or set aside and the parties affected thereby.

(c) If upon inquiry into such application, after prior notice to the parties to the action deriving any interest under the interlocutory decree, the court is satisfied”

(i) that the party affected had no notice whatsoever of the said partition action prior to the date of the interlocutory decree or having duly filed his statement of claim and registered his address, failed to appear at the trial owing to accident, misfortune or other unavoidable cause, and

(ii) that such party had a prima facie right, title or interest to or in the said land, and

(iii) that such right, title or interest has been extinguished or such party has been otherwise prejudicially affected by the said interlocutory decree,

the court shall upon such terms and conditions as the court in its discretion may impose, which may include an order for payment of costs as well as an order for security for costs, grant special leave to the applicant.

(d) Where the court grants special leave as hereinbefore provided the court shall forthwith settle in the form of issues the questions of fact and law arising from the pleadings and any further pleadings which are relevant to the claim set up in the petition only, and the court shall appoint a date for the trial and determination of the issues.

The applicant, unless the court otherwise orders, shall cause notice of such date to be given to all parties whose rights under the interlocutory decree are likely to be affected or to their registered attorney in such manner as the court shall specify. The court shall thereafter proceed to hear and determine the matters in issue in accordance with the procedure applicable to the trial of a partition action.

(e) Where the court determines any matter in issue in favour of the applicant, the court shall in accordance with its findings amend or modify the interlocutory decree to such extent and in such manner only as shall be necessary to give to the successful party and to no other party or person whomsoever, the right, title or interest to which such party is entitled, or in the event of the applicant being found entitled to the entirety of the said land forming the subject-matter of the interlocutory decree, the court shall set aside the interlocutory decree and dismiss the action.

Section 48(5) also gives power to the District Court to set aside Interlocutory and Final Decrees of Partition on the ground of want of jurisdiction. It reads as follows:

48(5) The interlocutory decree or the final decree of partition entered in a partition action shall not have the final and conclusive effect given to it by subsection (1) of this section as against a person who, not having been a party to the partition action, claims any such right, title or interest to or in the land or any portion of the land to which the decree relates as is not directly or remotely derived from the decree, if, but only if, he proves that the decree has been entered by a court without competent jurisdiction.

However, in terms of section 48(3), the powers of the Court of Appeal to set aside Interlocutory and Final Decrees by way of revision and/or restitutio in integrum to avert a miscarriage of justice when proceedings are tainted with a fundamental vice have been expressly preserved.

48(3) The powers of the Supreme Court by way of revision and restitution in integrum shall not be affected by the provisions of this subsection.

The Administration of Justice Law, No. 44 of 1973 abolished the Court of Appeal and made the Supreme Court the only superior court of record which could exercise jurisdiction by way of appeal, revision and restitutio in integrum. Thereafter by the 1978 Constitution, the Court of Appeal was again created, and conferred appellate, revisionary and restitutio in integrum jurisdiction, leaving the Supreme Court as the highest and final superior court of record. Therefore, this sub section drafted in 1977 needs to be amended to replace “ *Supreme Court* “ with “ *Court of Appeal* “.

In the celebrated case of *Somawathie v. Madawala*² a Five Judge Bench of the Supreme Court (Sharvananda J. (later C. J.), Wanasundara J., Wimalaratne J., and Ratwatte J., and Soza J.) held:

When there is no proper compliance with Section 12(1) of the Partition Law in the matter of the declaration stipulated to be filed under that section and no notice has been served on the claimants before the Surveyor as required by section 22(1)(a) of the Act then the Appeal Court can intervene by way of revision, to prevent a miscarriage of justice.

Although section 48 invests interlocutory and final decrees entered under the Partition Act with finality the revisionary powers of the Appeal Court are left unaffected. The position is the same under the Partition Law.

The powers of revision and restitutio in integrum of the Appeal Court have survived all the legislation that has been enacted up to date.

Let me now examine the reasoning of Udalgama J. in *Umma v. Zubair*, against the backdrop of the said express provisions of the Partition Law, to see whether the said Judgment represents the correct position of the law.

In the first place, in *Umma v. Zubair*, the petitioner who made the application before the District Court to vacate the Interlocutory Decree

was not a party to the case. Section 48(4), under which the application appears to have been made to the District Court, can be invoked only by a party to the case. This is the threshold requirement to make an application under that section. Hence the petitioner in *Umma v. Zubair* could not have made the application under section 48(4). Therefore, with all due respect, there is a fundamental error in the Judgment.

In *Somawathie v. Madawala*, Soza J. who wrote the illuminating Judgment on behalf of the Supreme Court left no room for conjecture on the subject and stated at page 32 without mincing words:

[T] he District Judge had no power to allow the intervention after the entry of interlocutory decree. This can be done only by a superior Court acting in revision.

As quoted above, the counsel for the plaintiff in *Umma v. Zubair* drew the attention of Udalagama J. to the Judgment of *Somawathie v. Madawala* to emphasise that the District Judge had no jurisdiction to vacate his own Judgment in the circumstances of that case. Udalagama J. acknowledged this position of the law, but stated that if the order of the District Court is set aside due to want of jurisdiction on the part of the District Court, the same party could successfully come before this Court by way of revision, and therefore the order of the District Court shall be allowed to stand to avert further delay. (If I may repeat, Udalagama J. at page 171 stated: “*Although the above submission is not without merit I am inclined to the view that even if this application is dismissed the petitioner-respondent would not be precluded from moving in revision and would only result in further delay in concluding this matter before the original court.*”) With respect, this reasoning is simply unacceptable on first principles. It amounts to conferring revisionary jurisdiction parallel to the Court of Appeal on the District Court to revise its own Judgments in partition cases to save time. I need hardly emphasise the chaotic situation that would arise in terms of jurisdiction and hierarchy of courts if this is permitted.

Furthermore, such a finding presupposes that when a case is brought before the Court of Appeal by way of revision, setting aside the Judgment of the District Court is automatic or perfunctory, which is not correct. The Appellate Court will intervene only if there is a fundamental vice in the procedure, which has caused a grave positive miscarriage of justice and not otherwise (E. g. *Koralage v. Marikkar Mohomad*,³*Perera v. Adline*,⁴*Navaratne Manike v. Padmasena*⁵).

When the legislature with meticulous scrutiny has laid down the procedure, or rather the limited circumstances upon which the District Court can set aside an Interlocutory Decree entered by itself, there is no room for the District Court to go beyond those parameters and grant reliefs, as Udalagama J. has stated, “*under inherent powers*”. Such an attitude would unmistakably render section 48 absolutely nugatory.

Jayaratne v. Premadasa is another leading case decided after *Somawathie v. Madawala* and *Umma v. Zubair* on this point. In Jayaratne’s case, the original plaintiff filed an action to partition a land of 30 acres. The surveyor who did the preliminary survey produced a plan for more than 71 acres. Without contest, the Judgment was delivered to partition the 71- acre land and the Interlocutory Decree was entered. Thereafter, three persons who were not parties to the action applied to set aside the Judgment or alternatively to confine the corpus to 30 acres. The District Judge allowed the application and the Court of Appeal justified it by reference to the inherent powers of the District Court in terms of section 839 of the Civil Procedure Code (probably following *Umma v. Zubair*). On appeal, the Supreme Court set aside the order of the District Court as well as the Judgment of this Court, on the basis that the District Court had no jurisdiction to vary its Judgment. Weerasuriya J. on behalf of the Supreme Court (with S. N. Silva C. J. and Ismail J. agreeing) stated at page 344:

It is significant that section 48(1) of the Partition Law gives final and conclusive effect to the interlocutory decree subject to the decision on any appeal which may be preferred therefrom and sub section (4) as referred to earlier. Having regard to the stringent provisions of section 48 of the Partition Law which had as their object the finality of the interlocutory decree it is obvious that learned District Judge had acted in blatant disregard of the provisions of section 48.

*On a consideration of the above material it would be manifest that District Court had no jurisdiction to entertain the application of the petitioner-respondent-respondents to seek the relief they prayed for and the application was misconceived. The Court of Appeal has taken the erroneous view that notwithstanding the provisions of section 48, learned District Judge was Justified in restricting the corpus to 30 acres using **the inherent powers of Court in terms of section 839 of the Civil Procedure Code**. For the foregoing reasons I hold that the Court of Appeal has erred in affirming **the order of the District Judge which was patently***

outside his jurisdiction. Therefore, I set aside the order of the District Judge dated 04. 11. 1998 and the order of the Court of Appeal dated 07. 03. 2002.

When summons has not been issued, Udalagama J. states that section 48(4) could not bar the District Court from holding that such non-issue was improper or the Court in such instances had no jurisdiction to proceed.

It is noteworthy that there is a distinction between non-service of summons to a party to the case and failure to make a person a party to the case. Service of summons does not arise in the latter instance, as summons is issued only on a party to the case. The Partition Law has provided for both these contingencies.

Under section 48(4)(a)(i), when summons has not been served on a party, that party can seek “ *special leave* “ within the stipulated time to establish the right, title or interest of such party to or in the land to be partitioned, notwithstanding the Interlocutory Decree has already been entered. But, as I have already stated, the person who applied to the District Judge to set aside the Interlocutory Decree in *Umma v. Zubair* was not a party to the case. Nor did he challenge the Interlocutory Decree under section 48(5) on lack of jurisdiction.

Once the Interlocutory Decree is entered, the District Court has no jurisdiction to set it aside otherwise than in the limited circumstances stipulated in section 48(4) and (5) of the Partition Law. The District Court cannot set aside Interlocutory Decrees by way of revision or restitutio in integrum or by invoking the inherent powers of the Court to avert a miscarriage of justice or to remove a fundamental vice in the proceedings or in the name of due administration of justice or on any other ground. That can only be done by a superior Court.

For the aforesaid reasons, with all due respect, I take the view that *Umma v. Zubair* does not seem to represent the correct position of the law in terms of the powers of District Judges to set aside their own Judgments entered in partition actions.

I must also make the following point clear for the benefit of District Judges, as there is apparent confusion. It may be noted that section 48 speaks of only the finality and conclusiveness of Interlocutory Decrees and Final Decrees of Partition, and not of Judgments. This gives the impression that finality and conclusiveness is attached only to Interlocutory and

Final Decrees, and therefore, in between the delivery of the Judgment and the entering of the Interlocutory Decree, the District Court can set aside the Judgment and add parties and commence trial de novo. This is not so. The entering of the Decree is a purely ministerial act and the Interlocutory Decree once entered relates back to the date of the Judgment (*Petisingho v. Ratnaweera*,⁷*Ariyaratne v. Lapie*,⁸*Dissanayake v. Elisinahamy*,⁹*Koralage v. Marikkar Mohomed*¹⁰). In short, section 48 becomes applicable from the date of the Judgment.

The District Court can add parties, in terms of section 69 of the Partition Law, only until the Judgment is delivered and not after it.

69(1) The court may at any time before the judgment is delivered in a partition action add as a party to the action, on such terms as to payment or prepayment of costs as the court may order-

(a) any person who, in the opinion of the court, should be, or should have been, made a party to the action, after issuing to such person, a notice, substantially in the Form set out in the Second Schedule to this Law, requiring him to make an application to be added as a party to the action on or before the date specified in the notice, and upon such person making such an application or;

(b) any person who, claiming an interest in the land, applies to be added as a party to the action.

Let me now consider the present appeal. The 3A defendant made the application to the District Court to vacate the Interlocutory Decree by way of a statement of objections filed against the Final Partition Plan. There is no dispute that the 3A defendant did not and could not make the application under section 48(4) or (5) of the Partition Law.

The learned President's Counsel for the 3A defendant argues that although it is not expressly stated in the impugned order, the learned District Judge has purged the default of the 3rd defendant, as the trial proceeded without due notice to the 3rc1 defendant or his new registered Attorney, as seen from Journal Entry No. 94 of the District Court case record where notice had been served on the registered Attorney whose proxy had been revoked, as seen from Journal Entry No. 93. The learned President's Counsel, citing *De Fonseka v. Dharmawardena [1994]*,¹¹ submits that such inquiries into purging default are conducted by invoking the inherent powers of the Court.

The learned President's Counsel for the 3A defendant also submits that a Judgment entered under such circumstances can also be set aside by the District Court as having been entered per incuriam. In this regard, he cites *Jeyaraj Fernandopulle v. Premachandra*,¹² which reiterated the well-established principle that "*The Court has inherent powers to correct decisions made per incuriam.*"

I find it difficult to bring myself to accept this line of argument as this is a partition case. In both those instances (i. e. *De Fonseka v. Dharmawardena* and *Jeyaraj Fernandopulle v. Premachandra*), according to the learned President's Counsel himself, the Court set aside the Judgment by invoking its inherent powers, which the Supreme Court, as I have already discussed, frowned upon or held inapplicable in partition actions upon the entering of the Interlocutory Decree, unless the application falls under section 48(4) or (5) of the Partition Law.

I accept the argument of the learned President's Counsel for the plaintiff that partition actions are sui generis and unique.

It is significant to note that notwithstanding that the Civil Procedure Code has made provisions in respect of Decrees, in the Partition Law special provisions have been enacted from sections 48 to 53 in relation to Decrees, under the heading "*SPECIAL PROVISIONS RELATING TO DECREES*", predominantly in order to invest the Interlocutory and Final Decrees of Partition with finality as far as possible.

The Partition Law sets out the manner in which a party in default can purge default. Hence the default proceedings spelt out in the Civil Procedure Code are inapplicable.

De Fonseka v. Dharmawardena (*supra*) was a rent and ejectment case where the defendant made an application to vacate the ex parte Judgment in terms of section 86(2) of the Civil Procedure Code. What was challenged in that case before the Court of Appeal was not the jurisdiction of the District Court, but the procedure adopted by the learned District Judge in conducting the inquiry. It is in this context that the Court in the said case referred to the invocation of inherent powers.

Section 79 of the Partition Law, which enables any *casus omissus* to be governed by the Civil Procedure Code, states that the procedure laid down in the Civil Procedure Code is applicable only if such procedure has not been set out in the Partition Law. It reads as follows:

In any matter or question of procedure not provided for in this Law, the procedure laid down in the Civil Procedure Code in a like matter or question shall be followed by the court, if such procedure is not inconsistent with the provisions of this Law.

Let me now summarise the law regarding default proceedings in Partition Law.

Before the Judgment is delivered, a party in default can make an application to the District Court to participate at the trial. This is provided for in section 25(2) and (3) of the Partition Law.

25(2) If a defendant shall fail to file a statement of claim on the due date the trial may proceed ex parte as against such party in default, who shall not be entitled, without the leave of court, to raise any contest or dispute the claim of any other party to the action at the trial.

25(3) The court may permit a party in default to participate in the trial after notice to the other parties to the action affected by the claim or dispute set up or raised by such party in default, on being satisfied of the bona fides of such claim or dispute, and upon such terms as to costs and filing of a statement of claim or otherwise as the court shall deem fit.

Before the Judgment is delivered, a non-party can also make an application to the District Court to be added as a party in order to participate at the trial. This is provided for in section 69 of the Partition Law.

After the Judgment is delivered, a party can make an application to the District Court to set aside the Judgment and the Interlocutory Decree entered thereon, only upon the limited grounds and circumstances set out in section 48(4) of the Partition Law, which I have adverted to earlier.

After the delivery of the Judgment, a non-party can make an application to the District Court to set aside the Judgment/Interlocutory Decree/Final Decree under section 48(5), only on the ground that the Decree has been entered by a Court without competent jurisdiction.

On no other ground can a party or a non-party to the action make an application to the District Court to set aside the Judgment. The District

Judge cannot nullify the express provisions of the Partition Law, designed to give finality to Decrees in partition actions, by what is termed invoking the inherent jurisdiction of the Court.

After the Judgment, those who do not come under section 48 are not without a remedy. They may seek relief from the Court of Appeal by way of revision or *restitutio in integrum*, as the case may be. They may also file an action for damages under section 49 of the Partition Law.

The only matter now left for consideration is whether this Court can act in revision to see whether the Judgment and the Interlocutory Decree entered by the District Court ought to be set aside, as the Supreme Court did in *Jayaratne v. Premadasa (supra)*. This is not possible in the circumstances of this case, as the present 3A defendant has previously come before this Court by way of revision (CA/RV/1575/2005) seeking to set aside the same Interlocutory Decree of the District Court, and this Court, after giving a hearing to the 3A defendant, refused to issue notice and dismissed the application by order dated 31. 09. 2005. What has happened in the present case is that after the revision application of the 3A defendant seeking to set aside the Interlocutory Decree was dismissed by this Court, the 3A defendant, without making any reference to the said Court of Appeal application, made the same application to the District Court to set aside the Interlocutory Decree in the guise of filing objections to the Final Partition Plan. Partition Law makes no prohibition against a party who failed to participate at the trial filing objections to the proposed scheme of partition (*Anthony Appu v. Margret Fernando*¹³), but a party cannot attack the Judgment and the Interlocutory Decree collaterally by way of filing objections to the proposed scheme of partition. This course of action adopted by the 3A defendant and confirmed by the learned District Judge is entirely repugnant to the Partition Law.

For the aforesaid reasons, I set aside the order of the District Court dated 03. 11. 2006 and allow the appeal with costs.

GOONERATNE, J. - *I agree.*

Appeal allowed.

Judgment by: Mahinda Samayawardhena, J.

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