1963 *Present :* **Herat, J., and Sri Skanda Rajah, J.**

M. ISOHAMY, Appellant, *and* M. HARAMANIS and others, Respondents

S. C. 439/1961—D. C. Panadura, 5197/P

Partition action—Decree entered when one of the parties is dead—Invalidity of such decree—Jurisdiction of District Court to hold that the decree was invalid.

A partition decree entered when any one of the parties was dead at the time of such entry is void and of no avail in law. In a subsequent action for partition, in which the corpus is admittedly part of the larger land which formed the corpus partitioned in the earlier action, it is competent for the District Court to hold that the decree in the earlier action, even if it had been entered after appeal, was invalid.

APPEAL from a judgment of the District Court, Panadura.

D. R. P. Goonetilleke, for the Plaintiff-Appellant.

H. A. Koattegoda, with *N. R. M. Daluwatte,* for the 10th, 26th, 27th and 37th to 42nd Defendants-Respondents.

December 4, 1963. SRI SKANDA RAJAH, J.—

This is an action for partition in which the corpus is admittedly part of a larger land which formed the corpus partitioned in D. C. Panadura Case No. T. K. 584.

It would appear that the points at issue in this case were whether the partition decree entered in the earlier case T. K. 584, which was instituted in the year 1944 and which was concluded in 1956, was a valid decree and whether the District Court could itself inquire into the validity of that decree.

There was sufficient material to show that the 15th defendant was dead before the institution of the partition action No. T. K. 584. There was also sufficient evidence to show that the 72nd defendant was dead before the interlocutory decree was entered.

A partition decree entered when anyone of the parties was dead at the time of such entry is void and of no avail in law.

When a question of this type arises in the District Court it is competent to the District Judge to decide on the validity or otherwise of such a partition decree even if such a partition decree had been entered, as in T. K. 584, after appeal. Therefore, it was competent to the District Judge to hold that the decree in T. K. 584 was invalid.

Without expressing any opinion as to whether there was sufficient evidence to show that the 73rd defendant in T. K. 584, from whom the original plaintiff in this case claimed, was dead we set aside the order of the learned District Judge and send the case back for trial in due course. The appellant is entitled to the costs of appeal as well as the costs of contest in the District Court.

HERAT, J.—I agree.

Order set aside.