

1978 Present: Samarakoon, C.J., Thamotheram, J. and
Wanasundera, J.

P. BEMPY APPUHAMY and OTHERS, Petitioners
and
J. K. PETER RANASINGHE and OTHERS, Respondents

S.C. Application No. 219 of 1976

Partition Law, No. 21 of 1977, sections 48 (3), 67, 74, 82—Stamp Ordinance (Cap. 8), Schedule A Part II—Application to Supreme Court by way of revision—Stamping—Are such proceedings exempt from stamp duty—Partition Act (Cap. 69), section 75—Administration of Justice Law, sections 11, 662 (1).

An application by way of revision to the Appellate Court in a partition action is a pleading in such an action and all papers filed in such proceedings are exempt from stamp duty. It is clear that the Legislature intended all matters connected with partition proceedings to be so exempt.

APPPLICATION in revision in terms of sections 11 and 354 of the Administration of Justice Law, No. 44 of 1973.

D. J. Walpola, with C. O. Fonseka, for the petitioners.

H. W. Jayewardene, Q.C., with Miss P. Seneviratne, for the respondents.

S. Silva, Senior State Counsel, for the Attorney-General.

Cur. adv. vult.

March 21, 1978. SAMARAKOON, C.J.

The petitioner was the twenty-second defendant in a Partition Action No. 13057/P of the District Court of Gampaha filed by the plaintiffs-respondents for the partition of a land called Dambugahawatta. Interlocutory Decree for partition was entered on 4.8.1975 (P4). For certain reasons, which are not relevant in this application, the petitioner was dissatisfied with the Inter-

locutory Decree. Hence this application for Revision. As was the practice stamp duty was levied on the documents filed, Rs. 78 being the class stamps. This was levied upon the claim that revision proceedings are independent proceedings initiated in the Supreme Court and covered by Schedule A Part II of the Stamps Ordinance. The petitioners and the respondents contest this liability. They state that these being proceedings in a partition action no stamp duty is leviable in law. State Counsel who appeared as *amicus curiae* contended that the papers filed in this application were not papers filed "under" the Partition Act. Section 75 (1) of the Partition Act, No. 16 of 1951 (Cap. 69) stated the exemption thus:--

"All pleadings and processes and all documents filed or produced in a partition action under this Act shall be exempt from stamp duty."

Section 662 (1) of the Administration of Justice Law, No. 25 of 1975, and section 74 of the Partition Law, No. 21 of 1977, granted the same exemption. The provisions of the latter Law will apply to these proceedings (vide section 82). Admittedly an appeal from an order in a partition action is exempt from stamp duty by reason of the fact that it is an appeal filed in terms of section 67 of the Partition Law and therefore filed in terms of the Partition Law. Is a Revision Application one "filed in a Partition Action under this Law" within the meaning of section 74 of Law No. 21 of 1977? Counsel for the respondents submitted that the power of revision is an exercise of the appellate jurisdiction of this Court. He referred to section 11 of the Administration of Justice Law, No. 44 of 1973, the marginal note of which reads "Appellate jurisdiction of the Supreme Court". It grants the Supreme Court sole and exclusive jurisdiction by way of appeal, revision and *restitutio in integrum*. Counsel therefore argued that the exercise of the power of revision is also an exercise of the appellate jurisdiction of this Court, and therefore a revision application in respect of an Interlocutory Decree in a partition action would be free of stamp duty by reason of the fact that section 67 of the Partition Law permits an appeal. I am unable to agree with this contention. The jurisdiction to deal with a matter by "way of appeal" is independent of the jurisdiction to deal with a matter by way of revision. When an appeal is lodged by a party under the provisions of section 67 of the Partition Law he invoke the jurisdiction of this Court "by way of appeal" as conferred by section 11 of the Administration of Justice Law, No. 44 of 1973. They are distinct and independent powers.

However section 48 (3) of the Partition Law recognises the power of the Supreme Court to deal with an Interlocutory Decree by way of revision. The proviso to section 48 (3) reads as follows:—

“The powers of the Supreme Court by way of revision and *restitutio in integrum* shall not be affected by the provisions of this subsection.”

It is clear that the Partition Law itself recognises the power of the Supreme Court to deal with partition cases by way of revision. An application by way of revision therefore is a pleading filed in a Partition Action. The words “under this Law” is descriptive of the word “action” and not of the words preceding it. There is another reason for such a result. All revision proceedings dealing with the Interlocutory Decree and any order made by way of revision will necessarily affect that decree. All pleadings, processes, documents and orders made by the Supreme Court in such proceedings affecting the Interlocutory Decree, became part and parcel of the record in the partition action. If one looks at the intention of legislature it is clear that it intended all matters connected with partition proceedings, to be exempt from stamp duty. It would be fatuous to hold that the legislature intended only one part of the appellate jurisdiction to be free of stamp duty and not the other part of its jurisdiction even though this latter is part of partition proceedings. Whether by way of appeal or revision all pleadings invoking the Supreme Court’s jurisdiction in a partition action are pleadings in a partition action. I therefore hold that all papers filed in these proceedings are exempt from stamp duty. The Registrar is directed to act accordingly.

THAMOTHERAM, J.—I agree.

WANASUNDERA, J.—I agree.

Proceedings exempted from stamp duty.