GRISILDA AND OTHERS
VS.
BABA NONA AND OTHERS

COURT OF APPEAL.
EKANAYAKE, J.
CALA 153/2003. (LG)
DC GAMPAHA 26612/P.
FEBRUARY 15, 2006.

Partition Law, No. 21 of 1977, sections 48(4)(a), 48(4)(c) and 69(1) - Interlocutory decree entered - Addition of parties - Is it permitted ? - Inherent powers of Court invoked - Could the Court act? - Violating express provisions - Civil Procedure Code, section 754 (2).

The petitioners who were not parties to the partition action, applied under section 48(4)(a) to get them added as parties. Interlocutory decree has already been entered. The trial Judge refused the application.

HELD:

(1) Section 48(4) (c) has no application to the instant case, as the application has been made even after entering the interlocutory decree. Section 48(1) applies only to persons who are parties in the case and not to any outsiders.

(2) The petitioners disentitle themselves to the benefit of the provisions of section 69(1) because addition of parties can be allowed only before the delivery of judgment and in this case judgment had been delivered almost 3 years earlier.

(3) Inherent power of the court cannot be invoked to violate the express provisions.

APPLICATION for leave to appeal from an order of the District Court of Gampaha with leave being granted.

Manohara R. de Silva for – petitioner petitioners.

N. R. M. Daluwatte, P. C. with *H. S. P. Seneviratne* for plaintiff-respondents and 1A, 2, 3A, 4-7, 9-11 defendant -respondents.

Rohana Jayawardane with *Gamini Perera* for 10(a) defendant-respondent - respondent

Cur. adv. vult.

September 25, 2006.

CHANDRA EKANAYAKE, J.

The Petitioner-Petitioners (hereinafter sometimes referred to as the Petitioners) by their petition dated 21.05.2003 had sought inter *alia* leave to appeal against the order of the learned District Judge of Gampaha dated 30.04.2003 (P6), to set aside and/or to vacate the same and for a trial *de novo*. The Plaintiff-Respondents (hereinafter sometimes referred to as the Plaintiffs) had instituted this action bearing No. 26612/P in the District Court of Gampaha to partition the land called 'Unagahawatta *alias* Unapanduruwatta' in extent of 2A 3R and 34.5 P under the provisions of the Partition Law.

It is common ground that the present petitioners were not parties to the main partition action. After the interlocutory decree was entered by their application made by petition dated 30.09.2002(P5) supported by an affidavit, said to have been under and in terms of section 48(4)(a) of the Partition Law (as amended) had sought the following reliefs :

(a) that these petitioners be made parties to this action and permission be given to make their claim to the land depicted in the preliminary plan No. 632 filed of record in this case,

(b) that an opportunity be afforded to the said petitioners to file their statements of claim,

(c) that the land described in the 2nd schedule to the petition - the land depicted in plan No. 451 mentioned in the petition - being lot No. 7 in plan No 632 mentioned above be excluded from the corpus.

The basis of the above application had been that K. M. Ruberu Nona who was said to be the predecessor in title of the present petitioners had claimed the plantations and improvements in lot No. 7 at the preliminary survey. It is seen from the interlocutory decree that aforesaid Ruberu Nona had been already given the plantations and improvements in lot No. 7 as claimed by her. After an inquiry into the above application of the petitioners the learned trial Judge by his order dated 30.04.2003 had dismissed the

same, This is the order this leave to appeal application has been preferred from.

This Court by its order dated 13.01.2005 had granted leave to proceed in this matter.

By the impugned order (P6) the learned trial Judge had dismissed the application of the Petitioner on the basis that the said application was made even after entering of the interlocutory decree and further provisions of section 48(4)(c) of the Partition Law does not permit the Court to allow parties to intervene at this stage. Further it has to be observed here since this is an Application for Leave to Appeal made under and in terms of section 754(2) of the Civil Procedure Code, a party who is dissatisfied with any order..... may prefer an application against same for the correction of any error, in fact or in law. Section 754(2) of the Civil Procedure Code thus reads as follows:

> "Any person who shall be dissatisfied with any order made by any original court in the course of any civil action, proceeding or matter to which he is, or seeks to be a party, may prefer an appeal to the Court of Appeal against such order for the correction of any error in fact or in law, with the leave of the Court of Appeal first had and obtained."

Perusal of the impugned order reveals that the basis of rejecting the petitioner's application had been that the provisions of section 48(4) (c) has no application to the instant case as it has been made even after entering the interlocutory decree. I am inclined to agree with the said finding since the above section 48(4)(c) applies only to persons who are parties in the case and not to any outsiders like the present petitioners. In the light of the above I am unable to conclude that there appears any error in fact or in law in the impugned order.

The petitioners disentitle themselves to the benefit of the provisions of section 69(1) of the Partition Law because addition of parties can be allowed only before the delivery of judgment and in this case judgment had been delivered as far back as 17.06.1999 - (Vide Journal Entry 93).

It was further contended on behalf of the petitioners that even though section 48(4)(c) of the Partition Law has no application to the instant case, present petitioners could be added as parties under inherent powers,

as they are the recipients of the said improvements in lot No. 7. The trend of authority in Sri Lanka would amply demonstrate that inherent powers of the Court cannot be invoked to violate the express provisions. Section 69(1) of the Partition Law provides the instances for addition of parties in a partition case. Viewed in the above context I conclude that the above argument advanced on behalf of the petitioners is of no merit.

For the foregoing reasons I see no basis to interfere with the impugned order and this appeal is hereby dismissed with costs fixed at Rs. 7,500.

Appeal dismissed.