

1970 Present : Sirimane, J., and Wijayatilake, J.

F. ABEYSURIYA, Appellant, and W. M. A. DIONISAPPU
et al., Respondents

S. C. 176/67 (Inty.)—D. C. Matara, 3036/P.

Partition action—Disclosure of new parties by a defendant—Notice of action to the new parties—Duty of the defendant to issue such notice—Partition Act (Cap. 69), s. 22 (1).

Where, in a partition action, the defendants disclose new parties, the trial Judge should, as a rule, order the defendant who disclosed the new parties to issue notices to them under section 22 (2) of the Partition Act.

APPEAL from an order of the District Court, Matara.

N. R. M. Daluwatte, for the plaintiff-appellant.

No appearance for the defendants-respondents.

April 24, 1970. SIRIMANE, J.—

This was a partition action filed as far back as 1961. In 1965 an intervention by the 40th defendant had been allowed by Court. In his statement of claim the 40th defendant disclosed five new persons who were alleged to have rights in the land, and they have been added as 41–45 defendants. The learned District Judge had made order that notices should be issued on the parties disclosed but he had not specified as to who should issue those notices.

In cases where defendants disclose new parties, trial Judges should, as a rule, order the defendant who disclosed the new parties to issue notices on them under the proviso to Section 22 (2) of the Partition Act.

In this case the Court should have ordered the 40th defendant, and not the plaintiff, to issue notices on the parties that he had disclosed. The journal entries show however that in fact five notices had been tendered for issue, probably by the plaintiff, according to learned counsel for the appellant. Four of the parties disclosed had in fact been served with those notices. The address of the fifth person, i.e., the 41st defendant was given only as “Badulla” by the 40th defendant who disclosed him. This address is obviously insufficient to effect service of notice on the defendant. There seems to have been much delay in finding out the detailed address of the 41st defendant and the only person who could have furnished that address was the 40th defendant.

The learned District Judge dismissed the plaintiff’s action acting presumably under Section 71 of the Partition Act on the ground that he had not prosecuted the action with reasonable diligence. We do not

think that the plaintiff should have been penalised in this matter. Journal entry 50 shows that the plaintiff's proctor had tendered notices for service on the added defendants even at a later stage whilst the person who disclosed the parties appears to have remained inactive.

The order dismissing the plaintiff's action is set aside. In view of the long delay it is desirable that all parties should now have notice of the action and a direction should be given to the 40th defendant to furnish the address of the 41st defendant and see that notice is served on him. There will be no order as to costs.

WJAYATILAKE, J.—I agree.

Order set aside.
