1960 *Present :* **Basnayake, C.J., and Sansoni, J.**

EKANAYAKE, Appellant, *and* EKANAYAKE, Respondent

S. C. 154—D. C. Kandy, 4999/L

Amendment of pleadings—Scope—Action for definition of boundaries—Conversion thereof to action for declaration of title to land—Illegality—Civil Procedure Code, ss. 46 (2), 93.

The use of the machinery of amendment of pleadings will not be permitted for the conversion of an action of one character to that of another. Accordingly, a plaint filed in an action for definition of boundaries cannot be amended so as to convert the action to one of declaration of title to land.

APPEAL from an order of the District Court, Kandy.

N. E. Weerasooria, Q.C. with *T. B. Dissanayake,* for Defendant-Appellant.

Vernon Jonklaas, for Plaintiff-Respondent.

August 5, 1960. BASNAYAKE, C.J.—

The only question that arises for decision on this appeal is whether the amendments sought to be made to the plaint, as indicated in the document called " the amended plaint ", filed on 23rd September 1959 should be allowed. In his plaint dated 4th January 1957 the plaintiff alleged that the Western boundary between the plaintiff's and the defendant's land had disappeared and he prayed that that boundary be defined and demarcated. He also prayed the ejectment of the defendant from that portion of the land on which the defendant had encroached, and for damages. In the " amended plaint " the plaintiff asked for a declaration of title to the land described in the schedule to the plaint which is in extent about 13 acres and that the defendant be ejected from that portion marked Lot 1 in Plan No. 4152 dated 19th May 1957 made by Surveyor L. A. De C. Wijetunga.

The action filed in January 1957 was an action for definition of a boundary. The amendments which the plaintiff sought to make would if allowed convert that action to one of declaration of title to land. It has been said over and over again that the use of the machinery of amendment of pleadings was not to be permitted for the conversion of an action of one character to that of another.

Learned counsel for the appellant cited the following passage from the case of *Wijewardene v. Lenora* [1] :—

" An examination of the provisions of Chapter VII of the Civil Procedure Code discloses that the power conferred by section 93 is subject to one limitation. Section 46 (2) provides that before a plaint

[1] *(1958) 60 N.L.R. 457 at 463.*

is allowed to be filed, the Court may refuse to entertain it for any of the reasons specified therein and return it for amendment *provided that no amendment shall be allowed which would have the effect of converting an action of one character into an action of another or inconsistent character.* If before a plaint is allowed to be filed an amendment which would have the effect of converting an action of one character into an action of another or inconsistent character is not permitted, the power conferred on the Court by section 93 for amending the plaint after it is filed cannot be greater."

We are in agreement with that view.

Before we part with this judgment we wish to point out that the procedure for amendment of pleadings is prescribed in section 93 of the Civil Procedure Code and should be followed. In the instant case it has not been observed. After two years and eight months a fresh plaint has been lodged, under the guise of amending the plaint originally filed, with no indication whatsoever thereon as to what portions of the plaint it is sought to amend. The course adopted in this case is not authorised by the Code. The whole purpose of the Code would be defeated if parties were allowed to ignore its provisions and adopt their own procedure.

The order of the learned District Judge allowing the amended plaint cannot therefore stand. We accordingly set aside that order and direct that the record be sent back to the lower Court for trial in due course.

The appellant is entitled to the costs of the appeal.

SANSONI, J.—I agree.

Order set aside.