

1958 *Present* : Basnayake, C.J., and Sansoni, J.

KASTURIARACCI and another, Appellants, *and* PINI and others,
Respondents .

S. C. 330—D. C. Kegalle, 8,468

Partition action—Paraveni panguwa—Action instituted by nilakaraya—Consent of ninda lord—Jurisdiction of Court to entertain the action—Validity of the partition decree.

The partition under the repealed Partition Ordinance of a *paraveni panguwa* is not valid even where the *ninda* proprietor is a consenting party to the proceedings. In such a case the partition decree is a nullity.

APPPEAL from a judgment of the District Court, Kegalle.

N. E. Weerasooria, Q.C., with *Kingsley Herat*, for Plaintiffs-Appellants.

C. R. Gunaratne, for 1st, 3rd, 4th and 5th Defendants-Respondents.

July 17, 1958. BASNAYAKE, C.J.—

The question that arises for decision on this appeal is whether the partition under the repealed Partition Ordinance of a *paraveni* land is valid in a case where the proprietor of a *nindagama* or *viharagama* is also a consenting party to the proceedings.

It has been held in the case of *Appuhamy et al. v. Menike et al.*,¹ by a Bench of three Judges of this Court, that a *paraveni panguwa* cannot be the subject of a partition action under the repealed Partition Ordinance. In that case the proprietors of the *nindagama* intervened and disputed the right of the plaintiff *nilakaraya* to institute a partition action. Learned counsel for the appellant seeks to differentiate that case from the one under consideration on the ground that the *ninda* proprietor was a consenting party in the case on which he bases his claim.

It is settled law that where a Court has no jurisdiction to entertain an action parties cannot by consent confer jurisdiction on it. The learned District Judge is therefore right in holding that the partition decree is a nullity.

The appeal is dismissed with costs.

SANSONI, J.—I agree.

Appeal dismissed.

¹ (1917) 19 N. L. R. 361.
