

1959

Present : Basnayake, C.J., and Pulle, J.

S. DEERASOORIYA, Appellant, and B. VANDERPOORTEN,
Respondent

S. C. 86 A-B—D. C. Badulla, 11329

Partition Act—Proceedings thereunder—Power of Court to issue an injunction in respect of movable property—Power of Court to appoint receiver—Objection to jurisdiction of court—Stage at which it should be taken—Courts Ordinance (Cap. 6), ss. 71, 86—Civil Procedure Code, s. 671 et seq.—Consent order—Application for writ—“ Order of Court ”.

In proceedings under the Partition Act the Court is entitled to issue an injunction in respect of movable property under section 86 of the Courts Ordinance. No. is the Court precluded from making an order under Chapter L of the Civil Procedure Code in such proceedings.

Section 71 of the Court Ordinance precludes a party from objecting, for the first time in appeal, to the jurisdiction of the trial Court.

An application for writ in respect of a consent order or decree cannot be questioned on the ground that there was no order of the court, if the parties have acted on the footing that there was an order of the court.

APPEALS from a judgment of the District Court, Badulla.

C. Thiagalingam, Q.C., with V. Arulambalam, for 4th Defendant-Appellant in both Appeals.

H. V. Perera, Q.C., with Sir Ukwatte Jayasundera, Q.C., C. G. Weeramantry and E. B. Vannitamby, for Plaintiff-Respondent in both Appeals.

October 28, 1959. BASNAYAKE, C.J.—

Appeal No. 86A is against certain orders made in the course of the proceedings under the Partition Act. It was argued by learned counsel for the appellant that it is not open to a court to issue an injunction in respect of movable property under section 86 of the Courts Ordinance in proceedings under the Partition Act. We are unable to uphold that contention. There is nothing in the Partition Act which precludes a court from issuing an injunction under that section of the Courts Ordinance in proceedings under that Act. The terms of section 86 of the Courts Ordinance are very wide. It provides that an injunction may be issued "in any action instituted in any District Court or Court of Requests". We also do not think that the court is precluded from making an order under Chapter L. of the Civil Procedure Code in proceedings under the Partition Act.

In regard to the objection raised in the petition of appeal to the jurisdiction of the court below we wish to observe that throughout the proceedings in the lower court no objection was taken to its jurisdiction. The appellant is precluded by section 71 of the Courts Ordinance from raising that question now. It reads :

"Whenever any defendant or accused party shall have pleaded in any cause, suit, or action, or in any prosecution brought in any District Court, without pleading to the jurisdiction of such District Court, neither party shall be afterwards entitled to object to the jurisdiction of such court, but such court shall be taken and held to have jurisdiction over such cause, suit, action, or prosecution :

"Provided that where it shall appear in the course of the proceedings that the cause, suit, action, or prosecution was brought in a court having no jurisdiction intentionally and with previous knowledge of the want of jurisdiction of such court, the Judge shall be entitled at his discretion to refuse to proceed further with the same, and to declare the proceedings null and void. "

Learned counsel for the appellant also sought to argue that there was no consent order or decree and that the plaintiff-respondent's application for writ is bad. No objection was at any time taken to the order of the 11th June 1954 on the ground that it was not an order of the court. As a matter of fact all the proceedings throughout were on the basis that it was an order of the court and the parties themselves have acted on the footing that it was an order of the court. The learned trial Judge who made the order has meant it to be so and has said so in the course of his judgment.

There is no substance in learned counsel's contention.

The appeal is dismissed with costs.

Appeal No. 86B is also dismissed.

PULLE, J.—I agree.

Appeals dismissed.