1974 *Present :* **Perera, J., Ismail, J., and Walpita, J.**

S. A. C. PATHUMA NATCHIYA, Appellants, *and*
A. W. M. HANIFFA, Respondent

S. C. 171/70 (Inty.)—D. C. Kalutara, 1456/L

Execution of decree—Whether validity of the decree can be challenged on grounds not raised at the trial—Partition decree—Whether its validity can be attacked collaterally in a different action.

In an action for declaration of title to a land, decree was entered in favour of the plaintiff-respondent on the basis that she was entitled to the land by virtue of a decree entered in a previous partition action. At the stage of execution of the decree the defendants-appellants claimed that the decree was bad and could not be executed on the ground that the decree in the partition action was a nullity as it had been entered without substitution for a party who had died pending the trial of that action.

Held, that the appellants were bound by the decree entered in the present action and could not be allowed to attack it at the stage of its execution, least of all on grounds they did not urge at the stage of the trial.

APPEAL from an order of the District Court, Kalutara.

R. Manikkavasagar, for the defendants-appellants.

M. S. M. Nazeem, for the plaintiff-respondent.

Cur. adv. vult.

March 28, 1974. WALPITA, J.—

This is an appeal by the defendants-Petitioners-Appellants (here-in-after called the appellants) seeking to set aside the order of the learned District Judge dated 18.8.70 allowing a Writ of execution against the appellants. The plaintiff-respondent (here-in-after called the respondent) filed this action against the appellants, as administratrix of the estate of one A. W. M. Haniffa administered in D. C. Kalutara Case No. 3875 (Testy.), for a declaration of title to a defined lot 9 depicted in Plan No. 568 and described in Schedule B to the plaint, for restoration of possession of the plaintiff or heirs of plaintiff to the said land and damages. She claimed title on behalf of the estate of Haniffa on deed No. 285 of 25.10.52 which had been given during the pendency of the Partition Case No. 28786 by one Ahamed Ali *alias* Mohamed Ali and that on the entry of the final decree the said Haniffa became automatically entitled to the said lot No. 9. The appellants filed answer stating that on the said Ahamed Ali's death they became entitled to his interests and that deed No. 285 of 52 was in fact and effect a mortgage of Mohamed Ali's interests and the said deed was bad in law on the ground of *Laesio enormis*. They also pleaded that Haniffa never possessed any interests in the land. A question of prescription was also raised. The 3rd appellant claimed title from the 1st and 2nd appellants by deed of transfer 5958 of 67 and also filed a separate answer and claimed lot 9, which was allotted jointly to Ahamed Ali and the 4th defendant in that action, as he had purchased the 4th defendant's interests on deed 6777 of 1968 besides Ahamed Ali's interests on deed 5958 of 1967 and that he was in consequence entitled to the entirety of Lot 9. At the trial in this case issues were raised according to the pleadings and the trial proceeded with. Judgment was entered in favour of the respondent on 25.5.69 declaring the respondent entitled to 800/840 shares and the decree was thereafter entered in terms of the judgment. When the respondent sought to execute this decree the appellants objected to it on the ground that the decree was bad as it was based on the transfer Deed No. 285 referred to earlier which was a transfer of the rights which would be allotted in the partition decree in case No. 28766. The appellants also took up the position for the first time that the partition decree in D. C. 28766 was void as when the interlocutory decree was entered the 18th defendant, i.e. the said Ahamed Ali *alias* Mohamed Ali was dead. And no substitution having taken place the interlocutory decree was void and the rights obtained by the respondent were therefore null and void. The learned District Judge made order on 18.8.70 rejecting the appellants' objections to the issue of writ of execution in favour

of the respondent, on the ground that the appellants are bound by the decree and the District Court has no power to set aside its own decree or canvas the validity of such decree. The learned District Judge states in his order that the matters urged by the appellants in regard to the validity of the partition decree was never taken at the trial in this case and besides there was no appeal from the said judgment and decree and that it is not open to the appellants at this stage to attack the validity of the decree. The learned District Judge referred to the observations of the Court in 51 N.L.R. page 39 " After a Court has acquired jurisdiction as well as a right to decide every question arising in the cause and however erroneous its decision may be, it is binding on the parties until reversed or annulled "—in the result the District Judge rejected the appellants' objections. It is from this order that the appellants have appealed. We were referred to 66 N.L.R. 57, 68 N.L.R. 36, 76 N.L.R. 413, where a partition decree was declared a nullity when it was entered without substitution for a party who had died pending the trial.

We are of the view that the decision in those cases are not applicable to the present case. There is the decree in this case, it has not been set aside and it determines the rights of parties in this case, i.e. the rights of the appellants and the respondent and it is final between the parties, and binding on them. The respondent merely seeks now to execute this decree. The appellants who are bound by this decree cannot be allowed to attack this decree now, least of all on grounds they did not urge at the trial of this case. The District Court was only concerned at this stage in enforcing this decree and any inquiry into its regularity or validity cannot be considered now.

We are of the view therefore, that the learned District Judge's order was correct and that this appeal must be rejected. The appeal is therefore dismissed with costs.

PERERA, J.—I agree.

ISMAIL, J.—I agree.

Appeal dismissed.