

1965

Present : Sansoni, C.J., and Manicavasagar, J.

S. B. D. T. KARUNARATNE and others, Appellants, and
H. T. S. PERERA and others, Respondents

S. C. 114/63 (Inty)—D. C. Gampaha, 9128/P

Partition action—Donation by a co-owner, pending action, of the shares to which he will be declared entitled—Rights of donee—Partition Act, s. 48.

Where, pending a partition action, a co-owner gifts to certain persons the shares to which he will be declared entitled in the action, the interests which are allotted in that action to the donor pass automatically to the donees when the final decree is entered. It is not necessary that the interests which the donees obtained on the deed of gift should be expressly conserved to them in the final decree, even though they intervened in the action.

APPEAL from an order of the District Court, Gampaha.

W. D. Gunasekera, with *N. S. A. Goonetilleke*, for 2nd, 4th and 5th defendants-appellants.

N.E. Weerasooria (Jnr.), with *R. D. C. de Silva*, for plaintiffs-respondents.

September 14, 1965. SANSONI, C.J.—

The contest in this case was between the plaintiffs on the one hand and the second, fourth and fifth defendants on the other.

The contesting defendants claimed the entire lot which had been allotted to the heirs of one Peries Perera in an earlier partition action. Their claim was based upon two deeds 2D1 and 2D2 executed by Peries Perera pending that earlier action. By those deeds, Peries Perera gifted to them the shares to which he would be declared entitled in that partition action. They, therefore, claimed that the interests which were allotted in that action to the heirs of Peries Perera (who had meanwhile died) automatically passed to them under those deeds when the final decree was entered.

Their argument is sound and has the support of the decisions in *Sirisoma v. Sarnelis Appuhamy*¹ and *Sillie Fernando v. Silman Fernando*². But Mr. Weerasooria argued that under the new Partition Act the interests which the contesting defendants obtained on those two deeds were wiped out by the final decree because they had not been conserved to them in that decree.

We are unable to accept this submission, because we take the view that the interests referred to in section 48 of the Partition Act are interests which are presently vested in the grantee, and do not include interests which have not already vested even in the grantor. We see no difference in this respect between the provisions of the old Partition Ordinance and the new Partition Act.

¹ (1950) 51 N. L. R. 337

² (1962) 64 N. L. R. 404

It was pointed out that the contesting defendants had intervened in the earlier action but had not been allotted any interests. Obviously this was because they had no interests which had vested in them at that time, since interests would only have vested in them upon the passing of the final decree in favour of Peries Perera or his heirs.

We therefore set aside the decree under appeal and dismiss the plaintiff's action with costs in both Courts.

MANICAVASAGAR, J.—I agree.

Appeal allowed.

