[IN REVISION.]

1940 *Present :* **Soertsz and Nihill JJ.**

DE SARAM *v.* DE SILVA *et al.*

D. C. Matara, 11,253.

Decree nisi—Absence of plaintiff—Application to set aside—Time limit—Partition act—Civil Procedure Code, s. 84.

A Court has no power to enlarge the period given by section 84 of the Civil Procedure Code within which a plaintiff is bound to show cause against a decree *nisi* entered against him being made absolute.

The decree *nisi* becomes absolute after fourteen days by mere effluxion of time.

Section 84 of the Civil Procedure Code applies to partition action.

THIS was an application for revision of the order of the District Judge of Matara.

H. A. Chandrasena, for plaintiff, petitioner.

S. W. Jayasuriya, for third and eighth defendants, respondents.

Cur. adv. vult.

February 21, 1940. SOERTSZ J.—

I agree with petitioner's Counsel that his client is in a hard case here, and would give him some relief if I could, but I am bound hand and foot by the law.

There can be no doubt whatever that section 84 of the Civil Procedure Code applies to all actions in the District Courts, including actions for the partition of lands, *mutatis mutandis,* of course, for the purpose of giving effect to the provisions of the Partition Ordinance. When, therefore, the plaintiff-petitioner failed to appear in Court on the day fixed for the trial of the action, and many of the defendants were present, the District Judge acted rightly, when he entered decree *nisi.* But when it came to the drawing up of the decree *nisi,* a printed form was used which reads " this action coming on for disposal . . . . . on August 30, 1938, being the day fixed for the hearing of this action, and the tenth defendant being

[1] *19 N. L. R. 289.* [2] *16 C. L. W. 41.*

present and the plaintiff not appearing either in person or by Proctor, it is decreed that the action may be dismissed . . . . . unless sufficient cause is shown to the Court to the contrary within *one month* of date **hereof**". This decree was served on the plaintiff, and it is quite clear that it misled him into the belief that he had one month's time within which to show cause against the dismissal of his action. In that view of the matter, Mr. Buhari for the plaintiff filed affidavit from plaintiff together with a medical certificate . . . . . and moved to notice defendants to show cause why the decree entered should not be vacated, and the case fixed for trial. But, in the interval between August 30 and September 22, 1940, the decree entered on August 30 had been made absolute on the motion of the Proctor appearing for the third and eighth defendants, who submitted to the Court that fourteen days having elapsed, the decree of August 30 should be made absolute. The Court, under section 84, made the decree absolute. That was done on September 14, 1938. Notwithstanding the fact that decree absolute had been entered and had swallowed up the decree *nisi*, the plaintiff's application to have the decree *nisi* entered on August 30, 1938, set aside took its course, and inquiry into that application was held on December 19, 1938, and on January 12, 1939, and order was made by the District Judge on January 23, 1939, refusing the plaintiff's application. It is this order that the plaintiff now asks us to deal with in the exercise of our powers of revision.

There are insurmountable difficulties besetting this application. Section 84 provides for the entering of a decree *nisi* due to become absolute by the mere effluxion of time, by the lapse of fourteen days, unless *previously* the plaintiff has succeeded, with notice to the defendants, in showing cause for it to be set aside. If fourteen days run without the plaintiff doing this, the decree becomes absolute without anyone moving so much as a finger in the matter. It does not seem necessary to enter up a decree absolute. The fact that the decree *nisi* served on the plaintiff gave him thirty days time to have the decree set aside is of no legal consequence. No Court had the power to override the law. In point of fact, section 84 does not require the decree *nisi* entered under it to be served on the plaintiff. The plaintiff is the *dominus litis*. He is supposed to know the date of the trial, and to know that in his absence, the law would take its course, and he is left to come in himself and obtain relief if he could within fourteen days. The position is different in the case of a defendant's absence. Section 85 requires notice to be given to him that a decree *nisi* has been entered and he is given time to show cause. There is no statutory period fixed for the decree passing from a decree *nisi* into a decree absolute. This is the view taken in the case of *Annamaly Chetty v. Carron*[1], and with that view I find myself in complete and respectful agreement.

The next point to be noticed is that section 87 of the Civil Procedure Code does not give a plaintiff, in whose case decree has become absolute by the operation of section 84, a right of appeal.

It is in view of that disability that the plaintiff now comes before us as a petitioner asking for revision. But our powers in revision, though large

[1] *23 C. L. Rec. 48.*

are not unlimited. Section 753 of the Civil Procedure Code enacts that the Supreme Court in revision may do what it might have done, if there had been an appeal, if it is not satisfied " as to the legality or propriety of any judgment or order ". Now there can be no question of the legality or propriety of a decree entered by the law itself, so to speak, and that fact ousts the revisionary jurisdiction of this Court. In this case there are other circumstances that must deter us from entertaining an application for revision, for instance, the important circumstance that that in the course of the law taking effect, third parties have acquired rights, for the record shows that in execution of that decree the plaintiff's interests were sold on the order for costs made against him and were bought by parties who are not before us on this application.

For these reasons, I am of opinion that this application must be refused with costs which I fix at Rs. 31.50.

NIHILL J.—I agree.

Application refused.