

1959

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

PETISINGHO, Appellant, and RATNAWEERA, Respondent

S. C. 240—D. C. (Inty.) Tangalle, 367/P

Partition action—Intervention of parties—Stage after which intervention is not permissible—Partition Act, No. 16 of 1951, ss. 26, 70—Civil Procedure Code, s. 188.

Section 70 of the Partition Act does not empower the Court to add as party to a partition action a person who claims to be added as such after judgment has been pronounced in terms of section 26 of the Act.

APPEAL from an order of the District Court, Tangalle.

N. R. M. Daluwatte, for Intervenant-Appellant.

F. R. Dias, with *B. A. R. Candappa*, for Plaintiff-Respondent.

April 27, 1959. BASNAYAKE, C.J.—

This is an appeal from the order of the learned District Judge refusing the appellant's application to intervene in a partition action. On 15th October, 1956, the learned District Judge delivered his judgment, and made the following order :—

“ Interlocutory decree for 30/10. Schedule of shares for 30/10. ”

On 19th October 1956 the Proctor for the appellant filed a statement of claim and moved that the same be accepted and filed of record. He also moved that the parties disclosed in the statement of claim be added and that a date be given to notice them. On 23rd October, 1956, the appellant's Proctor submitted that he was entitled to intervene as the interlocutory decree had not in fact been entered. The respondent's Proctor objected to the addition of the appellant as a party. His objection was upheld.

Learned counsel for the appellant relies on section 70 of the Partition Act, No. 16 of 1951, which provides that the court may at any time before interlocutory decree is entered in a partition action add as party to the action any person who, claiming an interest in the land, applies to be added as a party to the action.

We do not think that section 70 empowers the Court to add as a party to the action a person who applies to be added as such after judgment has been pronounced in terms of section 26 of the Partition Act. That section provides that at the conclusion of the trial of a partition action, or on such later date, the Court shall pronounce judgment in open court,

and the judgment shall be dated and signed by the Judge at the time of pronouncing it. As soon as may be after the judgment is pronounced, the Court shall enter an interlocutory decree in accordance with the findings in the judgment, and such decree shall be signed by the Judge. It would appear from section 26 that the entering of the interlocutory decree is a purely ministerial act and the Judge is bound by that section to enter the decree in accordance with the findings in the judgment. No purpose would therefore be served in admitting parties after he has pronounced judgment as required by section 26. The Civil Procedure Code, which is applicable to proceedings under the Partition Act, recognises the practice that the formal decree is not entered on the same day that the judgment is delivered when it provides (s. 188) that it shall bear the same date as the judgment, and in the instant case the decree satisfies that requirement.

We therefore hold that the Court has no power to add a party under section 70 after the date on which the judgment as required by section 26 is pronounced.

The learned District Judge is right in refusing the application for intervention.

The appeal is accordingly dismissed with costs.

SANSONI, J.—I agree.

Appeal dismissed.

