Nonnohamy V. Odiris Appu

385/1965

Present: Sansoni, C. J., T. S. Fernando, J., Abeyesundere, J., Sri Skanda Rajah, J., and G. P. A. Silva, J.

NONNOHAMY, Appellant, and ODIRIS APPU and others, Respondents

S. C. 349/62—D. C. Tangalle, 485/P

Partition action—Intervention after interlocutory decree—Permissibility.

Held (by the majority of the Court), that no intervention can be allowed in a partition action after interlocutory decree has been entered.

APPEAL from a judgment of the District Court, Tangalle.

Cecil de S. Wijeyaratne, with *E. H. C. Jayetileke* and *J. V. M. Fernando*, for Petitioner-Appellant.

W. D. Gunasekere, with *D. R. P. Goonetilleke*, for Plaintiff-Respondent.

Cur. adv. vult.

December 7, 1965. **SANSONI, C. J.**—

After final decree was entered in this partition action, the appellant petitioned the District Court to set it aside on the grounds (1) that the *lis pendens* had not been duly registered, and (2) that the plaintiff's proctor had not included the appellant's name in the declaration filed under section 12 (1) of the Partition Act. The District Judge dismissed the application for reasons the soundness of which it is not necessary to examine.

We are of the view that the application to set aside the decree and to be allowed to intervene could not possibly succeed, because no intervention can be allowed after interlocutory decree has been entered.

Mr. Wijeyaratne argued that (1) the failure to register the action correctly as a *lis pendens* and (2) the breach of section 12 (1) by the plaintiff's proctor rendered the decree invalid, and entitled the appellant to have it set aside. For the reasons we have given in S. C. No. 414/62 (F)—D. C. Point Pedro 6611/P [[(1965) 68 N. L. R. 145.]] decided today, we are unable to accept these submissions. The appeal is dismissed with costs.

T. S. FERNANDO, J.—I agree.

ABEYESUNDERE, J.—I agree.

SRI SKANDA RAJAH, J.—After careful consideration of the arguments submitted to us from the Bar and the judgment of My Lord the Chief Justice I am confirmed in the view to which I ventured to give expression in the dissenting judgment in the Divisional Bench case of *Odiris Appuhamy v. Caroline Nona* [1 (1964) 66 N. L. R. 241 at 244.]. The appeal should be allowed with costs.

G. P. A. SILVA, J.—I agree that the appeal should be dismissed. In the case S. C. 414/1962 (F)—D. C. Point Pedro—6611/P [2 (1965) 68 N. L. R. 145,] I have disagreed with the decision of my Lord The Chief Justice and my brother Judges who have concurred on the question whether a person can intervene after the interlocutory decree has been entered and would have expressed my disagreement in this appeal as well, if the only ground of appeal was based on the question of law whether a person can intervene after the interlocutory and the final decree. In the instant case, however, the learned District Judge has, after inquiry, held that the folio in which the *lis pendens* has been registered was a continuation from another folio which too was a continuation from another folio, according to the extracts of encumbrances produced in the case. He accordingly concluded that there was no material to

show any irregularity in the registration of the *lis pendens*. In view of this conclusion he held, correctly, in my view, that the appellant was not a party to whom section 48 (3) would apply. In the circumstances, I do not see sufficient reason to interfere with the decision of the learned District Judge.

Appeal dismissed.