

**JAYAKODY**  
**v**  
**SARASWATHIE**

COURT OF APPEAL  
UDALAGAMA, J., AND  
NANAYAKKARA, J.  
C/A 1690/91 (F)  
D.C. NUWARA ELIYA 693/T  
OCTOBER 21, AND  
NOVEMBER 27, 2002

*Civil Procedure Code, sections 712, 713, 754(i) and 754 (5), – Order fixing an application for discovery of property – Is it a final order or an interlocutory order?*

**Held:**

- (i) It is only an order made after due inquiry under section 714 depending on the nature and the effect of the order, if at all, that finality can be attached.
- (ii) The impugned order does not attract the finality contemplated.

**APPEAL** from the order of the District Court of Nuwara Eliya.

**Cases referred to:**

1. *Siriwardena v Air Ceylon Ltd.*, - (1984) 1 Sri LR 286.
  2. *Ranjit v Kusumawathie* - (1998) 2 Sri LR 232.
- S.F.A. Cooray* for 6th respondent appellant.  
*C.V. Vivekanandan* with *A. Paramalingam* for petitioner-respondent.

*Cur.adv.vult.*

December 10, 2002

**NANAYAKKARA, J.**

The appellant has preferred this appeal against an order of the learned District Judge in fixing an application made by the respondent for the purpose of discovery of property under section 712 of the Civil Procedure Code, for an inquiry to be held under section 714 of the Civil Procedure Code.

At the hearing of this appeal, counsel for the petitioner-respondent (respondent) raising a preliminary objection to the maintainability of the appeal, urged that the appeal be dismissed *in limine*, as the order against which the appeal has been preferred is not appealable in terms of the section 754 (1) of the Civil Procedure Code. 10

The question now for determination in this appeal is whether the order against which this appeal has been lodged, has the effect of a final judgment which is subject to an appeal in terms of section 754(5) of the Civil Procedure Code.

From the material placed before this court the learned District Judge on the presentation of a petition under section 712 of the Civil Procedure Code acting in conformity with the procedural requirements, has taken the next logical step by fixing it for inquiry to be held under section 714 of the Civil Procedure Code. 20

The very fact of fixing an application for inquiry, in my view, is an incidental order in terms of section 754 (5) of the Civil Procedure Code which does not attract the finality contemplated by that section as it does not finally dispose of the matter in dispute. As far as the facts of this case are concerned, it is only an order made after due inquiry under section 714 of the Civil Procedure Code depending on the nature and the effect of the order, if at all, finality can be attached to it.

In this connection it should be observed, that the tests adopted in the cases of *Siriwardena v Air Ceylon*<sup>1</sup> and *Ranjit v Kusumawathie*,<sup>2</sup> would be useful in distinguishing a direct appeal from an appeal with the leave of the court first obtained. In the circumstances, I am of the view that order dated 31.01.1991 from which this appeal has been preferred is of an interlocutory nature in respect of which no direct appeal lies. Therefore the appellant is precluded by the provisions of the Civil Procedure Code seeking relief against the order of the learned District Judge by way of direct appeal. Therefore upholding the preliminary objection of the respondent I dismiss the appeal casting the appellant in cost in a sum of Rs. 5000/-. 30 40

UDALAGAMA, J. – I agree.  
Appeal dismissed.