

WICKREMARATNE  
v.  
SAMARAWICKREMA AND OTHERS

COURT OF APPEAL.  
S. N. SILVA P/CA J.,  
R. B. RANARAJA, J.  
C.A. L.A. NO. 16/73.  
D.C. GALLE 3634/P  
JUNE 03 AND 17, 1994.

*Partition law 21 of 1977 – S. 48(4) (a) – 30 day Time-Limit – Interpretation – Court – Registry – S. 27, 27(2), S.30, S. 31, S. 32 – Settled Law.*

The question that arose for consideration relates to the interpretation of the words in S. 48(4) (a) which limit the time within which a party to a partition action, who did not appear at the trial and whose rights in the corpus have been extinguished by the Interlocutory Decree may apply for Special Leave to establish his rights.

The Commissioner executed the commission well in advance and the papers returned by him were received in the Registry and date stamped 15.10.90. The returnable date fixed by court was 10.1.91.

The District Court computed the 30 day period stipulated in S. 48(4) (a) from the returnable date.

**Held:**

(1) 'Court' will mean the place of public sitting, where the Judge or judges conduct the hearing of any matter before it. The word 'Court' is one of general use and may acquire distinct meaning in the context in which it appears.

It would be misleading and unreasonable to consider; that receipt of papers anywhere in court is receipt by "the Court" in the particular usage of these words in the section; especially where the date of such receipt is the commencement of a period of Time Bar imposed by that provision itself.

(2) In statutory interpretation there is a presumption that the legislature did not intend what is inconvenient or unreasonable. The rule is that the construction most agreeable to justice and reason should be given.

**Per Silva, J.**

"The provisions of the Partition Law demonstrate that the issuing of a commission for the final survey and fixing the returnable date are not mere administrative steps but events related to the judicial activity of the Court itself at its public sittings."

- (3) Notice of the returnable date is required to be given to the parties so that they may appraise themselves of the contents of the Surveyor's return and object to it if necessary or resort to the special procedure laid down in S. 48(4).

Thus the receipt of the return by "the Court" as referred to in S. 48(4) (a) must necessarily be related to fixing of the returnable date "in open court," as required by S. 27. The word "Court" should be construed restrictively to mean only the court at its public sitting and cannot be extended to cover the Registry and its administrative work.

**Per Silva, J.**

"The basic rule of interpretation is that the legislative objective should be advanced and that the provisions be interpreted in keeping with the purpose of the legislature, Interpretation should not have the effect of defeating the objective of the legislature and of detracting from its purpose."

- (4) Thus the period of 30 days has to be computed after the date the return of the Surveyor is received in open court on a returnable date that had been fixed by court.

**AN APPLICATION** for Leave to Appeal on which leave has been granted.

**Cases referred to:**

1. *Perera v. Perera* – 1978-79 – 2SLR 191  
Not followed.
2. *Gartise v. IRC* (1968) A.C. p 553 at P. 612.
3. *Fry v. IRC* (1959) Ch. D. P. 86 at P. 105.

*Rohan Sahabandu* for 1A Defendant-Appellant.

*D. R. P. Gunetillake* for 2A & 26th Defendants-Respondents.

*Cur. adv. vult.*

July 01, 1994.

**S. N. SILVA, J.**

This is an application for leave to appeal by the 1A Defendant-Appellant on which leave has been granted. The Appellant is seeking to set aside the order of 13.1.1993. By that order learned District Judge allowed the application made under Section 48(4) (a) of the Partition Law by 2A, 8A, 14A and 26A Defendants and set aside the interlocutory decree that had been entered in the case.

The trial commenced in the case in 1988 on 32 points of contest. When the trial resumed on 20.3.1990 only the Plaintiff, the Appellant

and 4 other Defendants were present and represented by counsel. On that day disputes amongst those present were adjusted. The Plaintiff and the 64th Defendant gave evidence. Judgment was entered on this evidence giving shares only to the Plaintiff, the petitioner and the 64th Defendant. Interlocutory decree was entered from which there was no appeal. The Commission for the final survey to partition the land was issued on 21.8.1990 and it was returnable on 10.1.1991.

8A, 14A and 26A Defendants were parties to the action who filed statements of claim but were absent on the date of trial. They were not allotted shares in the interlocutory decree. They filed petition and affidavit on 16.11.1990 in terms of Section 48(4) (A) of the Partition Law to excuse their failure to appear at the trial held on 20.3.1990. 2A Defendant filed similar papers on 1.12.1990. Learned Judge has in his order dealt with the grounds urged by these Defendants to excuse their absence. For reasons stated, he has upheld these grounds and set aside the interlocutory decree.

Counsel for the Appellant has not sought to canvass the findings of fact made by the District Judge. He relies only on the ground that the applications by the Defendant's have not been made within the time provided for in section 48(4) (A).

The only question that arises for consideration in this appeal relates to the interpretation of the words of section 48(4) (a) which limit the time within which a party to a partition action, who did not appear at the trial and whose rights in the corpus have been extinguished or prejudiced by the interlocutory decree, may apply for special leave to establish his rights. The section provides that such party;

"may at any time, not later than thirty days after the date on which the return of the surveyor under section 32 or the return of the person responsible for the sale under section 42, as the case may be, is received by the court, apply to the court for special leave to establish the right, title or interest of such party to or in the said land notwithstanding the interlocutory decree already entered."

As noted above, the returnable date given by court was 10.1.1991. However the Commissioner executed the commission well in advance and the papers returned by him were received in the Registry and date stamped on 15.10.1990. If that is taken as the date on which the return of the surveyor "is received by the court", the papers filed by 8A, 14A and 26A Defendants would be one day out of time and the papers filed by 2A defendant would be well out of time. On the other hand, if the date on which the papers were received in open court is taken as the date on which the return of the surveyor "is received by the court", the applications of all Defendants would be within time. Learned District Judge took the latter view and rejected the objection raised on time bar, by the Appellant. He expressed the view that the date on which the return is received in the Registry, would not be known to the parties and as such it would be unreasonable to take that date as the commencement of the period of time within which an application for special leave should be made.

Counsel for the Appellant relies on the judgment of a bench of two judges of this court in the case of *Perera v. Perera* <sup>(1)</sup> in support of the submission that the date the return is received in the Registry should be taken as the date the return is received by the court. On that basis it was submitted that the applications of the Defendants should have been rejected in limine. Counsel for the Respondents supported the reasons given by the District Judge and submitted that, that interpretation is proper and reasonable.

The case of *Perera v. Perera* (*supra*) presents facts that are similar to the instant case in that the return appears to have been received in the Registry well before the returnable date. The District Court refused the application for special leave made in terms of section 48(4) (a) on the sole ground that it was time barred, computing the period of 30 days from the date of receipt of the return in the Registry and not the returnable date in court. This court refused an application in revision filed from that order. Atukorale, J. in his judgment cited the words of Section 48(4) (a) referred above and observed as follows:

"These words make it imperative that the application should be made to court not later than the prescribed period of thirty days.

In the present case it is quite clear that the return of the surveyor under section 32 was received by court on 20.9.1978. The petitioner had therefore, if he wished to avail himself of the relief provided by section 48(4) (a), to apply to court not later than thirty days after 20.9.1978. He filed the application on 15.11.1978 which was clearly beyond the period prescribed. In view of the clear and plain meaning of the words used in the subsection, I cannot agree with the submission of learned counsel for the petitioner that the thirty days must be computed from 1.11.1978, namely the date fixed by court for the return of the commission. On a consideration of sections 27 and 28 of the said Law together with the form prescribed in the Second Schedule thereto, it is clear that the surveyor was commissioned by court to make his return on or before 1.11.1978. There was thus nothing to preclude the surveyor from making his return to court on any day prior to 1.11.1978. Hence the application of the petitioner was not one that the court could have entertained as it was out of time." (p. 193)

Foregoing is the only passage in the judgment which relates to the matter of interpretation of the particular provision. It appears that the attention of Their Lordships who heard that case has not been drawn to the distinction between the receipt of the return in the Registry and the receipt of the return in open Court on the returnable date. Furthermore, with due respect, it has to be noted, that the matters such as the difficulties that the parties would be confronted with by adopting the first stated meaning has not been considered. Further the question whether the latter meaning is warranted by reading the provision in its proper context, the scheme of the law, the other relevant provisions and the objective of the legislature, has not been considered. The decision appears to have been made on the basis that the provision does not present a question of interpretation and that a literal construction could be given by reading the words in the section itself. In these circumstances, we were not inclined to take the decision in the case of *Perera v. Perera (supra)*, as "settled law" as contended for by counsel for the appellant and counsel were invited to make submissions, fully, on the matter of interpretation.

The submission of Learned counsel for the appellant is that in its ordinary usage the word "Court" includes the Registry of a particular Court and that receipt in the Registry should be construed as receipt by Court. As a general proposition, there may be merit in this submission. Pleadings, actions and other papers are filed in the Registry and it is indeed reasonable to take the date of tendering those documents to the Registry, as the date they are filed in Court. On the other hand the word "Court" will mean the place of public sitting, where the judge or judges (as constituting the court) conduct the hearing of any matter before it. Thus it is seen that the word "Court" is one of general use and may acquire distinct meanings in the context in which it appears. It would be misleading and unreasonable to consider that receipt of papers anywhere in Court, (used in its wider sense) is receipt by the Court", in the particular usage of or these words in the section. Especially so, where the date of such receipt is the commencement of a period of time bar imposed by that provision itself. Maxwell (The Interpretation of Statutes 12th Edition page 76) has stated thus as to the treatment of general words appearing in a statute:

"... Whenever a statute or document is to be construed it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used."

*In Gartise v. I.R.C.*<sup>(2)</sup> Lord Reid observed as follows:

"If the language is capable of more than one interpretation, we ought to discard the more natural meaning if it leads to an unreasonable result, and adopt that interpretation which leads to a reasonably practicable result."

*In Fry v. I.R.C.*<sup>(3)</sup> Romer L. J. observed as follows:

"The court ... when faced with two possible constructions of legislative language, is entitled to look to the results of adopting each of the alternatives respectively in its quest for the true intention of Parliament."

In statutory interpretation there is a presumption that the Legislature did not intend what is inconvenient or unreasonable. The rule is that the construction most agreeable to justice and reason should be given. Maxwell (p 199) has stated this rule of interpretation as follows:

"In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be the true one. "An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available."

I shall now pass to a consideration of the relevant provisions of the Partition Law, in the light of the aforesaid rules of interpretation. Section 48(1) of the Partition Law attributes finality to an interlocutory and final decree entered in a partition action (subject to appeal and review by this Court in revision or by way of *restitutio in integrum*). The decree creates new rights to and in relation to the corpus, free from all encumbrances other than those stated in the decree itself, notwithstanding any omission or defect of procedure. Any person whose right to the corpus are extinguished or prejudiced by the new rights thus created by the decree is provided a remedy by way of damages by Section 49(1). Section 48(4) was introduced by the Law of 1977 (following Section 651(3) of the Administration of Justice Law, No. 25 of 1975, there had been no corresponding provision in Partition Act, No. 16 of 1951), giving an opportunity to a party to a partition action, whose rights to the corpus are extinguished or prejudiced by the interlocutory decree to apply for special leave to cure any omission or defect of procedure or default on his part and to establish his rights. It is significant that this opportunity is afforded only to a party to the action and the stage for making such an application is related to the final survey. It appears that the legislature related the stage of making any such application to the final survey in view of the publicity given to the fact of partition of the corpus at that survey. I advert to in particular to the notifications necessary and the publicity that should be given in terms of section 30(1), (2), (3) and (4) of the Partition Law. Thus the legislature not only provided a special procedure to a party to the action whose rights are extinguished or prejudiced by an omission or defect of procedure or

default on his part, to establish his rights but also made that special procedure effective by relating it to the final survey.

The provisions of the Partition Law amply demonstrate that the issuing of a commission for the final survey and fixing the returnable date, are not mere administrative steps but events related to the judicial activity of the Court itself at its public sittings. Further, notice of the returnable date is required to be given to the parties so that they may apprise themselves of the contents of the Surveyor's return and object to it if necessary or resort to the special procedure in section 48(4) to establish any right that has been extinguished or is prejudiced by the interlocutory decree. In this context, I refer in particular to section 27(2) which states in relation to the final survey that the Court "shall in **open court** fix the returnable date of the commission" (underlined by me). Further, section 31 which provides for what should be done by the surveyor when he carries out the commission for partition on the land, expressly states that he "shall inform the parties present of the returnable date of the commission fixed under section 27."

Viewed in the foregoing context of the statutory scheme of the Partition Law, the provisions of section 48(4) (a) which speak of the date on which the return of the surveyor "is received by the Court" have to be necessarily construed as receipt of the return by the Court on the returnable date notified to the parties in open court under section 27 and by the Surveyor under section 31. The receipt of the return by "the Court" as referred in section 48(4) (A) must necessarily be related to fixing of the returnable date "in open court" as required by section 27. In both instances, the word "Court" should be construed restrictively to mean only the Court at its public sitting and cannot be extended to cover the Registry and its administrative work.

The foregoing construction is also in accord with the convenience of parties and is in every respect reasonable and just. Section 48(4) (a) lays down a time limit within which a party whose rights are extinguished or prejudiced may make an application, to establish his rights. The time limit is computed with reference to "the date on which the return of the Surveyor ... is received by the Court." The submission of learned Counsel for the Appellant (similar submission appears to have been upheld in the case of *Perera v. Perera*) (*supra*) is that the date the return is received in the Registry should be taken as the operative date for computing this time bar. The return of the

Surveyor may be made by the Surveyor by sending the papers by post or handing them over physically at the Registry. In either event no party would be aware of that date. It would be a matter of knowledge between the Surveyor and the officer of the Registry who receives the papers. Therefore, a party would not know the time within which the application should be made. If that be taken as the date for computing the time bar. This would indeed be an unreasonable and unjust result that would cause immense inconvenience to parties and should as noted in the aforesaid principles of interpretation, be avoided if there be another interpretation which is reasonable, just and convenient. On the other hand, if the operative date for computing the time bar is taken as the date the return of the Surveyor is received at a public sitting of the Court, the date of such receipt would be well within the knowledge of every party. Furthermore, the returnable date is notified to parties in open court under Section 27 and by the Surveyor under Section 31 and any party who wishes to avail of the opportunity to make an application for special leave to establish his rights would know when the return will be received by court. Hence, this construction is the one most agreeable to justice and reason.

Another reason for not accepting the submission of learned counsel for the appellant is that if the date the return is received at the Registry is taken as the operative date, the entire period of 30 days within which an application should be made under section 48(4) (A) may elapse before a party becomes aware in open Court of the fact of receipt of the return. In the instant case, in fact the return was received in the Registry several months before the returnable day on which the matter was to come up in open Court. The entire period of time within which an application could be made under Section 48(4) (a) had elapsed before a party would in the ordinary course become aware that the return has been received. The resulting position is that the objective of the legislature in affording an opportunity to any party whose rights are extinguished or prejudiced, to make an application to establish his rights, is rendered nugatory by a process of interpretation. The basic rule of interpretation is that the legislative objective should be advanced and that the provisions be interpreted in keeping with the purpose of the legislature. The interpretation submitted by learned counsel for the Appellant has the effect of defeating the objective of the legislature and of detracting from its purpose.

It is seen from the foregoing analysis that there are overwhelming reasons to construe the phrase "may at any time, not later than 30 days after the date on which the return of the Surveyor under Section 32 ... is received by the Court ..." on the basis that the words "the Court" are restricted in their operation to the Court in public sitting and do not extend to cover the Registry of the Court. In the circumstances, I am of the view, that the period of 30 days has to be computed after the date the return of the Surveyor is received in open Court on a returnable date that had been fixed by Court.

For the foregoing reasons I see no merit in this appeal. The appeal is dismissed with costs.

**DR. R. B. RANARAJA, J.** – I agree.

*Appeal dismissed.*

---