

1971 *Present*: H. N. G. Fernando, C.J., and Thamotheram, J.

L. R. GUNASEKERA, Appellant, and R. A. S. PERERA, Respondent

S. C. 43/68 (Inty.)—D. C. Colombo, 9072/P

Appeal—Omission to join a necessary party as respondent—Liability of the appeal to be rejected.

Failure of the appellant, in an appeal filed by him, to join as a respondent a party who will be adversely affected if the appeal were to succeed renders the appeal liable to be rejected if objection is taken by a party-respondent.

APPEAL from an order of the District Court, Colombo.

H. W. Jayawardene, Q.C., with *Joe Weerasekera*, for the defendant-appellant.

C. Ranganathan, Q.C., with *W. D. Gunasekera* and *K. Kanagaratnam*, for the plaintiff-respondent.

January 21, 1971. H. N. G. FERNANDO, C.J.—

In this action for partition the plaintiff allotted all the shares in the land to himself and the 1st to the 5th defendants. The 6th defendant filed a statement of claim on the basis that the land belonged exclusively to himself and to the 16th and 17th defendants. After trial the learned District Judge rejected the claims of the 6th defendant and entered judgment holding that the land belonged to the plaintiff and to the 1st to the 5th defendants in the shares as stated in the plaint.

In the present appeal the 6th defendant has joined only the plaintiff as a respondent, although it is manifest that if the appeal were to succeed the interests of the 1st to the 5th defendants would be completely affected. The failure to join the 1st to the 5th defendants as respondents is a defect of an obvious character which should have been foreseen. Following the judgments in *D. A. Suwarishamy v. G. D. Thelenis*¹ and *Ibrahim v. Beebee*² I would uphold the objection taken by counsel for the plaintiff-respondent.

The appeal is rejected with costs.

THAMOTHERAM, J.—I agree.

Appeal rejected.
