

1971 Present : Samerawickrame, J., and Wijayatilake, J.

THEIVANAIPILLAI (w/o K. Nalliah), Appellant, and K. NALLIAH  
and others, Respondents

*S. C. 260/68 (Inty.)—D. C. Colombo, 10408/MB*

*Mortgage action—Intervention sought by person interested—Inapplicability of s. 16 of Mortgage Act to him—Duty of Court then to consider whether s. 18 of Civil Procedure Code or any other principle of law is applicable.*

Where the provisions of section 16 of the Mortgage Act are not applicable to a person who seeks to intervene in a mortgage action as a party having an interest in it, the Court must consider whether he is entitled to intervene and be added as a party on the basis of section 18 of the Civil Procedure Code or on any other ground or principle of law.

**A**PPPEAL from an order of the District Court, Colombo.

*L. D. Guruswamy*, for the intervenient-appellant.

*A. Siragurunathan*, for the 1st and 4th defendants-respondents.

March 15, 1971. SAMERAWICKRAME, J.—

The appellant who sought to intervene on this mortgage action is the wife of the 1st plaintiff and is living in separation from him. She alleged that she has from the year 1943 been in occupation of the land in question to the exclusion of everybody else and that she had put up buildings and had paid the rates in respect of the house standing on the land. She further averred that the money was provided by her for the purchase of the land and it was intended that it should be bought in her name. The deed had however been executed in the name of the 1st plaintiff. She asserted that the subsequent transactions in respect of the land between the 1st plaintiff and the defendant-society were made in collusion and did not therefore affect her rights. She also claimed that by reason of the law of Thesawalamai to which the parties are subject she was entitled to the land as her separate property. It is her position that the plaintiffs and the defendant-society were acting in collusion to defeat her rights and that a mortgage decree in this action and a sale upon it would gravely prejudice her and may well put an end to her rights. The learned District Judge dealt with the application only on the basis of Section 16 of the Mortgage Act. It appears to us however, that Section 18 of the Civil Procedure Code would also be applicable and that the learned District Judge should have considered whether on the basis of Section 18 of the Civil Procedure Code or on any other ground or principle of law, the appellant is entitled to intervene in this action.

We accordingly set aside the order dismissing the application of the appellant and send the case back with a direction to the District Judge to consider whether the appellant is entitled to intervene and be added as a party to this action on the basis of Section 18 of the Civil Procedure Code or on any other ground or principle of law. We also set aside the order for costs made by the learned District Judge. We make no order as to costs of appeal.

WIJAYATILAKE, J.—I agree.

*Case sent back for further proceedings.*

---