AMERESEKERE *v.* RAN MENIKA *et al.*

1897.
September 8.

D. C., Kurunegala, 1,265 L 312.

Division of land among co-heirs—Nature of proof required for one heir to prescribe against another.

Among co-heirs the strongest evidence of adverse possession should be given. Such evidence can very rarely prove division, unless it comes in the form of notarial conveyances, either cross between the heirs or so specifying the shares they severally deal with at different times as to indicate their acquiescence and possession on that basis.

THIS was a partition suit. Plaintiff claimed $\frac{19}{24}$ share of the land Kohombagahamulawatta, and prayed for a partition thereof. The land orginally belonged to one Kohombihami, who died leaving three children: Menuhami, Appuhami, and Jevathami. Plaintiff derived title through the children of the first and second, and through the third person aforesaid. Defendants, admitting the ownership of Kohombihami, declared that the whole land was allotted to and possessed by Menuhami, and that Appuhami and Jevathami had been assigned other lands in lieu thereof by their parent. Defendants claimed the land under Menuhami, and pleaded title by prescriptive possession.

The District Judge found for plaintiff, and accordingly entered a decree of partition in his favour. Defendants appealed.

Bawa, for appellants.

Dornhorst and *H. A. Jayawardena*, for respondent.

8th September, 1897. BROWNE, A.J.—

Mr. Bawa has failed to satisfy me that the learned District Judge has come to a wrong conclusion on the evidence. No doubt there is the fact that the sons of the original owner are sundered one from another now in residence—a circumstance

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which we must always expect to find—and that they are each planting gardens and chenas for themselves, and there is the fact, on which the defence seems mainly to rest, that second defendant's vendor in 1892 professed to sell one-fourth and not one-twelfth, and that subsequent conveyances have repeated that statement. But this was done after two of the original owners' sons had, in 1890, leased out two-thirds of the garden as their shares, so that one assertion is pretty well met by another. On the evidence of possession, I agree in the views expressed in the judgment. Amongst co-heirs the very strongest evidence of adverse possession should be given. In my judgment, such evidence can very rarely prove division unless it comes in the form of notarial conveyances, either cross between the heirs or so specifiying the shares they severally deal with at different times as to indicate their acquiescence and possession on that basis.

I affirm the judgment with costs.