

1951

Present : **Rose C.J.**

SEEDIN, Appellant, and THEDIYAS, Respondent

S. C. 174—C. R. Matara, 3,092

Partition decree—Creates new title in the parties—Married Women's Property Ordinance (Cap. 46), s. 10 (1).

Partition decrees are not, like other decrees affecting land, merely declaratory of the existing rights of the parties *inter se*. They create a new title in the parties. Where, therefore, a woman who possessed an undivided share of a land prior to the commencement of the Married Women's Property Ordinance is awarded in a partition decree entered after the commencement of that Ordinance a divided lot in lieu of her undivided share, she is entitled, under section 10 (1) of the Ordinance, to dispose of the divided lot without the consent of her husband. The partition decree operates to defeat the interest which the husband previously had in his wife's share in the undivided land.

A PPEAL from a judgment of the Court of Requests, Matara.

H. W. Tambiah, with *P. Navaratnarajah* and *V. Ratnasabapathy*, for the plaintiff appellant.

N. W. Obeyesekere with *G. L. L. de Silva*, for the defendant respondent.

Cur. adv. vult.

November 2, 1951. ROSE C.J.—

In this matter the plaintiff-appellant claims a declaration of title to a certain land, described as lot B.

It is common ground that by a partition decree entered in the District Court of Matara on January 17, 1940, the wife of the defendant-respondent became entitled to lot B in lieu of a certain share of a larger undivided land, which she had inherited from her first husband in 1918. She sold lot B to the plaintiff in 1942, the deed P1 being executed without the husband's (respondent's) consent. The respondent admits having been in possession of the land since 1949.

The respondent contends and the learned Commissioner found that deed P1 conveyed no title to the appellant because the respondent's wife's title accrued before July 1, 1924, which is the relevant date for considering the application of Section 10 (1) of the Married Women's Property Ordinance (Chapter 46). It is further contended for the respondent that the partition decree cannot operate to defeat the respondent's interest in his wife's share in the undivided land, which interest, he submits, continues to attach to lot B after the partition decree.

In my opinion this contention is not well-founded. As was stated by De Sampayo J. in *Bernard v. Fernando*¹, "Partition decrees are conclusive by their own inherent virtue, and do not depend for their

¹ (1913) 16 N.L.R. p. 439.

final validity upon anything which the parties may or may not afterwards do. They are not, like other decrees affecting land, merely declaratory of the existing rights of the parties *inter se*. They create a new title in the parties absolutely good against all other persons whomsoever." This passage is cited with approval in Mr. Jayewardene's book on "The Law of Partition in Ceylon" at page 189.

It seems to me, therefore, that the title to lot B accrued to the respondent's wife on January 17, 1940, and that therefore the subsequent sale to the plaintiff in 1942 did not require the consent of the respondent. I would add that when the Legislature desires to protect a particular interest in partitioned land special provision is made in the Partition Ordinance (Chapter 56), as for example in Section 12 which protects the position of a mortgagee. Similarly, Section 9 preserves to any person prejudiced by a partition the right to recover damages in a proper case.

The appellant, therefore, is, in my opinion, entitled to the declaration asked for and also for damages which were agreed by the parties at the rate of Rs. 15 per annum from May 2, 1949. The appeal is therefore allowed, the judgment of the learned Commissioner set aside, and judgment entered for the appellant accordingly. The respondent will pay the costs here and below.

Appeal allowed.
