1946 *Present :* **Howard C.J. and de Silva J.**

RAMANAYAKE, Appellant, *and* NAGAPPA CHETTIAR *et al.*, Respondents.

365—D. C. Kegalla, 1,523.

Construction of deed—Conveyance of property—Plan contradictory of words of description—Insufficient description of the property conveyed—Rule of Falsa demonstratio non nocet.

The rule *Falsa demonstratio non nocet* is not applicable in a case where not only the plan attached to the deed of conveyance contradicts the text but also there is no adequate and sufficient definition with convenient certainty of what was intended to pass.

APPEAL from a judgment of the District Judge of Kegalla.

N. Nadarajah, K.C. (with him *D. W. Fernando*), for the defendant, appellant.

H. V. Perera, K.C. (with him *N. E. Weerasooria, K.C.*, and *T. Nadarajah*), for the plaintiffs, respondents.

Cur. adv. vult.

February 12, 1946. HOWARD C.J.—

The facts are set out in the judgment of my brother de Silva and after due consideration I agree with the conclusion at which he has arrived. I was inclined at first to think that this was a case in which the rule "*Falsa demonstratio non nocet*" applied. Authority for this rule is to be found in the case of *Llewellyn v. Earl of Jersey* [1]. In this case Baron Parke stated the rule as follows :—

"As soon as there is an adequate and sufficient definition, with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it according to the maxim *falsa demonstratio non nocet*".

This rule was applied in the Privy Council case of *Horne v. Struben* [2] in which Lord Robertson in giving the judgment of the Court stated that their Lordships considered that assuming, as appears to be the case in regard to the western boundary, that the diagram contradicts the unambiguous text of the title, it must give way to the text. If, however, the facts in the present case are examined, it is impossible to say that there is an adequate and sufficient definition with convenient certainty of what was intended to pass. The basis of the plaintiffs' title is P8, the mortgage by Ramanayaka the husband of the defendant. In this deed the property is described as consisting of 5 lots specified by different names with separate boundaries. After these 5 lots have been described the schedule to the deed states as follows :—

"All of which lands adjoin each other and now form one property called and known as Yakebehenayaya estate, situate at Kehelwatugoda

[1] *152 E. R. 767.* [2] *(1902) A. C. 454.*

aforesaid and bounded on the east by Ela, south by a fence, rock and land claimed by natives, Mala Ela, and Walawwewatta and on the north by land claimed by natives containing in extent forty-nine acres and two roods (A 49. R 2. P 0) according to the plan and survey made by C. D. Jayasinghe, Special Licensed Surveyor, dated May 24, 1923".

So, first of all there is a description of the property mortgaged by reference to 5 blocks specified by different names with separate boundaries. Then follows what purports to be a description of the same lands by reference to a consolidated block with a distinct name and boundaries according to a plan and survey made by C. D. Jayasinghe dated May 24, 1923. Mr. Direckze, the Surveyor, was on April 24, 1942, issued with a commission to identify the lands in dispute. The 5 blocks were referred to by name, but only the boundaries of the consolidated block were given. In his return to this Commission Mr. Direckze said that the chenas referred to by name in the land sold to the plaintiffs now form part of the Narangala Estate. The plan issued in the Commission is not a survey of land in that estate, but refers to land situate at Batuwatte village called the Kiridenekande estate and claimed by Mrs. W. Nugawela. A second commission was issued to Mr. Direckze and on August 28, 1942, he made a further report. In this report he states that he surveyed the Yakambehenayaya estate comprising the 5 blocks specified by name. That the portion surveyed formed part of the Narangala estate and, as given in the commission, is in Kehelwatugoda. That the boundaries given in the commission and the plan are of a different land the location of which he found to be in Batuwatte village. A third commission, issued to him on November 23, 1942, was reported on by Mr. Direckze on December 8, 1942. In this commission the Surveyor was asked to go to the lands with the defendant's plans and locate in a plan the lands represented in those plans and the lands already surveyed and the 5 chenas which comprise the land claimed by the plaintiffs in accordance with an amended schedule. The Surveyor was also asked to show in the plan the consolidated land as described in the schedule to the plaint. In his report Mr. Direckze has delineated on a plan the 5 chenas as pointed out to him by the persons who accompanied him. He says that the extents differ in acreage and the boundaries do not tally with those given in the schedule to the plaint. He is unable to locate the chenas mentioned in the schedule to the plaint with either the title plans handed to him by the defendant's or the plaintiffs' proctor. The boundaries of Yakambemukalana differ from the schedule. The land surveyed by Jayasinghe is 60 chains to the west of the land pointed out. Mr. Direckze testified in evidence to the same facts as appeared in his reports. Moreover the persons who pointed out the blocks when he made his surveys also gave evidence. From this evidence it is impossible to say that the blocks claimed by the p'aintiffs are defined with such certainty in the latter's title deeds that the rule *falsa demonstratio non nocet* applies and that Jayasinghe's plan can be ignored. Mr. Direckze cannot locate the chenas mentioned in the plaint by reference to the plaintiffs' title deeds. Moreover the boundaries of Yakembehenayaya, the consolidated block, differ from the boundaries mentioned in the plaint. The extents and boundaries of the separate blocks as pointed out on the

ground also differ from those given in the plaint. The description of the 5 chenas in P 6 and P 8 cannot be reconciled with that of the consolidated block in the same deeds. The case of *Eastwood v. Ashton* [1] therefore applies. In that case Lord Loreburn said " I do not think that any rule requires us first to examine the letterpress and then to discard the plan if we think the letterpress alone is sufficiently clear. The whole should be looked at and it may be that the plan will show that there is less clearness in the text than might appear at first sight ". He held that the other descriptions in the deed under consideration in that case were inaccurate and the one accurate guide was to endorse the plan. The judgment of Lord Sumner is also very much in point when the facts of this case are considered. At p. 915 he states that the deed purports to convey parcels described in four different ways which he specifies. At p. 916 he further goes on to say that if several different species of description are adopted, risk of uncertainty arises, for if one is full, accurate and adequate, any others are otiose if right, and misleading if wrong. Conveyancers, however, have to do the best they can with the facts supplied to them, and it is only now and again that confusion arises. The present was, His Lordship thought, a case of such confusion and a pretty tangle it was. At p. 917 he states as follows :—

> " The result is that whether the descriptions by name, acreage, and occupation are taken together or taken singly, the description so constituted is the very opposite of that to which the rule in *Llewellyn v. Earl of Jersey* [2] applies. Hence the fourth description, that by the plan, must be taken account of ".

Eastwood v. Ashton was followed by the Ceylon Divisional Bench in *Saminathan Pillai v. Dingiri Amma* [3] where it was held that :—

> " A reference to a wrong locality in the description of a land does not take away from the effect of a deed if the land affected by the deed is sufficiently described in a plan "

It seems to me that the words of Lord Sumner are peculiarly apposite to the present case. The descriptions by name, boundaries and acreage whether of the parcels as a consolidated whole or in separate blocks present a confusing picture of indefiniteness. The only accurate guide was the plan which purports to convey property which is not specified in the plaint and not moreover in the possession of the defendant.

For the reasons I have given I agree with my brother de Silva that the order of the District Judge must be set aside and judgment entered for the defendant with costs in this Court and the Court below.

DE SILVA J.—

This is an appeal by the defendant against a judgment of the District Court of Kegalla declaring that the plaintiffs are entitled to the land described in the amended schedule to the plaint. The plaintiffs instituted this action for a declaration of title to all those five allotments of

[1] *1915 A. C. 900.*
[2] *11 M. & W. 183.*
[3] *39 N. L. R. 325.*

land called and known as Kurukosgahamulawatta, Yakambehena, Moragollehena, Etinawetichchagalagawahena and Ambagahamulahena adjoining each other and now forming one property called and known as Yakembehenyaya estate, situated at Kehelwatugoda in Gandolaha pattu of Beligal korale in the District of Kegalla and for damages against the defendant, who was alleged to be in wrongful possession, in a sum of Rs. 500 up to May 18, 1943, and Rs. 25 a month thereafter together with costs.

The defendant filed answer stating that the plaintiffs were seeking to be declared entitled to a part of Narangala estate which belonged to her and she set out her title to that estate. Thereafter three commissions were issued to Surveyor Collin Direckze to survey the land in dispute. He made a return to the first commission on May 8, 1942, without making a plan as according to him he found that the chenas mentioned in the commission formed part of the land called Narangala estate of about 144 acres and that the lands shown in the plan attached to the commission were situated at Battuwatte village and formed part of Kiridena Kanda estate. In his return to the second commission he stated that he proceeded to the spot with one Weerappa Chettiar, who represented the plaintiffs, and surveyed the land which was a coconut estate with coconut trees about 20 years old with a few rubber trees of about the same age, and that on inquiry from the Conductor of the estate for its name he was informed that the whole of the estate, including the portion surveyed, was called Narangala estate. He added that the boundaries given in the commission and the plaint were of a different land, the location of which he found to be in a different village, Battuwatte. He attached plan P 1 to his return showing the boundaries of the land claimed as Yakambehenyaya estate. This plan did not show the five separate lands as the plaint did not give their boundaries. Thereafter the plaintiffs obtained a deed of rectification (P 18) from their vendor showing the boundaries of the five lands, amended the schedule to the plaint and reissued the commission to the Surveyor to enable him to locate the lands on the plan. The Surveyor then made a return on December 8, 1942, attaching plan P 1A which showed the land as comprising five lots, A, B, C, D, and E which purported to show the five lands. Though the commission directed the Surveyor to show the lands covered by the title plans of the defendant, which had been sent to the Surveyor by the defendant's Proctor, he omitted to show them as no representative of the defendant was present at the survey.

If the plaintiffs were not speculative purchasers they would have ascertained the identity and the title of the lands which they were purchasing and would have been in a position to state what lands they actually purported to purchase, but the plaintiffs have led no evidence to show whether they inspected the lands prior to their purchase and if so what lands were inspected by them.

At the trial issues were framed and certain evidence was led and the learned Judge held that the plaintiffs were entitled to the land shown in plan P 1A and awarded them damages as agreed upon. The defendant appeals against this order. It was contended that the land to which the plaintiffs have been declared entitled was entirely different from the land

conveyed to them on their deed P 17 dated April 17, 1940, and deed P 18 dated November 7, 1942, that the location and the extents of the five lands were incorrect and that the land shown in P 1 was clearly a portion of Narangala estate which was owned by the defendant on a title ultimately derived from the Crown.

It is necessary to examine the terms of deed P 17 to determine what the parties intended to convey. It seems clear that what was intended to be conveyed was the property called and known as Yakambahenyaya estate with the boundaries and extent according to the plan and survey made by C. D. Jayasinghe, Special Licensed Surveyor, dated May 24, 1923, and registered in E296–145. The reference to the five allotments of land seems to have been made to enable the original title to this estate to be traced. This is a subsidiary description which does not affect materially the land conveyed by the deed for even if the words had merely been "all those allotments of land now forming one property . . . . ", the deed would have been effectual to convey the consolidated land. The evidence of the witness Collin Direckze shows that there is a property as described in the deed and the plan at Battuwatta, about 60 chains from the land shown in plan P 1. Battuwatta is a village adjoining Kehelwatugoda, so that if the village limit of Kehelwatugoda was the same as it is at present at the time when Surveyor Jayasinghe made his plan there would be a *falsa demonstratio* with regard to the situation of the land and the description that it was situated at Kehelwatugoda will have to be ignored (see case of *Saminathan Pillai v. Dingiri Amma* [1]). The circumstances in which Jayasinghe appears to have made his plan gives every indication that it was a genuine plan made at a time when the owner was in possession of the land. If the case had stood as it was presented to Court by the original plaint it is clear that the plaintiffs were bound to fail. They therefore obtained from their vendor a deed of rectification in which the boundaries and extent of the five allotments of land were stated along with the description of Yakembahenyaya estate which appeared in deed P 17. I do not think that this additional description of the allotments makes any substantial difference to what was intended to be conveyed by the parties. The property conveyed still remains Yakembahenyaya estate. The total area of this estate is not the same as the total areas of the five allotments of land, nor does it appear that the outer boundaries of the five allotments as located by the plaintiffs correspond with the boundaries of Yakembahenyaya estate. As the two descriptions are inconsistent the deed must be regarded as conveying what the parties really intended to convey. Counsel for the respondents contended that as the plan was inconsistent with the clear words describing the land conveyed the plaintiffs were entitled to reject the plan as a *falsa demonstratio* and were entitled to rely on the description of the five allotments of land. He relied on the case of *Horne v. Struben* [2]. In my opinion this case has no application as the words describing the land Yakembahenyaya is consistent with the plan. What the plaintiffs seek to discard is not merely the plan but also the material words of description given in the deed,

[1] *39 N.L.R. 325.* [2] *1902 A.C. 454.*

but even assuming that the plaintiffs can disregard the description of Yakembahenyaya estate as given in their deed and rely on the conveyance of the five allotments of land, then the position would be that the plaintiffs would be obliged to restrict their claim to the five separate allotments of land according to their description and extents because the statement that they form one property or that such property has the boundaries or extent given in the deed is rejected.

The total extent of the five allotments is 7 amunams which is equivalent to 24 acres or at the most to 35 acres. It is therefore obvious that the plaintiffs cannot retain the decree by which they have been declared entitled to an extent of 48 acres 1 rood 18 perches according to plan No. 1,141 dated August 26, 1942. The plaintiffs did not on their deeds obtain title to this area of 48 acres 1 rood 18 perches as depicted in the above plan No. 1,141.

What I have stated above would be sufficient to dispose of the appeal. I would however consider whether the plaintiffs have established their claim to any portion of the land depicted in plan P 1. The evidence shows that no serious attempt was made to determine the exact situation or boundaries of each allotment of land. The Surveyor admits that the five divisions shown in plan P 1A do not correspond with the extents or boundaries of the five allotments of land. An examination of the documentary evidence leaves very little doubt that these five allotments must fall outside the boundaries depicted in P 1A.

The deed P 3 by which Tikirikumarahamy conveyed a half share of these allotments of land to Madduma Kumarahamy shows that as far back as 1879 Kurukosgahamulawatta was conveyed along with the plantations thereon (see P. 24). The deed P 4 dated September 2, 1911, shows that it was conveyed along with the buildings standing thereon (see P 28). These documents clearly show that Kurukosgahamulawatta was a planted land with buildings as far back as 1911, but the evidence called in this case shows that the land now identified as Kurukosgahamulawatta was in jungle at the time when the land shown in P 1 and the remainder of Narangala estate were cleared and planted by the witness Theobald. The evidence does not refer to any buildings or plantations which were on the land Kurukosgahamulawatta though reference is made to 3 jak trees. If in fact the witnesses had any definite knowledge of the land Kurukosgahamulawatta they should have known what happened to the plantations and buildings and how the land reverted to jungle.

If the location of Kurukosgahamulawatta is not correct it seems to follow that the location of the other lands also cannot be correct.

There is an alternative method of testing whether these five allotments of land can fall within the boundaries of the land shown in P 1. P 1 depicts part of the lands which the witness Theobald acquired and planted on his agreement No. 402 dated December 27, 1922, and April 19, 1923, (D 12). These lands were claimed by Tikirikumarahamy, William Nugawella and Robert Nugawella as forming part of Narangalahenyaya-hena of an extent of about 144 acres. This agreement contemplated a subsequent lease after the parties had obtained Crown Grants. Crown Grants were in fact obtained by Tikirikumarahamy and she entered into

the lease D 13. The various title plans referred to in D 13 cover an extent of 144 acres 2 roods 8 perches. These title plans refer to the allotments of land in respect of which they were issued and an examination of these names shows clearly that the five allotments of land mentioned in the plaintiffs' deeds are not included in the lands in respect of which the Crown Grants were issued. The only land which has some resemblance to one of the lands mentioned in the plaintiff's deed is Yakambamukalana but this is different in name and extent from Yakambahena with which the plaintiff's deeds deal. As the total extent shown in P 1 is covered by the Crown Grants it is clear that the lands mentioned in the plaintiff's deeds cannot fall within P 1. In the circumstances the other issues raised do not arise.

I would therefore allow the appeal with costs and set aside the decree of the District Court.

Appeal allowed.