

1954

*Present : Sansoni J.*K. CHELLAN, Appellant, and PONNAN *et al.*, Respondents*S. C. 143—C. R. Point Pedro, 1,001*

Co-owner—Owner also of adjoining land—His right to go over the common property to reach the adjoining land.

Where in the partition of a land owned in common a portion of it is reserved as common property for use as a lane, a co-owner is entitled to use the lane in order to reach an adjoining land which belongs solely to him if by doing so he does not interfere with the substantial rights of the other co-owners.

APPPEAL from a judgment of the Court of Requests, Point Pedro.

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

S. J. V. Chelvanayakam, Q.C., with *S. Sharvananda*, for the defendants respondents.

Cur. adv. vult.

October 6, 1954. SANSONI J.—

The plaintiff-appellant and the four defendants owned a land in common until, by deed P1 of 1941, they partitioned the land into four separate lots, the 1st and 2nd defendants who are husband and wife getting one lot at the eastern end. A lane was left along the southern boundary of the 4 lots "for our common use . . . the whole of this (lane) belongs to us in equal shares", to quote the words of the deed. This lane leads up to a separate land on the east which belonged and still belongs solely to the plaintiff. Admittedly the 1st defendant blocked the lane at two points, one point being where the lane begins to skirt his lot on the south and the other point being at its eastern extremity where it touches the western boundary of the land belonging to the plaintiff alone on the east.

The plaintiff has brought this action as a co-owner of the land over which the lane runs claiming damages against the 1st and 2nd defendants because they obstructed him in the use of the lane; he also asked for the removal of the obstruction. He claimed that he was entitled as a co-owner to use the land in order to reach his land on the east. The 1st and 2nd defendants filed a joint answer in which they denied that the lane was intended for use by the plaintiff to have access to his land on the east, or that he ever used it for that purpose. Their position was that the lane was intended only to serve the 4 lots.

I do not think the validity of the plaintiff's claim can be doubted. He is a co-owner of the lane and as such co-owner he is entitled to use it as a lane for the purpose of getting to his land on the east if by doing so he does not interfere with the substantial rights of the other co-owners. This is the reason underlying the decision of de Sampayo J. in *Marsal Appu v. Angohamy*¹ where he followed the decision of Schneider J. in *Singho Appu v. Hendrick Appu*². The plaintiff's use of the lane to get to his land on the east is an incident of his co-ownership of the lane and it is no less justified than the use of the lane by the owners of the 4 lots to reach their respective lots. It is not suggested that the use of the lane in the manner claimed by the plaintiff will interfere with the use of the lane by the other co-owners. The deed does not provide that the lane should be used only for the purpose of having access to the 4 lots lying to the north of it.

The learned Commissioner dismissed the plaintiff's action because the lane was not declared in the deed to be a public lane or one along which the plaintiff should have access to his land on the east. Both reasons are unsound. The plaintiff is not claiming to use the lane as a member of the public and he has no need to do so since he is a co-owner. Nor does the deed restrict the use of the lane by the co-owners in any way. It is a very unsafe method of construing this deed to search for the particular objects which the parties may have had in mind when they reserved a portion of land as common property for use as a lane. The deed itself contains no restriction as regards the lands which the lane was to serve and it would be adding to the terms of the deed if one were to impose such restrictions now. The learned Commissioner has also referred in his judgment to a servitude and a way of necessity but there is no claim by the plaintiff on these grounds.

I therefore allow this appeal. The plaintiff-appellant is entitled to have the obstructions on the lane removed by the four defendants and he is entitled to use the lane to have access to his land on the east. The 1st and 2nd defendants must pay the plaintiff-appellant damages as agreed at the trial until the obstructions are removed; they must also pay him his costs both in this Court and in the lower Court.

Appeal allowed.

¹ (1922) 4 C. L. Recorder 197.

² (1922) 24 N. L. R. 157.