

1966 Present : Alles, J., and Siva Supramaniam, J.

A. VALLIPURANATHAR, Appellant, and E. SELLAR
and others, Respondents

S. C. 88/65 (Inty.)—D. C. Chavakachcheri, 1621/P

Sale of land—Sale ad quantitatem and not ad corpus—Effect—Partition action.

Where the sale of a portion of a land is *ad quantitatem* and not *ad corpus*, the vendee is not entitled to claim the benefit of any excess found in the extent of the whole land on a subsequent survey.

The 1st defendant-appellant had sold to the plaintiff 75 lms. out of a land which was described in the deed of sale as 90 lms. in extent. In the present partition action instituted in respect of the land, interlocutory decree was entered on the basis that the plaintiff was entitled to 75/90th share of the land although on a survey it was found that the extent of the land, though reputed to be 90 lms. according to the deeds, was in fact about 178 lms.

Held, that a fresh decree should be entered on the basis that the plaintiff was entitled to an extent of 75 lms. and the 1st defendant-appellant to the balance, excluding a lot which should be allotted to the 4th defendant.

APPEAL from an order of the District Court, Chavakachcheri.

O. Ranganathan, Q.C., with *K. Sivananthan*, for the 1st defendant-appellant.

O. Chellappah, for the plaintiff-respondent.

Cur. adv. vult.

November 8, 1966. SIVA SUPRAMANIAM, J.—

By deed No. 3930 dated 5th February 1909 (P1) Vallipurathan Arumugam, the father of the 1st defendant-appellant, became entitled to a piece of land, said to be in extent 90 lms. p.c., being the western portion of a larger land. The boundaries of the said extent of 90 lms. p.c. were set out in the deed as follows :—On the East and North by road, on the West by a bye lane and on the South by river.

On the death of the said Arumugam the said piece of land devolved on the appellant. By deed No. 2511 dated 18.1.1956 (P3) the appellant transferred to the plaintiff-respondent an extent of 75 lms. p.c. The deed (P3) describes the subject matter of the transfer as follows :—“ Of this 90 lms., excluding an extent of 15 lms. p.c. from the North-Western side, the remaining in extent 75 lms. p.c. The 75 lms. is bounded on the East by sandy road, North by road and the said extent of 15 lms. belonging to me, West by the aforesaid 15 lms. p.c. excluded portion belonging to me, and South by Kanagarayan river.” It is not disputed that no boundaries were demarcated on the land.

It is also common ground that the subject matter of the present action for partition is the extent of 90 lms. p.c. dealt with by deed P1. On a survey it has been found that the extent of the land, though reputed to be 90 lms. according to the deeds, is in fact about 178 lms.

The plaintiff-respondent has instituted this action on the footing that he is entitled to 75/90th share of the land and the appellant to the balance 15/90th share. The short point for decision on this appeal is whether the plaintiff-respondent is entitled to claim 75/90th share of the land on the deed P3. That deed does not convey to the plaintiff-respondent any fractional share of the land but an extent of 75 lms. p.c. The vendor had assumed that the total extent of the land was 90 lms. p.c. and on that assumption he had set apart for himself 15 lms. and transferred to the vendee the remaining 75 lms. p.c. It is clear from the description of the subject matter of the transfer in P3 that the sale was one *ad quantitatem*, and not one *ad corpus*. What was conveyed to the plaintiff-respondent on that deed was an extent of 75 lms. p.c. and the plaintiff is not therefore entitled to claim a

larger extent than 75 lms. p.c. The consideration he paid was for an extent of 75 lms. p.c. and for no more. He is not entitled to claim the benefit of any excess found in the extent of the land on a survey.

We are of the opinion that the learned District Judge was wrong in holding that the plaintiff-respondent is entitled to 75/90th share of the land. We set aside the interlocutory decree entered in the case and direct that a fresh interlocutory be entered on the basis that the plaintiff-respondent is entitled to an extent of 75 lms. p.c. and the appellant to the balance, excluding lot 3 which will be allotted to the 4th defendant-respondent. All other rights will be as determined by the trial Judge in his judgment.

The appellant will be entitled to his costs of contest in the lower Court as well as his costs in appeal.

AELES, J.—I agree.

Order set aside.
