1931 *Present:* **Akbar J.**

DE SILVA *et al. v.* ABEYTILEKE *et al.*

59—C. R. Balapitiya 18,092.

Evidence—Conveyance of land and house—Error in description of house—Falsa demonstratio non nocet.

Where a deed of transfer conveyed to the transferee certain undivided shares of the soil and "the whitewashed tiled house of 32 feet in length and 49 feet in breadth standing thereon", and it transpired that there was only one whitewashed tiled house on the land but that it was 32 feet in length and 72 feet in breadth,—

Held, that title to the house passed to the transferee despite the error in description.

THIS was an action for declaration of title to a house against the added defendant who sold to the plaintiffs certain undivided shares of the soil and a tiled house 32 feet in length and 49 in breadth standing thereon. There was only one tiled house on the land but it

[1] *Moody Crown Cases 281 and 168; English Reports 1273.*

was 32 feet in length and 72 in breadth. The question for determination was whether the vendors intended to convey the whole tiled house to the plaintiff. The learned Commissioner of Requests held that the plaintiffs were only entitled to a portion of the house, 32 feet in length and 49 in breadth.

M. C. Abeywardane, for plaintiffs, appellants.—The appeal involves the construction of a deed by which certain shares of a land and " the white-washed tiled house of 32 feet in length and 49 feet in breadth standing thereon " were conveyed to the appellant. There is only one house on the land in question, and that a structure 32 feet in length and 72 feet in breadth. The trial Judge held that the plaintiffs were bound by the terms of their deed and were only entitled to such portion of the house in question as is 32 feet in length and 49 feet in breadth. It is submitted that the finding is wrong. This is a case of " *falsa demonstratio non nocet* ". What was conveyed was " the house ". The subsequent mis-description cannot alter the effect of that conveyance. The house was enlarged to its present proportions long anterior to the conveyance to the appellants. The erroneous description has probably been copied from an earlier deed. A reference is made to the earlier deed, in the schedule attached to our document of title. That deed, however, has not been produced but that is immaterial. The principles of construction in a case like this were very lucidly expressed by Lord Sumner in *Eastwood v. Ashton*[1]. See also *Bulner v. Schokman*[2].

L. A. Rajapakse, for defendant, respondent.—The case of *Eastwood v. Ashton* is really in my favour. The appellants are not entitled to the relief they pray for. The furthest they can go is to make a claim for compensation, *vide Fernando v. Sumangala*[3]. The principles of construction in a case like this were considered by Voet in *bk. XVIII., c. 7, tit. 1.* Under the Roman-Dutch law no quantity is mentioned, when a specific property is sold. If a declaration of quantity is mentioned, there is either a provision that that declaration is not to be strictly adhered to, or a mention of the boundaries of the property sold.

The appellants are purchasers of undivided shares of the land on which this house it built. As such, they cannot maintain this action without joining the other co-owners.

M. C. Abeywardane, in reply.—The question of co-ownership does not arise. It was not in issue at the trial. Nor is there any averment in the pleadings dealing with it. The passage in *Voet* has no application to the facts of the present case. *Voet* was there dealing with the case of land. The argument in the passage cited can only apply to land. The Roman-Dutch authorities nowhere deal with the case of a house.

October 15, 1931. AKBAR J.—

In this case the appellants claimed a house by right of purchase from the added defendant-respondent and some others. According to the deed of purchase what was conveyed was certain undivided shares of the soil and " the whitewashed tiled house of 32 feet in length and 49 feet in breadth standing thereon which we the said . . . . are entitled to . . . . "

[1] *(1915) A. C. 900.* [2] *(1920) 22 N. L. R. 50.* [3] *(1920) 22 N. L. R. 23.*

There is only one whitewashed tiled house on the land in question but it is 32 feet in length and 72 feet in breadth. The whole question is whether the intention of the vendors was to convey the whole tiled house or only 49 feet thereof. The respondent admitted in evidence that the additions were made about 15 or 16 years ago and that originally the tiled house was 49 feet in breadth. Further, she admitted that, before the sale to the appellants, the whole house was rented out, *i.e.*, the whole 72 feet of the house was let out prior to the sale to the appellants and that the respondent began letting out the disputed portion about two years ago, *i.e.*, after the sale to the appellants. The whole question is as regards the identity of the house which was intended to be sold. To my mind the words " the whitewashed tiled house " are conclusive and the additional dimensions given wrongly cannot affect the description of the house given earlier. If one were to accede to the proposition of the respondent, what portion of this 72 feet is to be held to have been sold? Is it 49 feet measured from the high road, or from the opposite end? Or are 49 feet to be carved out from the whole house? Who is to decide from what part it is to be cut out? As I have said, the clear intention was to sell the whole house on the land and the 49 feet was perhaps taken from the description given in the old deed. In the case of *Eastwood v. Ashton*.[1] Lord Sumner quoted with approval certain English decisions as follows:—" My Lords, the principle on which this case was decided in the Court of Appeal was thus stated by Parke B. in *Llewellyn v. Earl of Jersey*. 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*, to which the words *cum de corpore constat* should be added, to do the maxim full justice. In *Morell v. Fisher*, where this principle is repeated, it is further said, ' The characteristic of cases within the rule is, that the description, so far as it is false, applies to no subject at all; and so far as it is true, applies to one only.' It is thus stated by Romer J. in *Cowen v. Truefitt, Limited*, ' In construing a deed purporting to assure a property, if there be a description of the property sufficient to render certain what is intended, the addition of a wrong name or of an erroneous statement as to quantity, occupancy, locality, or an erroneous enumeration of particulars will have no effect.' On the expressions ' the addition ' and ' any subsequent erroneous addition ', it should be observed that all the members of the Court of Appeal in the same case, all the more forcibly because they spoke *obiter*, protested against the view that it is material in what part of the sentence the *falsa demonstratio* is found.

The rule is undoubtedly ancient; see *Dowtie's case*; though the consequence of an erroneous addition had been mitigated before Baron Parke's time. Later on, in *Llewellyn v. Earl of Jersey* (*supra*), that learned Judge says of the clause in question, a very different one be it said from the present clause, ' the portion conveyed is perfectly described, and can be precisely ascertained, and no difficulty arises except from the subsequent statement ', namely, a statement as to the number of poles in the close. Finally, he austerely observes, ' It is of much more importance

[1] *(1915) A. C. 900.*

that we should adhere strictly to legal maxims, than attempt to evade them to meet the supposed intention of the parties '. Without venturing to question or to qualify so inviolate a rule, I venture to think that it does not apply in the present case for the following reasons. ''

Mr. Rajapakse who appeared for the respondent quoted *Voet XVIII., c. 7, tit. 1,* and he argued that under the Roman-Dutch law when a property was sold specifically, it was done by mentioning no quantity at all or if there was a declaration of quantity it was followed by a proviso that the quantity was not to be strictly reckoned or thirdly if the quantity was mentioned and the boundaries had been indicated at the same time. This passage occurs in a paragraph dealing not with the validity of such sales, but with the law affecting the calculation of the price. Even here, however, the third alternative seems to indicate that unless the difference in the quantity was very great, the description of the boundaries was to be regarded as showing the sale of the property specified. This last alternative seems to show that even in the Roman-Dutch law if there are indications as regards the exact identity of the property, this is to govern the sale notwithstanding any small difference in the quantity mentioned and that afterwards ascertained. The further remark that I should like to add is that *Voet* was referring to sales of land. In this case we are concerned with the sale of a house and as I have said the clear indication was to sell the whole house. In my opinion effect should be given to this interpretation and I would therefore allow the appeal and enter judgment for the plaintiff declaring him entitled to the whole house in question, and also to the damages claimed by him. The added defendant-respondent will be ejected from these premises, and she will pay the costs incurred by the appellants in both Courts.

Appeal allowed.