

1947

Present : Soertsz S.P.J. and Jayetileke J.

SIMPSON, Appellant, and OMERU LEBBE, Respondent

246—D. C. Kurunegala, 1,013

Co-owners—Prescription—Evidence of adverse possession.

As between co-owners separate possession on grounds of convenience cannot be regarded as adverse possession for the purpose of establishing prescriptive title.

A PPEAL from a judgment of the District Court, Kurunegala.

N. E. Weerasooria, K.C. (with him *H. W. Jayewardene*), for the defendant, appellant.

N. Nadarajah, K.C. (with him *E. A. P. Wijeyeratne* and *E. B. Wikramanayake*), for the plaintiff, respondent.

Cur. adv. vult.

February 20, 1947. SOERTSZ S.P.J.—

Both the plaintiff-respondent and the defendant-appellant were agreed that Gamaya Henaya was the owner of the lands in dispute in this case and other lands. The plaintiff-respondent bought a one-third share of the lands in dispute from one Rani, the only child of Manikkuwa, who, admittedly, was one of the three heirs of Gamaya Henaya, and the plaintiff-respondent sought a partition of these lands as between him and the defendant-appellant on the footing that he was entitled to a one-third share and the defendant-appellant to the remaining two-thirds. The defendant-appellant, however, claimed the entirety of these lands on deeds from the other two heirs of Gamaya Henaya. His case was that there had been a division of Gamaya Henaya's lands among his three heirs and that Manikkuwa got lands other than the ones in dispute in this case and that the two other heirs had acquired a prescriptive title to the lands in dispute. He claimed the benefit of that prescriptive title.

There is no documentary evidence of any division and in view of the fact that the defendant-appellant's case involves the question of prescriptive title among co-owners, very clear and strong evidence of an ouster and of adverse possession is called for. There is no such evidence. It is impossible for us to hold, on the evidence, that the learned trial Judge erred in taking the view that such separate possession of some lands as

there were indications of was separate possession on grounds of convenience and not adverse possession. The plaintiff-respondent appears to have a grievance against the defendant-appellant and that was very probably why he went in search of his vendor and bought these interests. But, whatever his motives, his position in law is sound.

I would dismiss the appeal with costs.

JAYETILLEKE J.—I agree.

Appeal dismissed.

