Present : Wood Renton J.

1913.

GOONEWARDENE *v.* GOONEWARDENE

6—C. R. Galle, 7,334

Co-owner—Right to build on common land.

One co-owner cannot, as a rule, build a house on a land held in common without the consent of the other co-owner.

But the law does not prohibit one co-owner from the use and enjoyment of the property in such manner as is natural and necessary under the circumstances. If, therefore, a land was acquired, or at least held by the co-owners as a building site, a co-owner may build upon it.

A. St. V. Jayewardene, for the appellant.

De Zoysa, for the respondent.

February 20, 1913. Wood Renton J.—

In spite of Mr. A. St. V. Jayewardene's clear and strenuous argument in support of the appeal, the decision of the Commissioner of Requests appears to be correct. There is no doubt but that, by the common law of this Colony, one co-owner cannot build a house on a land held in common without the consent of the other co-owners. Where such consent is withheld, a co-owner is not without a remedy. He can institute an action for partition. There is, however, a class of exceptions to the general principle which I have just stated. It is defined by Sir Charles Layard in *Silva v. Silva*,[1] and by Sir John Bonser in *Siyadoris v. Hendrick*.[2] These decisions stand by their own authority, but they have constantly been followed in later cases. The class of exceptions referred to may be defined in this way. The law does not prohibit one co-owner from the use and enjoyment of the property in such manner as is natural and necessary under the circumstances. For example, as in *Siyadoris v. Hendrick*[2] the land had been purchased for the express purpose of digging plumbago contained in it, it would have been unreasonable that any co-owners should have been prohibited from digging for plumbago without the consent of the other co-owners. Sir Charles Layard gives another illustration in *Silva v. Silva*.[1] If the land were fit for paddy, it could scarcely be contended that any one co-owner would be entitled to prevent the other co-owners from cultivating it in that way. Mr. A. St. V. Jayewardene suggested

[1] *(1903) 6 N. L. R. 225.*

[2] *(1899) 6 N. L. R. 275.*

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that this was land acquired, or at least held by the co-owners, as a building site. If the evidence established that suggestion, the case would clearly come within the class of exceptions which I have just stated. But the evidence shows only that certain houses had been built on the land by consent. There is no instance in which any house had been erected without the consent of the other co-owners. A former co-owner had commenced to build a house, but the others interposed, and the building never got beyond its foundation. I am unable to hold on the evidence that any special character attached to this land of such a kind as to relieve the appellant from the ordinary fetter imposed upon the rights of co-owners by the common law.

The appeal is dismissed with costs.

Appeal dismissed.