

1962 *Present* : Basnayake, C.J., and H. N. G. Fernando, J.

PAULIS SINGHO and another, Appellants, *and*
WILLIAM SINGHO, Respondent

S. C. 198 of 1959—D. C. Gampaha, 5975/L

Co-owners—Building standing on the common property—Action by a co-owner for declaration of title to it—Maintainability.

A co-owner of a land cannot maintain an action for declaration of title to a building standing on the common property.

APPEAL from a judgment of the District Court, Gampaha.

H. W. Jayewardene, Q.C., with *D. R. P. Goonetilleke* and *L. C. Seneviratne*, for Defendants-Appellants.

A. C. M. Uvais, for Plaintiff-Respondent.

Cur. adv. vult.

March 16, 1962. BASNAYAKE, C.J.—

The question that arises for decision on this appeal is whether a co-owner of a land can maintain an action for declaration of title to a building on the common property. The plaintiff claimed that he was entitled to 1/20 share of a land called Medaweraniyewatta situated in the village of Tittapattara and a tiled boutique built thereon by one James Appu his predecessor in title. The defendants claimed that James Appu's father Belenis erected the building. That was the only matter in dispute at the trial, it being common ground that the plaintiff was entitled to an undivided 1/20 share of the land. The learned District Judge held that James built the tiled boutique and gave judgment for the plaintiff.

It is contended by learned counsel for the defendants, who have appealed from that decision, that a co-owner is not entitled to maintain an action such as that brought by the plaintiff in the instant case. He submits that where a co-owner desires to put an end to the co-ownership the proper action is an action for partition.

Under our law there can be no ownership of a house apart from the land on which it stands—*Van Wezel v. Van Wezel*¹. That being so a co-owner cannot claim a declaration that he is the owner of a house standing on co-owned land to the exclusion of all others, for that would amount to a declaration that he is the exclusive owner of the land on which the house stands.

A building on common property accedes to the soil and becomes part of the common property *quid quid inaedificatur solo, solo cedit*. The right of a builder is limited to a claim for compensation which can be determined in an action for partition. The cases of *De Silva v. Siyadoris*², *Sopihamy v. Dias*³, and *Charles v. Juse Appu*⁴, all support that view. The learned District Judge was wrong in giving judgment for the plaintiff.

We accordingly set aside his judgment and dismiss the plaintiff's action. The appellant is entitled to costs both here and below.

H. N. G. FERNANDO, J.—I agree.

Appeal allowed.

¹ (1924) A. D. 417 at 419.

² (1911) 14 N. L. R. 268.

³ (1948) 50 N. L. R. 284.

⁴ (1956) 60 N. L. R. 474.