Present: Lascelles C.J. and Wood Renton J. 1912.

SINNO APPU *v.* DINGIRIHAMY *et al.*

76—D. C. Galle, 10,628.

Crown grant in favour of several grantees—No presumption that the grant was made in equal shares.

Where a Crown grant in favour of several grantees conveys the property to them *simpliciter* without specifying the respective shares of the grantees, there is no presumption that the grant was made in equal shares.

THE facts are fully set out in the judgment of Wood Renton J.

Bawa, K.C., for appellant.

H. A. Jayewardene, for the respondents.

Cur. adv. vult.

July 11, 1912. LASCELLES C.J.—

This is a partition action in which the plaintiff claimed one-fourth of a land called Yakgahaowita on a Crown grant in favour of himself, the first defendant, and two others. The Crown grant is silent as to

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the shares of the grantees. The learned District Judge has inquired into the circumstances in which the Crown grant was issued, and has decided that the second defendant is entitled to five-eighths and the other defendants each to one-eighth of the property. Against the equity of this decision I do not think that any objection can be taken. But the appellant maintained that, inasmuch as the Crown grant did not specify the respective shares of the grantees, it must be presumed that the grant was made in equal shares, and that under sections 91 to 99 of the Evidence Ordinance it was not competent for the District Judge to go behind the terms of the grant. If the true meaning of the Crown grant is that the grantees should take in equal shares, the appellant's argument woud be well founded. But no authority was cited for the proposition that a grant to a plurality of persons must be construed as a grant to them in equal shares. I do not think that the rules of English law as to the creation of joint tenancies and tenancies in common are a safe guide in a system of law which is so widely different from the English law of real property. The question depends upon the form of the instrument viewed by the light of the Roman-Dutch law. The grant purports to be a grant to four persons of the entirety of the land. Such sales are recognized by the Roman-Dutch law. *Voet 19, 1, 1 (Berwick's translation 162)* states the case of a plurality of persons buying the same thing for one price, and lays down that it is not open to each of them to sue separately by the action *ex empto* for the delivery of his own share of the thing sold on his offering his rateable share of the price promised; but either all together or one of them who tenders the whole price must sue for the delivery. I can see no reason for reading into the grant a term that the grantees are entitled in equal shares, and it seems to me that such a construction of instruments such as that under consideration would be attended by serious practical inconvenience. Where, for example, as frequently happens in this country, several persons contribute the purchase money in unequal shares, the vendor or grantor might reasonably refuse to accept the responsibility of setting out the shares of the purchasers in the deed or grant; he might fairly insist on making the grant to the vendees *simpliciter* without any attempt to define their respective shares, leaving it to them to adjust their shares in accordance with the agreement between themselves. But grave injustice would be done in such cases if it were held that the deed or grant in this form conveyed the property in equal shares.

The appellant, in effect, asks us to lay down that, with regard to instruments such as that now under consideration, there is presumption of law that the shares of the grantees are equal. No authority has been cited to us for the existence of such a presumption, which, so far as I can see, has no foundation in any principle of justice or in the ordinary course of human conduct and affairs. In my opinion the appeal fails, and should be dismissed with costs.

Since writing this judgment we have been referred by Mr. Bawa to the case *Buddharakita Terunnanse v. Gunasekara* [1] and to the passage in *Nathan's Common Law of South Africa, vol. II., p. 512.* The former authority appears to me to have no direct bearing on the question. It related to the right of one of several lessors to sue alone for his share of the rent. The decision that this course could be taken does not necessarily involve an unrebuttable presumption that the shares of the lessors must be taken to be equal. The passage in Nathan relates to the respective rights and liabilities *in solidum* of co-principal creditors and co-principal debtors. These authorities have not changed my opinion as to the construction of the instrument in question.

WOOD RENTON J.—

This is an action for the partition of a land of about four acres in extent. The plaintiff-appellant claims for himself a one-fourth share of the land in suit under a Crown grant dated August 20, 1894, in favour of himself, the first defendant, and two other persons, Wanniachige Adrian and Jagodage Rovina. The Crown grant does not specify the share to which each grantee is to be entitled. The appellant contends, therefore, that it passed to the four grantees in equal shares. The second defendant-respondent is the widow of Adrian. The other respondents are the children either of Adrian or of Rovina. There was a plea of prescription on both sides, but no issue was framed on that question; there is no finding by the District Judge in regard to it, and the present appeal must be decided irrespective of it. The case for the respondents as stated in their answer was that the original owner of the land, Jagodage Simon, gifted half of it to his daughter Dingihamy by deed No. 11,163 dated January 12, 1869, and died intestate about fifteen years ago possessed of the remaining half share, which thereupon devolved on his four children: the second defendant-respondent, the appellant, the first defendant, and Rovina, each of whom thus became entitled to an eighth. The second defendant-respondent was married in community of property to Adrian, who died intestate about six years ago, leaving as her children the third defendant, the fourth, fifth, and sixth defendants-respondents, the seventh defendant, and the ninth defendant-respondent. The respondents say that the land in question was *diwel* property; that the Crown was entitled only to the fifth share due by property of that character, and had no right to sell the remaining four-fifths share to any one, and that Adrian was aware of that fact. They prayed, therefore, that they might be declared entitled to the shares devolving upon them through the title stated in the answer. At the trial it was admitted that Jagodage Simon was not the original owner of the property, but a usufructuary mortgagee under Adrian. Evidence was adduced

[1] (1895) 1 *N. L. R.* 206.

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on both sides, and the learned District Judge gave judgment directing the partition of the land according to the devolution of title asserted by the respondents. He held, and the evidence amply supports the finding, that both before and after the Crown grant the land had been held in accordance with that devolution, and that the appellant himself had acquiesced in its being so held. In support of this contention, he referred to proceedings held before the Government Agent in 1893 when part of the land was being acquired for a resthouse. The appellant was a party to those proceedings, and acquiesced in the settlement arrived at by the Government Agent—a settlement in which only a one-eighth share was allotted to him.

The case for the appellant presents no merits, and I am glad to be able to uphold the decision at which the District Judge has arrived. The Crown grant contains, it is true, no reference to the land acquisition proceedings before the Government Agent, and, as I have said, is silent as to the shares taken by the grantees; but I have been unable to find any authority from which it follows that under these circumstances it must necessarily be construed as one in favour of the grantees in equal shares. I do not think that there is anything in the case of *Buddharakita Terunnanse v. Gunasekara* [1] or in the passage in *Nathan's Common Law of South Africa, vol. II., p. 512,* to which the appellant's counsel referred us, to preclude us from considering the nature of a Crown grant and of the intention of the parties who apply for and obtain it. Such grants, as we all know, are made by the Crown without any reference to or concern about the shares in which the subject-matter of the grant is to be held. The applicants for the grant settle that question among themselves. Under these circumstances, it would, in my opinion, give rise to very serious difficulties in practice if we were to declare that any such presumption as that for which the appellant contends in the presence case arises from the vague language of the Crown grant. We must look to the sense in which the grant was interpreted by the parties themselves, and from that point of view the decision of the District Judge is clearly right.

I would dismiss the appeal with costs.

Appeal dismissed.

[1] (1895) 1 *N. L. R.* 206.