

1931

*Present : Dalton and Akbar JJ.*PERERA v. TENNA *et al.*263—*D. C. Kurunegala, 11,102**Transfer—Land owned in common—Dividedly possessed—Conveyance of undivided share—Claim to divided portion.*

Where land owned in common was dividedly possessed by the two co-owners and one of them transferred an undivided half of the whole land to the plaintiff,—

Held, that the plaintiff could not, on the conveyance, claim the divided portion of the land possessed by his vendor.

THIS was an action for declaration of title to the southern block of a certain land marked D and D1 in the plan filed in the case. The original owners of the land, which consisted of lots marked A, B, C, D, and D1, were Ponna and Tikiri. The northern portion, A, B, and C, was possessed by Tikiri and her successors in title, and the southern portion by Ponna and her successors. The plaintiff claimed the southern portion on a deed from Ponna's heirs which conveyed to him an undivided half of the entire land. The learned District Judge entered judgment for plaintiff for the southern block, D and D1.

F. de Zoysa, K.C. (with him *Amara-sekera*), for first defendant, appellant.

Nadarajah (with him *Abeysekera*), for plaintiff, respondent.

January 21, 1931. AKBAR J.—

Two points were taken in appeal, one on the facts and one on the law. On the question of fact Mr. de Zoysa argued

at great length that only Tikiri was the sole owner of the entire block marked as lots A, B, C, D, and D1 in the plan (X) filed in this case, but I think the learned District Judge has carefully considered all the points in the case in his judgment and has come to a correct conclusion when he held that not only Tikiri but Ponna also owned jointly the whole block. The deeds produced in this case are inconsistent, one with the other, probably due to the fact that some of the vendors sold more than their interest. But if all the facts are considered in this case, including the oral evidence of possession, it is quite clear to my mind that Ponna and Tikiri were the original owners of this block A, B, C, D, and D1, and that their respective heirs possessed this block dividedly, the northern portion A, B, and C being possessed by Tikiri and her successors in title and the southern portion by Ponna's successors in title. This action is an action for declaration of title to the southern block only made up of D and D1. The finding of the District Judge to the effect that the whole block was originally owned by Tikiri and Ponna does not however entitle the plaintiff-respondent to a decision in his favour, because his deeds with respect to lots D and D1 only conveyed an undivided one-half of the whole block made up of A, B, C, D, and D1. Mr. Nadarajah argued that as the two branches owned and possessed the block dividedly the plaintiff's deeds must be interpreted as conveying the whole of the southern block D and D1. He argued that although the plaintiff's deeds referred to one-half of lots A, B, C, D, and D1, yet the intention was to convey the whole of D and D1 only. I am afraid this contention cannot be upheld in view of the decision of this Court reported in *Fernando v. Podi Sinno*¹. It was there held that where persons who are entitled by prescriptive possession to a part of the land conveyed an undivided share of the whole land and where the persons so deriving title pass

on the same title to others, then the persons claiming under that title, unless they can show that they themselves have acquired title by prescription, must be bound by the terms of their deeds.

Plaintiff's last deed was in 1923, and that deed conveyed no more than one-half of the whole land. The action was instituted on October 20, 1925. Similarly the deed prior to P11, namely, P8, was executed on June 10, 1920; that too only conveyed one-half of the entire land. Therefore none of the vendors on these deeds had acquired title by himself by prescription.

This being an action, as I have said, for declaration of title, the plaintiff can only get a declaration of title to one-half of the lots D and D1 claimed by him and not to the whole land. The case of *Mensi Nona v. Neimalahamy*¹ is the converse of the case reported 6 *Ceylon Law Recorder*, and was an action for partition and not for declaration of title. That case therefore has no application in this case.

As regards the first defendant, he has no more than the rights of a lessee on D1 which is a lease in substance of one-half of lots A, B, C, D, and D1 for a period of 20 years from September 5, 1913. This lease interest on the death of the original lessee was assigned by lease D 14 to the first defendant. The first defendant, although he claimed title to lots D and D1, apart from this lease deed, on some other deeds executed by one Pincha and by Bandiya has acquired no title on these deeds because as held by the District Judge Pincha conveyed no title to the first defendant and Bandiya was not the son of Ukkuwa. So far as this case is concerned, the plaintiff will be declared entitled only to one-half of the southern block marked as lots D and D1 in the plan marked (X).

The order of the District Judge declaring the plaintiff entitled to the whole of lots D and D1 and that the defendant be

¹ 6 C. L. R. 73.

¹ 10 C. L. R. 159.

ejected therefrom and the plaintiff be put in possession thereof is set aside, and the plaintiff is declared entitled to an undivided one-half of these lots D and D1 and he is to be put and placed in possession of this undivided one-half. The order as regards damages and costs made by the District Judge will stand, but the first defendant-appellant, however, will be entitled to the costs of this appeal.

DALTON J.—I agree.

Set aside.
