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

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NATCHIA *et al. v.* NATCHIA *et al.*

66—D.C. Galle, 8,138

Amendment of final decree in partition action—Final decree—"At any time"—Civil Procedure Code, s. 189.

There is nothing in section 189 of the Civil Procedure Code which limits the time within which a decree can be rectified.

THE facts are fully set out in the judgment.

Bawa, K.C., for the plaintiffs, appellants.

A. St. V. Jayewardene, for the defendants, respondents.

Cur. adv. vult.

June 26, 1912. LASCELLES C.J.—

This is an appeal from an order of the District Judge refusing to amend the final decree dated December 5, 1907, in a partition action. The motion to amend the decree was made by the plaintiff, under section 189 of the Civil Procedure Code, on the ground of clerical error. The error is admitted. The first defendant, who was intended to get lot 3 of 5½ perches, was awarded lot 4 of 22 perches, and the fourth defendant, who was intended to get lot 4 of 22 perches, was awarded lot 3 of 5½ perches, the mistake being due to a clerical error on the part of the Commissioner who framed the scheme of partition. No exception can, I think, be taken to the learned Judge's ruling that he had power to correct the error, for though the words "at any time" which appear in the corresponding English "Slip Orders" (O. 28, r. 11). are not to be found in section 189, there is nothing in the section which limits the time within which the decree can be rectified. The substantial question is whether the refusal of the District Judge to amend the decree is justifiable on grounds of expediency and convenience. There have been dealings with both lots. The first and fourth defendants have sold lot 3 (5½ perches) in 1910, and the first and second defendants have sold lot 4 (22 perches) in the same year. But the deeds show that the first and fourth defendants have been content to possess the lots according to the shares to which they are really entitled (*i.e.*, as shown in plan 73*b*), though the decree entitles them to lots 4 and 3 as shown in plan 73*a*. As the learned District Judge has pointed out, the error cannot be completely rectified on account of the deeds

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which have been subsequently executed. An amendment of the decree will necessitate corrections in both deeds if they are to harmonize with the decree, and this rectification cannot be made without expense, and probably not without litigation. But on the whole, I think that the balance of convenience is in favour of amending the decree so as to agree with the expressed intention of the Court. That disputes will arise with regard to the lots is almost certain. The not very reasonable objection of the respondents to the amendment is an indication of what may be expected. It may be that litigation with regard to the deeds containing the mis-descriptions of the lots is inevitable; but if the decree is amended so as to show clearly the partition which was intended, the litigation will be short-lived. The amended decree will furnish a decisive answer to any future claim based on the error in the original decree. I would set aside the order of the District Court and amend the decree as prayed for, and would give the appellant his costs here and in the Court below.

WOOD RENTON J.—I agree.

Set aside.