1937 *Present :* **Soertsz J. and Fernando A.J.**

SAMINATHAN PILLAI *v.* DINGIRI AMMA *et al.*

134—D. C. Kurunegala 12,482.

Deed—Description of land—Reference to wrong locality—Accuracy of plan.

A reference to a wrong locality in the description of a land does not take away from the effect of a deed if the land affected by the deed is sufficiently described in a plan.

APPEAL from a judgment of the District Judge of Kurunegala.

N. E. Weerasooria (with him *H. A. Wijemanne*), for added defendant, appellant.

H. V. Perera, K.C. (with him *E. B. Wikramanayake*), for plaintiff, respondent.

S. W. Jayasuriya, for second defendant, respondent.

May 28, 1937. FERNANDO A.J.—

This was a partition action, and the plaintiff asked for a partition of lots F, F1, and I in plan No. 1,194, on the footing that half of that portion of land belonged to Tennekoon Mudianselage Punchi Banda, Korala, who has also been referred to in the record as Megolla Korale. The Korala died intestate leaving his widow Ukku Amma, and five children, one of whom is Dingiri Amma the first defendant. Bandara Menika, Podi Menika, Muttu Banda, three of the Korala's children, and the widow Ukku Amma conveyed their rights to the plaintiff. The plaintiff also claims to be entitled to the remaining half share of the land on purchase from five persons named in paragraph 5 of his plaint, who, he says, were the owners of that half share.

The tenth added defendant who is the appellant alleged in his answer that lots A and B in plan No. 398 were the property of Dingiri Amma, daughter of the Korala, on deed No. 34,330 marked 10D3 from the Korala, and that Dingiri Amma mortgaged the same lots to the appellant and that in execution of a decree entered against her on that bond, the said lots were sold, and purchased by the appellant. He also claimed title to one-fifth of the land called Leeniyagollemakulagahamulahena, also referred to in the plaint, on the footing that Dingiri Amma was owner of that one-fifth and that one-fifth had also been sold against her on the mortgage decree.

When the trial came on, on March 30, 1936, it appears to have been agreed by all the parties that the land to be partitioned consisted of lots F, F1, and I in plan No. 1,194. Another plan No. 425 was also produced and it is stated that that plan represents what was claimed by the added defendant who is here referred to as the third defendant, and it appears to have been admitted that lots F, F1, and I take in the whole of lot A and the land to the north of lot A, whereas, lot B is not included in F, F1, and I. Proctor for the appellant contended that lots A and B in that plan belonged to his client, and lot B having admitted to be his property that lot A should be excluded from the partition. He also contended that whatever the Court found to be the land to be partitioned north of lot A the appellant claimed a one-fifth share.

The learned District Judge held that the deeds in favour of the appellant were for 7½ lahas kurakkan sowing extent of Paragahamulahena, situated in the village of Lindapitiya, whereas the plaintiff's deeds were for Paragahamulahena, situated in the village of Wewagedera, and that the question for decision was whether lot A is a portion of Paragahamulahena in the village of Wewagedera or of Paragahamulahena in the village of Lindapitiya. He then proceeded to record evidence, and himself inspected the land, and after that inspection, he came to the conclusion that the village limit between Wewagedera and Lindapitiya was the indefinite line marked in red between lots A and B in plan 425. On this footing he held that the appellant's deeds could not apply to lot A which was in Wewagedera village, and that Liniyagollehena, a share of which was also claimed by the appellant, lies to the north of lot A, and to the north also of the land sought to be partitioned.

Counsel for the appellant argued that it was clear from the evidence that the Korala possessed lots A and B, and after his death these lots were also possessed by Dingiri Amma, who mortgaged it to the plaintiff. He also argued that the village boundary did not conclusively decide the question, because the bond in favour of the plaintiff 10D4, and the transfer in favour of the plaintiff 10D5 both referred to the plan made by Mr. Daniels on January 17, 1927. This plan itself is not now forthcoming, but plan No. 398 was prepared by Mr. G. A. de Silva, Surveyor, from the field notes of Mr. Daniels who had made the missing plan, and it is not denied that plan No. 398 may be regarded as a re-production of the missing plan. The learned District Judge appears to have dealt with this contention in this way. The deed in favour of the appellant is for 7½ lahas kurakkan sowing extent in the village Lindapitiya, and therefore, must apply to lot B. As the land is only 7½ lahas kurakkan sowing extent, which is equivalent to 7½ acres, this deed cannot possibly refer to lots A and B either in plan No. 398 or in plan No. 425, because the extent according to these two plans is either 20 acres 1 rood 34 perches, or 19 acres 0 rood 32 perches.

I do not think this is a fair comment on the deeds. The conveyance 10D5 refers to the land conveyed in these words. "The northern one-third share of 7½ lahas kurakkan sowing extent or containing 19 acres and 32 perches from the western three-fourth partitioned and separated from and out of Udawatta and Paragahamulahena", whereas the mortgage bond 10D4 refers to "all that northern one-third share of 7½ lahas kurakkan sowing extent, or containing in extent according to plan dated January 17, 1927, made by E. B. Daniels, 19 acres and 32 perches which said portion of land is held and possessed by me" by right of deed No. 34,330 (10D3) and that deed 34,330 refers to all that one-third share towards the north of 7½ lahas kurakkan sowing extent. Now the deed of gift 10D3, which refers to the sowing extent only, is dated March, 1913, whereas the mortgage bond was in September, 1927, and the plan appears to have been made in January, 1927, before the mortgage bond was executed. Although the mortgage bond 10D4 and the deed of conveyance 10D5 repeat the expression 'the one-third share of 7½ lahas kurakkan sowing extent' there can be little doubt that that bond referred to and dealt with a land of 19 acres 32 perches in extent, according to the plan made by Mr. Daniels, and the question that really arises in the case is whether the deed does in fact apply to and deal with the land shown in the plan to which a clear reference is made, or whether that reference should be entirely disregarded because the land is referred to in the same deed as being situated in Lindapitiya, and part of the land falls in Wewagedera, and also because of the reference to the sowing extent.

Counsel for the appellant referred to the case of *Eastwood v. Ashton*[1], where Lord Loreburn said, "I do not think that any rule requires us first to examine the letter press, and then to discard the plan, if we think the letter press alone is sufficiently clear. The whole should be looked at and it may be that the plan will show that there is less clearness in the text than might appear at first sight." He held that the other descriptions in the deed under consideration in that case were inaccurate, and

[1] *(1915) Appeal Cases 900.*

that the one accurate guide was the endorsed plan. Lord Parker was of the same opinion. Lord Sumner cited a passage from the judgment of Romer J. in *Cowen v. Truefitt, Limited* [1], in these words : " in construing a deed purporting to assure a property, if there be a description of the property sufficient to render certain what is intended, the addition of a wrong name or of an erroneous statement as to quantity, occupancy, locality, or an erroneous enumeration of particulars, will have no effect." Applying the principles laid down by the House of Lords in that case, I do not think, there can be any doubt that the most accurate description of the land is the reference to the plan. Obviously there is a dispute with regard to the boundary between the two villages, and there is nothing on the ground itself to indicate that the boundary as laid down by the learned District Judge was the dividing line between the two villages. In these circumstances, it is not impossible to conceive of a person who owns land falling into two villages, believing that the land fell only into one village, and describing the land in a deed in that way ; nor is it entirely safe to go on the sowing extent, which even if it is consistent in this district, is known to vary in other districts according to the fertility of the land. The reference to the sowing extent only means that according to the experience of the people who describe the land it was one on which it was possible to sow 7½ lahas of the grain known as kurakkan. The acreage as determined by a surveyor is obviously much more accurate than the description by sowing extent, and as Romer J. sets out in the passage quoted by Lord Sumner, a reference to the wrong locality does not take away from the effect of a deed if the land affected by that deed is sufficiently described in a plan. For these reasons, I come to the conclusion that the learned District Judge was wrong in holding that the deeds relied on by the appellant referred only to land in Lindapitiya village or that the description in the plan must for any other reason be regarded as incorrect.

If the land conveyed by the deeds to the tenth defendant is the land shown in plan 425, then a portion of the land sought to be partitioned must be excluded as the property of the tenth defendant. The land immediately to the north of it is also covered by the deeds in favour of the tenth defendant, and on that deed the tenth defendant is entitled to claim a one-fifth share of that land.

I would accordingly set aside the decree of the District Court, and send the case back so that lot A, shown in plan 425, may be excluded from the partition, and the remainder of lots F, F1, and I be allotted among the parties on the footing that the appellant is also entitled to a one-fifth share of that portion. The appellant will be entitled to the costs of the contest in the District Court from the plaintiff, and the other defendants who took part in that contest also to the costs of this appeal. It will be for the District Court to award the costs of further proceedings in the action.

SOERTSZ J.—I agree.

Appeal allowed.

[1] *(1892) 2 Chancery 551.*