1952 *Present :* **Gratiaen J. and Pulle J.**

R. JEYASINGHAM, Appellant, *and* M. DE ALMEIDA, Respondent

S. C. 131—D. C. Colombo, 4,014

Deed—Different parts of it inconsistent with each other—Construction.

A deed purported to convey four contiguous allotments, each of which was described in the conveyance as corresponding to a site to which a particular assessment number was allotted by the local authority and as including not a part but the entirety of a building standing on it. In the case of each allotment, the purchaser was placed in possession of (*a*) the entire area to which the relevant assessment number had been allocated, and (*b*) the entire building which stood on it. The western boundary, however, in the deed of conveyance was subsequently discovered to cut through a part of the kitchens and other rooms of some of the allotments. In a claim made by the vendor for title to the fractional portion of the land and buildings falling within each assessment number—

Held, that this was essentially a case for applying the rule that where different parts of a deed are inconsistent with each other, effect ought to be given to that part which is calculated to carry into effect the real intention of the parties, and that part which would defeat it should be rejected.

APPEAL from a judgment of the District Court, Colombo.

E. B. Wikramanayake, Q.C., with *C. Renganathan*, for the plaintiff appellant.

Kingsley Herat, with *E. L. B. Mendis*, for the defendant respondent.

Cur. adv. vult.

August 1, 1952. GRATIAEN J.—

The defendant had in 1926 purchased a block of land in Wellawatte (slightly over 4 acres in extent) intersected at that time by a watercourse which is depicted in the plan D3 annexed to the conveyance D4. The watercourse has long since dried up.

The property was divided up into small allotments by the defendant who from time to time erected a number of bungalows and cottages thereon. A part of the bed of the old watercourse, which did not belong to the original vendor and was not therefore included in the sale, was filled up by the defendant and was treated as incorporated in his land, while the rest of the watercourse has since been converted by the Municipal authorities into a masonry drain. In 1927 he mortgaged the property to the trustees of the provident fund of a well-known commercial firm in Colombo.

The money borrowed from the trustees was utilised in constructing certain additional buildings including those to which this action relates— i.e., cottages standing on four contiguous allotments bearing Municipal assessments numbers 2, 4, 6 and 10 in 44th Lane B depicted in the sketch marked " X " annexed to the plaint. A very substantial portion (and in one case the entirety) of each cottage falls within the boundaries of the property originally purchased by the defendant in 1924 under the deed P4, while the remaining portion projects into that part of the bed (no longer identifiable as such) of the dried-up watercourse to which I have previously referred.

On 9th June, 1938, the defendant sought to strengthen his position in respect of this slight encroachment by securing from the Crown in his wife's favour, but admittedly for his benefit, a " certificate of no claim " covering the extent concerned.

By a conveyance P1 of 8th January, 1940, the defendant sold certain of his allotments, with the buildings standing thereon, to the trustees of the provident fund and obtained a full discharge of his outstanding debt secured by the earlier mortgage. The allotments conveyed are separately described in various schedules and in each case with particular reference to a plan No. 24 (marked D1) dated 22nd October, 1935, made by Surveyor E. R. Claasz. For the purposes of this appeal it is necessary only to consider the description of the allotments dealt with in items 16, 17, 18 and 19 of the second schedule comprising the contiguous assessment numbers 2, 4, 6 and 10 abutting 44th Lane B, Wellawatte which, as I have already said, form the subject-matter of the present action. In each case one finds (1) that the property conveyed has been identified as bearing a particular numbered allotment in the plan D1, (2) that the deed expressly purports to convey, without limitation or qualification, the building or the buildings standing on the allotment concerned, (3) that the relevant Municipal assessment number of the property is specified, (4) that the extent conveyed purports to compute the area conveyed in perches and indeed in fractions of a perch, (5) that the western boundary is described as " the old watercourse ". The difficulty in the case is that the combined effect of the 2nd and 3rd elements enumerated by me does to some slight extent militate against the combined effect of the 4th and 5th elements.

Upon the execution of the conveyance the purchasers were in each case placed in possession of (*a*) the entire area to which the relevant assessment number had been allocated, and (*b*) the entire building which stood on it. This circumstance is certainly an eloquent guide to the defendant's understanding at that time of the effect of the conveyance. In 1941 the new owners sold the allotments with which we are now concerned to M. C. F. Pieris who conveyed them on the same day to the plaintiff. The plaintiff has been in undisturbed possession of the properties and the buildings ever since that date, except for a period during the recent war when they were requisitioned for military purposes. The de-requisitioned properties were in due course restored to him, and proceedings are now pending for the assessment of compensation payable by the Crown in respect thereof. It is that latter event which

seems to have encouraged the defendant to claim for the first time that the title to a fractional portion of the land and buildings falling within each assessment number which the military authorities occupied had, upon a very narrow interpretation of his conveyance P1, not passed to the trustees by sale and therefore still remained his property. In these circumstances the plaintiff instituted the present action against the defendant to vindicate his rights of ownership to what everybody concerned had till that date assumed to be the property actually sold by the defendant in 1940 and purchased by the plaintiff in 1941.

The learned District Judge found himself constrained, although with obvious regret, to uphold the defendant's interpretation of P1. Having had the advantage of hearing fuller argument in this Court upon the issues involved, I am satisfied that justice can be done to the plaintiff without violating any of the principles laid down for the interpretation of written instruments.

The real conflict which arises in this case concerns the location of the *western boundary* of each of the four allotments forming the subject matter of this action. The plan D1 does not purport in so many words to define the line of the old eastern bank of the dried up watercourse, but it has been clearly proved, by comparison with the earlier plan D3, that a line (marked in red) appearing in D1 which cuts through a part of the kitchens and other rooms of some of the allotments does in fact—although not visible on the site—correspond to what had once been the eastern bank of the old watercourse. Surveyor Claasz, who prepared the plan D1, has also stated that in computing, for the purposes of D1, the extent of each allotment he had been careful to exclude the area of any part of the building which extended beyond the line which had originally separated the defendant's property from the watercourse. The area in dispute in each case is, however, so extremely small that no intending purchaser would, I imagine, have found it possible, by the application of that test alone, to ascertain the precise limits of the property conveyed.

As against these arguments which were urged on the defendant's behalf, we are confronted with the compelling circumstance that *each allotment is described in the conveyance as corresponding to a site to which a particular assessment number has been allotted by the local authority and as including not a part but the entirety of a building standing on it.*

Putting the argument in favour of the plaintiff at the very lowest, I would say that this is essentially a case for applying the sensible rule that " where different parts of a deed are inconsistent with each other, effect ought to be given to that part which is calculated to carry into effect the real intention of the parties, and that part which would defeat it should be rejected." *Walker v. Giles* [1]. Had the learned trial Judge been invited to give consideration to this principle, I do not doubt that he would have rejected the interpretation that the conveyance P1 was intended only to dispose of " portions of the kitchens and storerooms " or that the defendant seriously intended to " reserve for himself the remaining portions which were separated off by *an imaginary line* so

[1] *(1848) 6 C. B. 662 at 702 (=136 English Rep. 1407 at p. 1424).*

far as the actual boundary ran on the ground." Indeed, it is monstrous to suggest that the true intention was that the conveyance should, contrary to its express terms, pass title in each case only to *a part of a building standing on a part of a site bearing a specified Municipal assessment number.*

In my opinion, the plaintiff is entitled to a declaration against the defendant that he is the owner of the entire ground area covered by the contiguous allotments of land bearing assessment numbers 2, 4, 6 and 10 abutting 44th Lane B, Wellawatte respectively, and to the entirety of the building or buildings standing on each of the said allotments of land. I would accordingly allow the appeal and enter decree as indicated by him. The plaintiff is entitled to his costs both here and in the Court below.

PULLE J.—I agree.

Appeal allowed.