

June 27, 1911

Present : Lascelles C.J.

FERNANDO v. FERNANDO *et al.*

195—C. R. Negombo, 18,309.

Misdescription in lease—Lease of an undivided share by owner of a divided share—Falsa demonstratio non nocet.

S., who was allotted a divided lot of land under a partition decree, leased, after the partition decree, an undivided share of the land.

Held, that the lease was not invalid by reason of the misdescription.

LASCELLES C.J.—It is, in my opinion, a case of *falsa demonstratio non nocet*. The intention of the lessor to demise his share under the decree recited in the lease is plain and unmistakable, and the misdescription of his interest is merely a *falsa demonstratio*, which does not prejudice the validity of the lease.

THE facts are set out in the judgment of the Chief Justice.

A. St. V. Jayewardene, for appellants.

Zoysa, for respondents.

Cur. adv. vult.

June 27, 1911. LASCELLES C.J.—

The material facts in this case are the following. In a partition suit a certain share was allotted to one Sarda, who by an order dated July 13, 1904, was directed to pay a certain sum as compensation to another shareholder. The decree embodying the order, by inadvertence, omitted the direction to pay compensation. On July 7, 1908, Sarda leased his share to one Francisco for eight years. After the date of the lease, on November 25, 1908, the decree was amended so as to give effect to the order directing compensation. Sarda failed to pay the compensation, and his share was sold to the defendants for Rs. 240 on March 23, 1909. It is admitted that the defendants bought with notice of the lease. Subsequently, on July 20, 1910, the lessee, Francisco, assigned his lease to the plaintiff. The defendants then were put in possession by the Fiscal, and the plaintiff now asks to be restored to possession during the currency of this lease.

Numerous points of law were raised in the Court below, but on appeal two grounds only were pressed. In the first place, it was urged that the lease to Francisco is wholly ineffective, as the lease purports to grant an undivided share in the land, although Sarda's

share, at the date of the lease, consisted of the specific share which had been allotted to him under the partition decree. This error of description, which is not creditable to the notary who was responsible for the lease, might in some circumstances have led to serious results, but in my judgment it would be carrying a technical objection too far to hold that the lease is invalid on the ground of misdescription. It is, in my opinion, a case of *falsa demonstratio non nocet*. The intention of the lessor to demise his share under the deed recited in the lease is plain and unmistakable, and the misdescription of his interest in the property is merely a *falsa demonstratio*, which does not prejudice the validity of the lease. The case is analogous to a demise of "my freehold farm and lands situated at Edgware and now in the occupation of James Bray," which was held to pass a part of the farm which was copyhold—*In re Bright Smith, Bright Smith v. Bright Smith*.¹ The first ground of the appeal therefore fails.

The only other ground of appeal now pressed was that the lease of Francisco was subject to the order to pay compensation. I understand the contention to be that this partition decree in some unexplained manner has the effect of charging the interest of the lessees with the payment of this sum. It is a sufficient answer to this objection that the partition decree, as it stood at the date of the lease, contained no order for compensation. But in this case the contention of the defendants is wholly unreasonable. They bought with notice of the lease, and have no right to complain if the lessees are allowed the benefit of their lease.

I would affirm the judgment of the Commissioner of Requests, and dismiss the appeal with cost.

Appeal dismissed.

June 27, 1911

LASCHELLES
C.J.

*Fernando v.
Fernando*

¹ (1886) 31 Ch. Div. 314.