

1915.

Present : De Sampayo J.

BABUN APPU v. UPARIS.

316—C. R. Matara, 8,297.

*Dival lands—Right of Crown to sell a share of the land.*

DE SAMPAYO J.—“*Dival* lands became the property of the holders, subject only to the payment of the above share of produce (one-tenth in the case of high lands and one-fifth in the case of low lands) to Government. I am unable to say how the Crown came to be considered as having a share in the lands themselves, but the fact is illustrated by many cases that come before the Courts. Probably, in course of time, the true reason for payment of a share of the produce to Government was forgotten, and it was assumed that the payment was in respect of a corresponding share in the land still vested in the Crown.”

THIS was an action for the partition of a land which is marked A, B, C, and D in the plan filed in the case. The sixth defendant-appellant's contention was that lot A in the plan filed was no part of B, C, and D, and he claimed the whole of A upon a transfer deed (6 D 5) from his late father Sinchi, who purchased it from the Crown upon a Crown grant (6 D 4). The plaintiffs-respondents contended that the Crown grant conveyed to the sixth defendant-appellant only a one-fifth of the lot A. The learned Commissioner held against the sixth defendant, and he appealed.

*B. L. Persira*, for the sixth defendant, appellant.

*W. H. Perera*, for plaintiff, respondent.

*Cur. adv. vult.*

November 3, 1915. DE SAMPAYO J.—

This is an action for the partition of a land consisting of lots A, B, C, and D in the plan. The only dispute is raised by the sixth defendant, who claims the entirety of lot A upon the Crown grant dated February 4, 1889, in favour of his father Sinchi. The Commissioner considers that the Crown grant in reality conveyed a one-fifth share of the whole land, and in this opinion I think he is right. The land is of the tenure known as *divel paraveni* and also as *wedawasan*. The origin of this tenure is traceable back to remote times. Headmen were, according to immemorial custom, remunerated for their services by grants of land to be held free of duty, and the land descended on male heirs under the condition of

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service, but reverted to the Crown on a total failure of male heirs in the direct or collateral line. The *accommodesans* had the same significance with regard to the *Lascorsens*, who performed military service. This system was continued by the Portuguese and Dutch, and was recognized also in the early days of the British Government, though, I take it, no new grants of land were made. When Ceylon was still administered by the Government of Madras the salary system was adopted, and the lands were considered to be the property of the holders in full ownership, subject to a payment to Government of a tenth share of the produce. See *Bertolacci 290*, and also *Cordiner's Description of Ceylon*, on the subject of feudalism in Ceylon. Governor North, by the proclamation of May 8, 1800, withdrew the pay of native headmen, and declared that all persons holding lands by tenure of service had permission to appropriate the lands on the payment of one-tenth share of the produce in the case of high lands and one-fourth share in the case of low lands. With regard to *Lascorsens*, it provided for their giving up *accommodesans* and receiving pay for their services. By the proclamation of September 3, 1801, however, all obligation to serve on tenure of lands was finally abolished, and it was enacted that all lands held duty free at that time on account of service should pay to Government a tenth share of the produce in the case of high lands and a fifth share in the case of low lands. It will be seen that the result of these provisions was that *divel* lands became the property of the holders, subject only to the payment of the above shares of produce to Government. I am unable to say how the Crown came to be considered as having a share in the lands themselves, but the fact is illustrated by many cases that have come before the Courts. Probably, in course of time, the true reason for payment of a share of the produce to Government was forgotten, and it was assumed that the payment was in respect of a corresponding share in the land still vested in the Crown. At any rate, the Crown frequently gives back its share in the lands on payment of the value, and a grant in the usual form is made. In this case the Crown share of land was one-fifth, but, by some oversight or other, the grant issued to Sinchi was for a specific portion of the land, which is identified as lot A in dispute. It is, however, clear from the record of the sale that only a one-fifth share belonging to the Crown was sold. The Crown grant can therefore be construed as conveying only a one-fifth share of the entire land, and this has been allowed to the sixth defendant and the other heirs of Sinchi.

I think the judgment appealed against is right. The appeal is dismissed, with costs.

*Appeal dismissed.*