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

W. R. A. SOLOMON, Appellant, *and* W. A. DON WILLIAM SINGHO *et al.*, Respondents

S. C. 24—D. C. Gampaha, 422/5,127/C

Evidence—Deeds relating to land—Recitals therein concerning ownership of adjacent land—Hearsay.

The ownership of a certain land, Kosgahawatte, was in dispute. The only evidence on which the Court accepted the contention that one L. V. was the original owner of the land was contained in the recitals of two deeds in which the alleged owners of the property lying immediately to the north of Kosgahawatte had described their Southern boundary (i.e., the land in dispute) as belonging to the heirs of L. V.

Held, that the recitals in the deeds were at best hearsay evidence and were inadmissible to prove that L. V. was at any time the lawful owner of Kosgahawatte.

APPEAL from a judgment of the District Court, Gampaha.

H. W. Jayewardene, with *E. Amerasinghe* and *M. L. de Silva*, for the plaintiff appellant.

H. A. Koattegoda, for the 6th and 8th defendants respondents.

Cur. adv. vult.

May 28, 1952. GRATIAEN J.—

The plaintiff appellant instituted this action for the partition of a land called Kosgahawatte, 2 acres and 19 perches in extent, depicted in plan No. 44 dated 30th April, 1948, made by Mr. D. A. Rubesinghe, Licensed Surveyor. The land comprises :—

(*a*) Lot C, the extent of which slightly exceeds two thirds of the entire property, and which, though not until very recently separated from the adjoining Lot B, has been depicted as a defined entity in order to clarify the issues between the contesting parties.

(*b*) Lot B, which is 1 rood 6 perches in extent, and which is now separated from Lot A on the West by a live fence which was erected only a few years before the action commenced.

(*c*) Lot A, which is 1 rood 21 perches in extent.

Lot C was fully planted in coconut and jak over 40 years ago by the predecessors-in-title of the plaintiff and of the parties who support his case, and the learned Judge was satisfied that this plantation had been exclusively possessed by them since about 1887. Lot B was till very recently uncultivated, and there is no evidence to support the suggestion

that it had until the year 1943 been regarded as an entity distinct from Lot C. It has since then been in the possession of the 7th defendant whose alleged interests as a co-owner are disputed by the plaintiff. Lot A has been possessed, planted and separated off from Lot B, according to the view taken by the learned Judge, since 1938 by the 6th defendant (whose title is also disputed by the plaintiff). This period of possession is, however, insufficient to form the basis of prescriptive title. As I read the learned Judge's findings of fact, the 6th defendant had intermittently on various dates during an earlier period forcibly prevented others from cultivating Lot A, but he had not himself in any sense exercised any positive rights of ownership or co-ownership during that earlier period. In the result, neither the 6th defendant nor the 8th defendant (who claims through him) can succeed in this action except upon the basis of legal title to the property in dispute.

The case for the plaintiff and the parties who support him is that by a long series of deeds executed between the years 1887 and 1947 the persons whose names appear in the pedigree marked " A " dealt with the entire property on the footing that it had originally been exclusively owned by Jamis Appuhamy by right of *maternal* inheritance and prescriptive possession. Admittedly, Jamis and, after him, his successors-in-title had cultivated and possessed at least two thirds of the property (represented by Lot C), while the rest of the property remained uncultivated, though not separated by any boundaries from the cultivated portion until less than 10 years before the action commenced. Upon these facts one is forced to the conclusion that, whatever may have been the origin of Jamis' title, the persons claiming through him had for well over 40 years treated and dealt with the entire property as a single unit. Since then, no rival claimants have acquired rights in respect of the whole or any part of the property by adverse possession for a period sufficient to satisfy the requirements of section 3 of the Prescriptive Ordinance.

The 6th defendant, who now claims adversely to the plaintiff on a chain of title suggesting that Jamis owned only one third of the property through his grandfather Ladappu Vederala, had himself purported on an earlier occasion in 1925 to acquire a share of the property on the basis that Jamis had exclusively owned the property (P 13). Later he sold those interests on the same basis by P 14 of 1927, and it is quite evident that he first asserted title to the property on the assumption that the plaintiff's chain of title, which he has now chosen to dispute, was correct. On 19th September, 1927, having discovered that his original vendor was not in truth the lawful heir of one of Jamis' successors-in-title, he purchased an alleged interest through the deed 6 D9 on an entirely different basis—namely, that Allis, a brother of Jamis, had originally inherited one third of the property through their common grandfather Ladappu Vederela. The learned Judge has in my opinion misdirected himself by not taking into consideration this serious inconsistency in the 6th defendant's case.

The only evidence, so called, on which the learned Judge accepted the contention that Ladappu Vederala was the original owner of the property is contained in the recitals of two deeds (6 D5 of 1894 and 6 D12 of 1900) in which the alleged owners of the property lying immediately to the North

of Kosgahawatte had described their Southern boundary (i.e., the land in dispute) as belonging to " the heirs of Ladappu Vederala ". In my opinion these recitals are at best hearsay evidence on the issue under consideration and are inadmissible to prove that Ladappu Vederala was at any time the lawful owner of Kosgahawatte. In any event, I am satisfied that Jamis' possession since 1887 was not consistent with that of a person who acknowledges that either of his brothers Allis and Daniel were his co-owners. It is significant that Daniel's heirs have made no claim to the property and that, in any view of the matter, the portion cultivated by Jamis and his heirs far exceed that which represented the legitimate share of a co-owner whose rights extended to only one third of the property.

In my opinion neither the 6th defendant nor the 7th defendant, who also claims through Allis on a recent deed of 1943, had any share in the property. Similarly the 8th defendant, who purchased the 6th defendant's interests in 1947, acquired no title to a share.

I would accordingly set aside the judgment under appeal and send the case back to the lower Court so that a decree for partition be entered on the basis set out in the pedigree marked " A " filed with the plaint. The 6th, 7th and 8th defendants must jointly and severally pay to the plaintiff the costs of this appeal and also the costs of the contest in the Court below. The costs of partition will be borne *pro rata* between the parties to whom shares are allotted under the final decree.

GUNASEKARA J.—I agree.

Judgment set aside.