1933.

Present: De Sampayo and Schneider JJ.

APPU *et al.* *v.* SILVA *et al.*

231—D. C. Galle, 18,483.

Crown grant in favour of six persons—Grant silent as to what share is conveyed to whom—Presumption.

When a property is purchased by several persons, and the deed does not specify what share is conveyed to each, the deed itself is *primâ facie* evidence that they acquired title in equal shares. This inference may be rebutted by specific evidence as to the intention of the purchasers.

THIS was an action for partition of a land called Dammitta.

The contest was as regards the extent of the share which one Babunhamy, one of the six grantees, acquired under the Crown grant No. 6,519 of August 13, 1887 (P 1). The third defendant-appellant's case was that under the Crown grant Babunhamy bought a half share, and that half of half or quarter was sold against Babunhamy's widow, Balahamy, in 1908, and purchased by one Seelappu (3 D 1) who gifted his share to the appellant in 1917 (3 D 3). The case of respondents was that Babunhamy bought an equal share with each of the other five grantees, viz., one-sixth, and that the appellant was only entitled to half of one-sixth or one-twelfth. The District Judge (A. L. Crossman, Esq.) upheld the respondents' contention:—

The Crown grant was as follows:—

No. 6,519.

To all to whom these presents shall come. Greeting. Know ye that for and in consideration of the sum of Rs. 120 lawful money of Ceylon to us paid by Senadirage Babun Appu, Senadirage David de Silva, Kariyawasan Patiranage Don Andris de Silva, all of Atanikata, Atanikata Hendirage Appu of Dikkumbura, Atanikata Hendirage Carolis Appu of Dikkumbura, and Atanikata Patiranage Don Andris of Atanikata (the receipt whereof is hereby acknowledged). We of our special grace, certain knowledge, and mere motion have granted and assigned, and by these presents do grant and assign, unto the said Senadirage Babun Appu, Senadirage David de Silva, Kariyawasan Patiranage Don Andris de Silva, Atanikata Henadirage Appu, Atanikata Henadirage Carolis, and Atanikata Patiranage Don Andris, their heirs, and assigns, the following premises, to wit [land described]:—

. . . . . .

To have and to hold the said premises with their and every of their appurtenances unto the said Senadirage Babun Appu, Senadirage David de Silva, Kariyawasan Patiranage Don Andris de Silva, Atanikata Hendirage Appu, Atanikata Hendirage Carolis, and Atanikata Patiranage Don Andris, their heirs, &c., in free and common soccage for ever, he and they yielding, &c.

. . . . . .

In testimony whereof we have caused these our Letters to be made patent, and the Public Seal of our said Island to be hereunto affixed at Colombo in the said Island, this 23rd day of August, in the year of our Lord One thousand Eight hundred and Eighty-seven.

Keuneman, for the appellant.

M. W. H. de Silva, for the plaintiff, respondents.

F. de Zoysa, for the ninth defendant, respondent.

December 13, 1922. DE SAMPAYO J.—

This is an action for the partition of a land which the Crown sold in August, 1887. The purchasers were six persons, of whom one Babun Appu was one. The dispute in the case is as regards the share of Babun Appu. It is, in the first place, contended on behalf of the third defendant-appellant that the ninth defendant, who is the respondent, should have proved by oral evidence what share Babun Appu acquired under the Crown grant. I understand the evidence desiderated is that Babun Appu paid a certain amount of money. It is contended that he acquired not one-sixth share in proportion to the number of grantees in the Crown grant, but a half share in the land. In this connection the case of *Sinno Appu v. Dingirihamy* [1] has been cited. But I cannot read that case as holding more than that there is no irrebuttable presumption, as regards the shares acquired by several grantees, that they become entitled in equal shares. To my mind when a property is purchased by several persons, and the deed does not specify what share is conveyed to each, the deed itself is *primâ facie* evidence that they acquired title in equal shares. This inference may of course be rebutted by specific evidence as to the intention of the purchasers. In the present case, there is no evidence that Babun Appu paid one-half of the purchase amount; and the third defendant, who advances the contention in question, only relies upon possession of a share on the footing that Babun Appu had one-half share of the land. But I am not satisfied that the evidence proves such possession. It is no doubt the case that the third defendant has been in possession of a portion of the land in respect of the interest that he acquired. But the inference that is urged from that fact is not justified. We must then assume that Babun Appu acquired an equal share under the Crown grant as the other purchasers, that is to say, one-sixth share of the land. Babun Appu was married twice. His first wife was one Tussana, and of that marriage there was one child, a daughter Gimara, within December, 1917, sold a half of one-sixth as inherited by her from her mother Tussana. It would be observed that this daughter of Babun Appu dealt with the share on the footing that Babun Appu had only one-sixth share. The contest,

[1] *(1912) 15 N. L. R. 21*

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however, is rather different. Babun Appu's second wife was Balahamy. She had seven children. It appears that on Babun Appu's death, in execution against Balahamy, another one-fourth share was seized and sold by the Fiscal in February, 1908, and was purchased by one Seelappu. Seelappu gifted that share to the third defendant. Thus the third defendant claims the one-fourth share on the footing that Babun Appu had one-half share, and on his death the one-half came to his widow Balahamy. In order to establish that interest, the third defendant says in connection with this appeal that it has not been proved that Babun Appu purchased during the lifetime of his first wife Tussana. The marriage certificate of Tussana was put in at the trial, and it appears that she was married to Babun Appu when she was about twenty-six years old, and that the marriage took place in 1875. There is no question that Gimara was a child of Tussana and Babun Appu. There was no proof to the contrary that Gimara inherited one-half of one-sixth from her mother Tussana. But with the petition of appeal is filed what purports to be a marriage certificate of Babun Appu and Balahamy; and the date of the marriage is given as the year 1883. This, it is contended, conclusively proves that in 1887, when the Crown grant was executed, Tussana was already dead. But I wish to say, in the first place, that it was not regular to have annexed the alleged marriage certificate of Balahamy with the petition of appeal. Such a practice has been condemned over and over again by this Court. If it is intended that this Court should consider fresh evidence, the proper course is to submit that evidence with an explanation that it was impossible to have procured it at the proper time, and that it was subsequently discovered. There is no affidavit to verify such a fact. In fact no affidavit at all is submitted in appeal. On the other hand, I gather from the petition of appeal, to which the certificate is annexed, that the third defendant-appellant knew at the time that there was such a document in existence, and he says that he did not procure and produce it in the Court below, because he was taken by surprise as to the nature of the claim of Gimara under Tussana. But I do not think that there was any circumstance which justified the idea that the third defendant was taken by surprise. In a partition case, if there was any contest, the parties should have been prepared to put all the documents necessary to establish their own case, and incidentally to destroy the case of the opponent. I do not think we can look at that document in appeal. The result is that the judgment in favour of the ninth defendant must be upheld, and I would, therefore, dismiss this appeal, with costs.

SCHNEIDER J.—I agree.

Appeal dismissed.