1956 *Present :* K. D. de Silva, J., and Sansoni, J.

P. B. PERERA, Appellant, *and* KIRI HONDA, Respondent

S. C. 268—D. C. Kurunegala, 7,931/L

Sale of land—Several vendors—Is there a presumption that each of them owned an equal share ?—Exceptio rei venditae et traditae—Scope of its applicability.

Where several vendors join in conveying a land or a portion of a land, it cannot be presumed that the deed of sale was a conveyance by them in equal shares, particularly where the rest of the evidence shows that they were never considered as owning the land in equal shares. Accordingly, if A, B, C and D sell to E a greater portion of a land than they are altogether entitled to and subsequently A alone acquires title to an additional portion of the same land, the doctrine of *exceptio rei venditae et traditae* can operate against A in respect of even the entirety of the additional portion although the total extent of A's share thereby allotted to E amounts to more than one-fourth of the portion of land originally sold to E.

Under the *exceptio rei venditae et traditae* a sale made by a vendor without title may be relied upon as against a purchaser from that vendor after the vendor has acquired title. . . .

APPEAL from a judgment of the District Court, Kurunegala.

T. B. Dissanayake, for the plaintiff-appellant.

H. W. Jayewardene, Q.C., with *W. D. Gunasekera*, for the 2nd defendant-respondent.

Cur. adv. vult.

June 21, 1956. SANSONI, J.—

The dispute between the plaintiff-appellant and the 2nd defendant-respondent in this case turns on the effect to be given to the deed 2D2 of 1936.

It is common ground that the four vendors on that deed, Salanchia, Ranamali, Tikkavi and Rapia were entitled, as shown in the pedigree attached to the plaint, to ⅛th, 1/16th, 1/16th and ¼th share respectively, or 8/16 in all. By that deed, however, they conveyed 12/16 to Ukkuwa, who by deed 2D3 of 1946 conveyed that share to the 2nd defendant. After the execution of deed 2D2, Salanchia inherited 1/8 from his brother Esa, and transferred that share to the plaintiff. The 2nd defendant claimed that he had a preferent right to this 1/8 share by reason of the *exceptio rei venditae et traditae*, since he had still to get title to 4/16 after his purchase on 2D2. It was submitted for the plaintiff, however, that according to the decision in *Carlina v. Nonhamy* [1] Salanchia must be deemed to have conveyed only a 3/16 share to Ukkuwa by deed 2D2, and as title to 2/16 had already passed from him on that deed, the 2nd defendant was entitled to claim only a further 1/16 share from that source. In the result, the plaintiff claims that he is still entitled to 1/16th out of Esa's 1/8th share, while the 2nd defendant's position is that the entire 1/8th share has devolved on him.

In the case cited, Gratiaen, J. (Basnayake J. agreeing) had to deal with a case where four persons conveyed the entirety of a land, and two of those four persons had no interests at all to convey. The deed passed title only to a ½ share. Subsequently, one of the two vendors who had no interest, by name Jacoris, acquired title to a ½ share and the vendee claimed that under the *exceptio* referred to this ½ share passed to him. Gratiaen J. held that as no specific undivided shares were conveyed by the four vendors in the earlier deed " it follows in accordance with the accepted principles of construction that each must be deemed to have purported to convey a one-fourth share in the land. It follows that the doctrine of *exceptio rei venditae et traditae* could operate against Jacoris only in respect of an undivided one-fourth share of the land ". This decision was relied upon by the plaintiff-appellant's Counsel.

The judgment does not cite any authorities as laying down the principle of construction which was applied in that case, and I do not think it can be applied in all cases where several persons join in conveying a land or a share of a land. There is no presumption that persons owning a land in common in this country, especially those who have obtained their shares in the land by inheritance, own the land in equal shares. It follows that there is no presumption that where four such co-owners

[1] *(1949) 41 C. L. W. 7.*

join in transferring the entire land or a share of it, each of them is to be deemed to have transferred a proportionate share. This very case provides an illustration of what happens every day when four co-owners deal with their interests in a land owned in common.

We have not been referred to another case where it has been held that each of several vendors is presumed to have conveyed an equal share of the land, but it was held in *Sinno Appu v. Dingirihamy* [1] that there is no presumption that a Crown grant in favour of several grantees was a grant to them in equal shares. Lascelles, C.J., said that it frequently happened in this country that several persons contributed the purchase money in unequal shares and the grant would be made out in favour of the vendees simpliciter, leaving it to them to adjust their shares in accordance with the agreement between themselves. Both the Chief Justice and Wood Renton, J., who agreed, said that a construction of a Crown grant which applied such a presumption would lead to serious practical difficulties. This judgment was referred to in the case of *Appu v. Silva* [2], where de Sampayo, J. said that the earlier case merely decided that there is no irrebuttable presumption that several grantees become entitled in equal shares. The learned Judge went on to say " 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 prima 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 ".

These decisions perhaps support the proposition that in the absence of other evidence a grant in favour of several persons may be construed as a grant to them in equal shares. I cannot, however, accept the converse proposition that a deed of sale by several vendors should be presumed to have been a conveyance by them in equal shares, particularly where the rest of the evidence shows quite plainly that they were never considered as owning the land conveyed in equal shares. In the face of such evidence I think it would be unreasonable to apply a presumption which is contrary to the known facts.

If, then, there is no presumption that Salanchia sold only a 3/16 share on the deed 2D2 I see no obstacle to the *exceptio rei venditae et traditae* being applied in full force to this case, and the 1/8 share, which the plaintiff bought from Salanchia, being allotted to the 2nd defendant. As the Privy Council held in *Goonetilleke v. Fernando* [3], under this *exceptio* a sale made by a vendor without title may be relied upon as against a purchaser from that vendor after the latter has acquired title.

It was also pointed out in that case that this Roman Dutch law doctrine is broader in its effect than the English law rule as to conveyance by estoppel. I think that if one applies the doctrine in this case, one is entitled to say that neither Salanchia nor the plaintiff can be heard to dispute the 2nd defendant's title to the 12/16 share conveyed on the deed 2D2.

For these reasons I would dismiss this appeal with costs.

DE SILVA, J.—I agree.

Appeal dismissed.

[1] *(1912) 15 N. L. R. 259.* [2] *(1922) 24 N. L. R. 428.*
[3] *(1921) 22 N. L. R. 385.*