

1943

*Present : Howard C.J. and Keuneman J.*SILVA *et al.*, Appellants, and ISMAIL *et al.*, Respondents.

131—D. C. Tangalla, 4,787.

Deed of conveyance—Sale of land by description—Specific dimensions control description in schedule.

Where in a conveyance the specific dimensions of the premises sold are given at the beginning of the schedule, describing the property, those specific dimensions must control the description given at the end of the schedule.

A PPEAL from a judgment of the District Judge of Tangalla.

H. V. Perera, K.C. (with him E. B. Wickremanayake and H. W. Jayewardene), for the defendants, appellants.

N. E. Weerasooria, K.C. (with him Vernon Wijetunge), for the plaintiffs, respondents.

Cur. adv. vult.

October 28, 1943. HOWARD C.J.—

This is an appeal by the defendants from a judgment of the District Judge, Tangalla, entering judgment for the plaintiffs for declaration of

¹ *Ramanathan (1863-68) p. 195*

title to a certain plot of land marked "C" in plan "X" filed of record. The question that arises for decision is as to the exact land sold upon a deed of conveyance dated March 24, 1941 (marked D 1), whereby the plaintiffs conveyed to the defendants the premises described and set forth in the schedule. The schedule is worded as follows:—

"All that the soil and plantation of divided off allotment of land seventy and a half feet in length and thirty feet in width together with the entire boutique comprising of three boutique rooms built by me the said first-named vendor and standing thereon of the entire land called the northern two-third ($\frac{2}{3}$) portion of the land called Illukketiyamulla depicted in T. P. 69,969, situated at Walasmulla in West Giruwa pattu in Hambantota District, Southern Province, and bounded on the north by Illukketiyamulla and Gansabhawa road, east by minor road, south by the southern portion of the same land, and west by T. P. 69,874, containing in extent two roods and twenty-seven perches being property held and possessed by me the said first named vendor by right of purchase upon transfer deed No. 6,786 dated July 18, 1930, attested by D. D. S. Muttucumarana, Notary Public, and by me the said second named vendor by right of purchase upon transfer deed No. 6,258 dated 5th September, 1919, attested by Notary aforesaid and which said portion is bounded on the north by a portion of the northern two-third portion of the land called Illukketiyamulla, east by high road leading from Walasmulla to Katuwana, south by the southern one third portion of the land called Illukketiyamulla and west by T. P. 69,874."

The plaintiffs were the owners of lots A, B, C, and D as depicted in plan marked "X". Their contention that only lot D passed by virtue of D 1 to the defendants was accepted by the learned Judge. In coming to that conclusion the latter held that, as the specific dimensions of the premises sold were given at the beginning of the schedule, those specific dimensions must control the description given at the end of the schedule. He also held that although the western boundary given as "west by T. P. 69,874" would include lot C, those words must be treated as a false description. The exact dimensions of the premises conveyed appear at the beginning of the schedule. Those are the dimensions of lot D. These dimensions are not an addition to something which has already been described, but are part and parcel of the description and definition. They are an essential part of the description. According to the evidence of the Notary who drafted D 1 and gave evidence on behalf of the defendants, those dimensions $70\frac{1}{2}$ feet by 30 feet were read out to the purchasers. Moreover as lot C included a well, it seems hardly likely that it would be included in the conveyance. In my opinion the learned Judge was right in holding that the subsequent description by boundaries was controlled by the earlier description in which the exact dimensions of the premises sold were specified. In this connection I would refer to *Francis v. Hayward*¹. At page 181 Jessel M.R. stated as follows:—

"When after a description of a property it is stated that on one side it is bounded by a certain other property, and it appears that it is not so bounded for every inch, there is an inaccuracy in the statement of the boundary, but this is not enough to exclude what is not so bounded

¹ (1882) 22 Ch. D 177.

if it appears from the evidence to have been part of the property dealt with, and the previous description of that property is sufficient to include it."

In that case it was a question of the boundaries reducing the area that passed under the general description. It was held that the general description of the boundaries does not cut down the effect of the prior description. In my opinion the converse proposition that the general description of the boundaries does not enlarge the effect of the prior description also applies. It was also held in *Mellor v. Walmesley*¹ that where, in a conveyance of land, the exact dimensions were stated on the parcels and marked on a plan and stated to be, though not in fact "bounded on the west by the seashore", the words in inverted commas must be rejected.

For the reasons I have given, the appeal is dismissed with costs.

KERNEMAN J.—I agree.

Appeal dismissed.

¹ (1905) 2 Ch.164.