1977 *Present:* **Pathirana, J., Ratwatte, J. and Wanasundera, J.**

D. A. SAMARANAYAKE, Defendant-Appellant *and*
U. RAN MENIKA Plaintiff-Respondent.

S.C. 243/69 (F)-D.C. Kandy No. 7921/L

Misdescription of boundaries – Deed of Sale – Correct Assessment numbers – Falsa demonstratio non nocet – Evidence Ordinance Section 95.

Plaintiff and Defendant purchased lands on either side of Lady Anderson Road and went into possession of their respective lands.

The boundaries set out in the deeds relied on by the plaintiff apply to the land purchased and possessed by the defendant while the deeds relied on by the defendant give the boundaries of the land purchased and possessed by plaintiff. The assessment numbers given in the respective deeds are correct.

Plaintiff instituted an action against the defendant for declaration of title and ejectment of the defendant from the land he was in possession.

The evidence and the findings of the Trial Judge indicated the allotment of land each party intended to buy and in fact purchased and was in possession of. The trial judge had however held that title must pass according to the deeds and the description of the land as given in those deeds and as the deeds applied to the land possessed by the plaintiff, he held that plaintiff had title to the land.

HELD :

That as the evidence and the findings of the Trial Judge show that the assessment numbers given in the respective deeds are the correct assessment numbers of the allotment of land each party intended to buy and in fact purchased and was in possession of, the description of the land by the boundaries was a misdescription which although it would not invalidate the deeds, could be rejected or ignored.

The maxim *falsa demonstratio non nocet* which is embodied in section 95 of the Evidence Ordinance applied.

Per Pathirana, J.

"The Assessment numbers provide a definite and sufficient description of the land in the respective deeds of the plaintiff and the defendant of what was intendend to pass and the descriptions in those deeds by boundaries are erroneous".

APPEAL from the judgment of the District Court of Kandy.

H. W. Jayewardene with *B. J. Fernando* and *Miss S. Senaratne* for Defendant-Appellant.

T. B. Dissanayake for Plaintiff-Respondent.

Cur. adv. vult.

December 1, 1977. PATHIRANA, J.

On either side of Lady Anderson Road within the Municipality of Kandy, are two distinct allotments of land facing each other. The land on the west which is depicted in Plans 'Y' of 1915, 'Z' of 1966 and 'X' of 1967, filed

of record of which the Eastern boundary is Lady Anderson Road is the land and premises with buildings and plantations which at one time bore the assessment No. 53, thereafter bore the assessment Nos. 58 and 60 and presently bear assessment Nos. 188 and 190. On the East of the said Lady Anderson Road facing premises Nos. 188 and 190 is the other allotment of land which at one time bore the assessment No. 15 and thereafter assessment No. 18 and presently bears the assessment No. 31. The Western boundary of this land is Lady Anderson Road. The land to the East, that is, the land which presently bears the assessment No. 31, has a building which is described as a rice depot.

The plaintiff-respondent instituted this action on 23.9.65 for a declaration of title, ejectment and damages against the defendant, for the premises in the schedule to the plaint, viz., the premises on the West of which the Eastern boundary is Lady Anderson Road pleading title upon deed No. 1689 of 1.12.59 (P9) and stating that since that date the defendant appellant was in wrongful and unlawful occupation thereof. He described this land in the schedule to his plaint as an allotment of land bearing assessment No. 18 at Thalwatte, Lady Anderson Road in extent 0A.0R.34P bounded as follows :–

North by land belonging to Suramba
East by Lady Anderson Road
South by Lady Anderson Road
West by Gangaramaya

The land is depicted in plans, X, Y and Z.

The defendant-appellant denied that the plaintiff-respondent had title to the land and claimed the land as having purchased it on deed No. 2504 of 12.4.58(D7). The schedule to his answer refers to this land as 'Thimbirigahamulawatte' of one laha paddy sowing extent, bearing assessment No. 53 and the new assessment No. 188 and bounded as follows:-

East and South by Road leading to Lewella.
West by Lady Anderson Road
North by 'Weta'

This allotment of land at one time bore the assessment No. 53, thereafter the assessment Nos. 58 and 60 and it presently bears the assessment Nos. 188 and 190.

The deeds in the plaintiff's chain of title P1 of 1900, P2 of 1903, P3 of 1910, P4 of 1914, P5 of 1915, P6, a mortgage bond of 1928, P8, mortgage bond of 1956 and P9 of 1959 on which deed the plaintiff purchased the said allotment of land referred to by the boundaries as follows:

North by the land belonging to Suramba

East by Lady Anderson Road.
South by Lady Anderson Road.
West by Gangaramaya.

The deeds in the chain of title relied on by the defendant D3 of 1896, D4 of 1925, mortgage bond of 1925 (D5), D6 of 1958, the Fiscal's transfer in favour of the plaintiff's predecessor-in-title Ukku Banda and finally D7, the deed No. 2502 of 12.4.58 on which Ukku Banda sold the said land to the defendant gave the boundaries of the land as follows:-

East and South by Road leading to Lewella.
West by Lady Anderson Road.
South by 'Weta'.

The deeds relied on by the plaintiff in regard to his title would apply to the land on the West of which the Eastern boundary is Lady Anderson Road. The deeds relied on by the defendant for his title refer to the land on the East which has Lady Anderson Road as the Western Boundary.

It is not in dispute that from the date of the defendant's purchase of the land on the West by D7 of 12.4.58 his tenant, a person called Hinniappuhamy occupied a house on this land till he was evicted by an action instituted against him by the defendant who entered into occupation thereof in 1961. This land is described in the schedule to the plaint. It is also not in dispute that the plaintiff since the date of his purchase of the land on P9 of 1.12.59 is in occupation of the land on the East, that is the land on which the rice depot is situated of which the Western boundary is Lady Anderson Road.

On the title pleaded by both parties one Abdul Caffoor was at one time the owner of the two lands. On his death, his brother Abdul Majeed became one of his heirs and he obtained letters of administration to his estate on 28.7.54 (P10). Abdul Majeed on mortgage bond No. 1270 of 1955 (D5) mortgaged the premises described in the schedule to the answer to one Ukku Banda who put the bond in suit and having obtained judgment purchased it on a Fiscal's conveyance D6 of 11.4.58. Thereafter Ukku Banda on deed No. 2509 of 1958 (D7) sold the premises to the defendant. This land admittedly was in the occupation of Hinniappuhamy who was sued in the action for ejectment by the defendant and after decree of ejectment, the defendant came into occupation in 1961. Abdul Majeed mortgaged the interests described in the schedule to the plaint to the plaintiff on mortgage bond No. 36669 of 1956 (P6) and thereafter sold it by deed No. 1689 of 1959 (P9) to the plaintiff. This is the land on which the rice depot is situated.

The resulting position is that although plaintiff's deeds apply to the land to the West of Lady Anderson Road he entered into possession of the land to

the East of this road. The defendant, although his deeds apply to the lands to the East of Lady Anderson Road, went into occupation of the land West of Lady Anderson Road.

The learned District Judge entered judgment for the plaintiff as prayed for declaring him entitled to the land described in the schedule to the plaint and ejectment of the defendant, subject to the payment to the defendant of Rs. 3,000/- as compensation for improvement and a *jus retentionis* till the compensation is paid. He took the view that no doubt both parties generally thought that they had purchased the lands they were in possession of on their deeds, so that the defendant was under the impression that he was the owner of the land described in the plaint and possessed it as such while the plaintiff thought that he was owner of the land described in the answer and possessed it as such. He nevertheless came to the conclusion that whatever the parties or their vendors thought or intended the title must pass according to the deeds and the description of the land as given in those deeds. He, therefore, held that the plaintiff had title to the land described in the schedule to the plaint which was in the possession of the defendant.

The defendant appeals against this judgment and decree.

In my view, the learned Judge came to a correct finding when he held that both the plaintiff and the defendant thought they had purchased the land they were in possession of on their respective deeds under the impression that they were the owners of the land they were in possession of. There is ample evidence to support this finding. Abdul Majeed the vendor had categorically identified the land to the East as the land he had sold to the plaintiff by P9 of 1959. He had inventorised in the testamentary case of his brother Abdul Caffoor among other lands the two properties, namely premises bearing assessment No. 31 described as a "rice depot and garden" and the other premises No. 58 and 60 described as the garden and two houses. The inventory (P10) was filed by him on 2.3.55 in Testamentary Case D.C. Kandy No. T/1022 (P11). Prior to the plaintiff's purchase of the premises by P9 of 1959 Abdul Majeed had by usufructuary mortgage bond P8 of 1958 mortgaged the premises bearing assessment No. 31 to the plaintiff which is the land to the East of Lady Anderson Road. The boundaries given in this deed refer to the land to the West of the road. The plaintiff therefore was in possession of premises No. 31 on usufructuary mortgage bond P8 of 1956 from1956, that is at least 3 years before she purchased the same premises on P9 of 1959.

The plaintiff did not give evidence in this case. Her husband, R. N. Punchi Rala, however, gave evidence on her behalf. He stated that he bought the land in the name of his wife, the plaintiff, from Abdul Majeed. Abdul Majeed had by mortgage bond D5 of 1955 mortgaged to Ukku Banda, the predecessor-in-title of the defendant the premises described as premises

"No. 53 now Nos. 58 and 60" which is the land to the West of Lady Anderson Road although the boundaries refer to the land to the East of the road. Ukku Banda had put the bond in suit in D.C. 2410/MB and having obtained judgment against Abdul Majeed the sale of the property was fixed for 11.1.58. Ukku Banda became the purchaser as the highest bidder and by Fiscal transfer D6 of 11.4.58 became the owner of the said land. One of the persons who had bid at this sale was R. M. Punchi Rala (D2 of 8.2.58). The sale would have been advertised and would probably have been conducted at the premises namely premises Nos. 58 and 60 . The fact that R. M. Punchi Rala, the husband of the plaintiff, had bid at the sale in 1958, nearly 22 months before his wife purchased premises No. 31 by P9 of 1.12.59, and while she was in possession thereof on the usufructuary bond P8 of 1956, would clearly establish that the plaintiff knew that these premises were not the premises of which she was in possession on the usufructuary mortgage bond P8 of 1956, which she subsequently purchased on P9 of 1959. When she purchased premises No. 31 from Abdul Majeed on P9 on 1.12.59 the consideration included the amount due to her on mortgage bond P8 from Abdul Majeed.

Punchi Rala had also admitted in evidence that when the plaintiff purchased premises No. 31 one Hinniappuhamy was occupying the premises West of the road and after he was ejected from the premises the defendant came into possession. The defendant has produced receipts for payment of rates for the premises he was in possession namely premises formerly No. 58 and now 188 and 190. D9 and D10 were payments of rates made by the tenant Hinniappuhamy and D11 and D16 were payment of rates made by the defendant in respect of these premises.

The resulting position is that, firstly, the boundaries of the deeds relied on by the plaintiff apply to the land possessed by the defendant while the boundaries of the deeds relied on by the defendant apply to the land possessed by the plaintiff. Secondly, the assessment numbers of the premises in the deeds in the plaintiff's chain of title refer to the premises in fact in the possession of the plaintiff while assessment numbers of the premises referred to in the deeds in the defendant 's chain of title refer to the premises in fact in the possession of the defendant. The learned District Judge having ascertained the intention of the parties without making any endeavour to find out which of the two conflicting descriptions in each of the sets of deeds was therefore a false description or misdescription proceeded to decide the case on the description of the land by their boundaries in the respective deeds ignoring the assessment numbers. He, therefore, held that title must pass according to the deeds and description of the land as given in those deeds and as the deeds applied to the land possessed by the defendant he held that the plaintiff had title to that land, *viz.*, the land described in the schedule to the plaint.

Mr. Jayewardene, for the defendant-appellant, submitted that in the deeds in question there was sufficient description of what was intended to be sold, if one took into consideration the assessment numbers. The evidence and the findings of the Trial Judge indicated the allotment of land each party intended to buy, and in fact purchased and was in possession of. In these circumstances the description of the lands by the boundaries was a false description or misdescription which although it would not invalidate the deeds, could be rejected or ignored. He based his submission upon the principle of the rule expressed in the maxim *falsa demonstratio non nocet* which is embodied in section 95 of our Evidence Ordinance. He submitted that where the description in a deed is made up of more than one part and [redacted] is true and the other part is false, the false may be rejected. To find [redacted] true or untrue extrinsic evidence is admissible to ascertain the intention of the parties. This principle would apply only to cases where there is more than one description in the deeds. In the present case each deed has two descriptions. The question therefore is which description should be ignored or rejected.

Mr. T. B. Dissanayake for the plaintiff-respondent, however, submitted that in construing the terms of the deeds the question is not what the parties may have intended but what is the meaning of the words which they used and in this case the express description in the deeds must prevail over the intention of the parties. There was no ambiguity in the deeds regarding the boundaries although the assessment numbers are wrong. The Court must consider the wrong assessment numbers, as a misdescription and ignore or reject them. Mr. Jayewardene's submission on the contrary was that boundaries in the deeds were a misdescription and therefore the description by boundaries must be rejected.

The principle relied on by Mr. Jayewardene has been referred to in Jarman on Wills, 5th Edition, page 742 quoted with approval by Lindley M. R. in *Cowen v. Truefitt, Limited,*[1] where it is said that the rule means "that where the description is made up of more than one part and one part is true but the other part is false, there, the part which is true describes the subject with sufficient legal certainty the untrue part will be rejected and will not vitiate the demise." In that case rooms on the second floor of Nos. 13 and 14, Old Bond Street, were demised, together with free ingress and egress for the lessee "through the staircase and passages of No. 13" to and from the demised premises; There was no staircase in No. 13 leading to the demised premises, but there was a staircase in No. 14. It was held that on the evidence once it was ascertained that it was intended that the plaintiff should have access to the rooms by a staircase and it was found that there is only one staircase by which such access can be had it followed that it was right to make an order giving her the use of that staircase, and accordingly the lease was rectified by substitution of the staircase of "No. 14" for that of "No. 13". This was more a case which deals with rectification of a deed but the broad principle is nevertheless applicable to the present case.

[1] (1899) 2 Ch. 309 at 311.

Halsbury's Laws of England, 4th Edition, Vol 12, para 1519 also refers to the rule:–

"When the premises are sufficiently described, as by giving the particular name of a close or otherwise, an erroneous additional description will be rejected as a *"falsa demonstratio"*; but if there is not this certainty in the first description (for example if it is expressed in general terms) and a particular description is added, the latter controls the former and limits the generality of the earlier description, for where words are inserted which thus form an essential part of the description of the subject-matter they cannot be rejected. In case of doubt whether words are a *falsa demonstratio* or words of restriction they must be taken as words of restriction, for the law will not assume that the description is erroneous or false. Of course the additional words may be neither words of restriction nor of false description, but simply an alternative description which exactly fits the premises already described. Here the further description is redundant."

And para 1520 states:

"It follows from the first rule previously stated that, where the particular land is ascertained with certainty by part of the description, an erroneous statement as to the mode in which title to the land is derived, or as to tenure or area, or mode of user or name or parish or **boundary** or occupation, will be rejected. The description which is rejected as false need not follow the true description. The whole description must be looked at fairly to see which are the leading words of description and which is the subordinate matter."

In *Fernando v. Christiana,*[2] Pereira J. although he saw no reason for the application of the maxim *falsa demonstratio non nocet,* explained the meaning of the maxim thus:

"This maxim means that as soon as there is an adequate and sufficient definition with convenient certainty of what is intended to pass by a particular instrument, a subsequent erroneous addition will not vitiate it. It applies only when the words of an instrument, exclusive of the *falsa demonstratio,* are sufficient of themselves to describe the property intended to be dealt with."

This principle was also followed by Akbar J. in *de Silva v. Abeytileke,*[3] where the case of *Cowen v. Truefitt. Ltd.* (supra) was again cited with approval at page 156:

"In the case of *Eastwood v. Ashton* (1915) A.C. 900 Lord Sumner quoted with approval certain English decisions as follows:–

[2] (1913) 15 N.L.R. 321. [3] (1932) 33 N.L.R. 154.

"My Lords, the principle on which this case was decided in the Court of Appeal was thus stated by Parke J. in *Llewellyn v. Earl of Jersey*. As soon as there is an adequate and sufficient definition, with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it; according to the maxim *falsa demonstratio non nocet*, to which the words *cum do corpore constat* should be added, to do the maxim full justice. In *Morell v. Fisher*, where this principle is repeated, it is further said, "The characteristic of cases within the rule is, that the description, so far as it is false, applies to no subject at all; and so far as it is true, applies to one only". It is thus stated by Romer J. in *Cowen v. Truefitt, Limited*." In construing a deed purporting to assure a property, if there be a description of the property sufficient to render certain what is intended, the addition of a wrong name or of an erroneous statement as to quantity, occupancy, locality, or an erroneous enumeration of particulars will have no effect."

Applying the principle set out in the above cases in the light of the finding of the learned District Judge, once it is ascertained what the true intention of the parties was and how they carried out that intention by purchasing the respective allotments of lands and entered into possession of them, it is then not difficult to find out which is the true description and which is the false description or misdescription. In this case the plaintiff intended and had in fact purchased and entered into possession of the land bearing assessment No. 31 which is the land to the East of Lady Anderson Road while the defendant intended to purchase and having purchased entered into possession of the Land bearing assessment No. 58 (now 188 and 190) which is West of Lady Anderson Road.

Mr. T. B. Dissanayake, however, submitted that when construing the deed the question is not what the parties may have intended but what is the meaning of the words which they used. He cited *Fernando v. Jossie*.[4] In that case there was no conflict in the deed in question between the premises sold and the boundaries. What was sold was a boutique room bearing No. 5 and the description was free from ambiguity as to what was sold, *viz.*, the boutique room bearing assessment No. 5 with the undivided soil covered thereby.

On an examination of the plaintiff's deeds in respect of premises No. 18 (now No. 31) from 1960 and the defendant's deeds in respect of premises 53 (then 58 and 60 and now 188 and 190) from 1896, it would appear that all persons who purchased or otherwise dealt with these premises had ignored the misdescription of the boundaries in these deeds and acted on the assessment numbers.

Considering all the circumstances, I would hold that the assessment numbers provide a definite and sufficient description of the lands in the respective deeds of the plaintiff and the defendant of what was intended to

[4] (1957) 58 N.L.R. 114.

pass by the deeds and the descriptions in these deeds by boundaries are erroneous.

The learned District Judge has held the defendant has not acquired prescriptive title to the land described in the schedule to the plaint. In view of the conclusion I have reached that the defendant and not the plaintiff is entitled to the land described in the schedule to the plaint, I would hold that the defendant and his predecessors-in-title have acquired prescriptive title to this land. Although Abdul Majeed was the owner of the lands at one time, these were two distinct allotments of land and he was entitled to them on independent title deeds from two different sources.

I, therefore, allow the appeal and set aside the judgment and decree. The plaintiff's action is dismissed. The defendant will be entitled to costs here and in the District Court.

There is still the possibility that some unwary purchaser of any one of these lands may commit the error of buying the wrong land if he were to be guided by the misdescription of the boundaries and this in turn may mean fresh litigation. For this reason we would suggest that either the plaintiff or the defendant should have the decree of this Court duly registered in the appropriate folios in the books kept under the Registation of Documents Ordinance in respect of the land described both in the schedules to the plaint and amended answer. Secondly, we would suggest that the plaintiff and the defendant should in their own interests have the boundaries of the lands described in their respective deeds rectified so that the plaintiff's deeds will be described by the boundaries given in the schedule to amended answer while the defendant's deeds will be described by the boundaries given in the schedule to the plaint, while retaining the assessment numbers and the deeds be duly registered after rectification.

RATWATTE, J. – I agree.

WANASUNDERA, J. – I agree.

Appeal allowed.