

1941

*Present* : Wijeyewardene and Nihill JJ.SUBRAMANIAM *et al.*, Appellants, and SIVAGURU, Respondent*S. C. 273—D. C. Jaffna, 13,313**Vendor and purchaser—Number of vendors—Each sells his undivided share—Purchaser evicted—Liability of each vendor—Proportionate share of damages—Notice.*

Each of a number of vendors who sells his own undivided share of a land is liable in an action for eviction only in a proportionate share of the damages.

Where there are a number of vendors notice of eviction must be given to each.

**A**PPPEAL from a judgment of the District Judge, Jaffna.

*N. Nadarajah*, with *C. Renganathan*, for defendants, appellants.

*H. V. Perera, K.C.*, with *H. W. Tambiah*, for plaintiff, respondent.

*Cur. adv. vult.*

November 11, 1941. WIJEYWARDENE J.—

The first defendant and his sister, the second defendant, sold to the plaintiff an undivided one-fourth share of a land for Rs. 400. A few months after the transfer, an action was filed by a third party for the partition of the land, and the plaintiff intervened in that action to establish his claim to the share purchased by him. Under the final decree in the action the plaintiff was not declared entitled to any share, and that decree was affirmed in appeal.

The plaintiff, thereupon, instituted the present action against the defendants claiming the consideration paid by him and the damages sustained by him by reason of the defendants' failure to warrant and defend his title. The Additional District Judge gave him judgment for Rs. 1,202·72 and costs against both the defendants and they have preferred the present appeal against that judgment.

In this case notice should have been given to each of the defendants as “where there is a plurality of vendors or of heirs of one vendor, it is necessary that notice be given to each” (Voet 21, 2, 21. Berwick’s Translation). The notice, of course, need not be in writing provided that a demand, if not made in express terms, could be implied, at least, from the surrounding circumstances, as having been made to each of the vendors to render to the vendee all the help that it was in his or her power to give and so defend the title of the vendee (vide *Tinanhamy v. Nonis*<sup>1</sup>; *Menika v. Adakappa Chetty*<sup>2</sup>; *Wirawadane v. Ratnaike*<sup>3</sup>). It is, moreover, sufficient if the notice is given to the vendor’s agent “the vendor, however, being present and not ignorant of it” (Voet 21, 2, 21). Applying these principles, I find that the evidence accepted by the District Judge supports his finding that due notice has been given to the defendants, though, as the defendants’ Counsel submitted, the District Judge does not appear to have directed his mind specifically to the legal requirement that notice should be given to each of the vendors.

The District Judge has erred in entering judgment against both the defendants for the full amount found to be due. The two defendants transferred to the plaintiff a one-fourth share claiming to be entitled to that share by right of inheritance from their father. It is clear that each defendant sold an undivided one-eighth share for half the consideration. Under these circumstances the liability of each defendant would be for only a half share of the amount found to be due to the plaintiff. The extent of liability of one of several vendors is indicated in the following passage from Voet 21, 2, 18 (Berwick’s Translation): “Clearly, if the plurality of vendors did not sell *communiter*, but each only his own undivided share of what had been possessed by him *pro indiviso*, then as there are considered to be as many sales as shares sold, there is no doubt but that each is bound only for his own share, not only in respect to making good the damages sustained by the eviction, but also in respect to undertaking the defence”. This view of the law has been accepted and acted upon in *Baba Sinno v. Sasira*<sup>4</sup>. I do not think that the case of *Giniarah Hamy v. Abdul Raheman*<sup>5</sup> cited on behalf of the plaintiff is of much assistance in the decision of this question.

The Additional District Judge has thought it necessary for the purpose of deciding the issue in this case to make some adverse comments on the evidence of Mr. Advocate C. Vanniasingham who was called as a witness by the defendants. On a careful study of the evidence given by the witness, I am strongly of opinion that the strictures passed by the learned District Judge are not justified.

I would set aside the decree appealed against and direct that decree be entered ordering each of the defendants to pay the plaintiff Rs. 601·36 and half the costs of the action in the District Court. I make no order as to the costs of this appeal.

NITHILL J.—I agree.

*Decree varied.*

<sup>1</sup> (1909) 1 *Cur. Law Rep.* 216.

<sup>2</sup> (1913) 17 *N. L. R.* 93.

<sup>3</sup> (1920) 22 *N. L. R.* 219.

<sup>4</sup> (1901) 5 *N. L. R.* 34.

<sup>5</sup> (1919) 6 *C. W. R.* 230.