1956 *Present :* Sinnetamby, J. and L. W. de Silva, A.J.

FERNANDO, Appellant, *and* JOSSIE *et al.*, Respondents

S. C. 302—D. C. Balapitiya, 398/L

Construction of Deeds—Paramount importance of the words used—Intention of parties not material.

In construing the terms of a deed, the question is not what the parties may have intended, but what is the meaning of the words which they used.

APPEAL from a judgment of the District Court, Balapitiya.

Sir Lalita Rajapakse, Q.C., with *V. C. Gunatilaka*, for the plaintiff-appellant.

S. W. Jayasuriya, for the defendants-respondents.

Cur. adv. vult.

October 4, 1956. L. W. DE SILVA, A.J.—

The Plaintiff-Appellant instituted this action in 1952 for a declaration of title to a boutique marked No. 6 and the soil covered by it as depicted in the Plan No. 2,620 marked X and made for the purposes of this action. The plan shows a horizontal line of 5 boutiques. The disputed boutique No. 6 adjoins boutique No. 5 on its southern side. The appellant, who became the owner in 1942, conveyed on the deed 1D 1 of 1948 the boutique No. 5 with the soil covered by it to the first defendant-respondent who is the wife of the second defendant-respondent.

The deed gives the boundaries for the entire land and is in the following terms which are entirely free from ambiguity :—

> " The boutique room bearing No. 5 with the undivided soil covered thereby out of the five boutique rooms bearing Nos. 1, 2, 3, 4 and 5 built abutting the high road on the land called one third portion of Urugasmanhandiya Manana Kebella bearing lot No. 12 " etc.

The respondents disputed the appellant's title to the boutique No. 6 and claimed it as a part of the boutique No. 5 on the allegation that Nos. 5 and 6 were one building. They thus contended that the deed 1D 1 did not exclude the sale of No. 6, the existence of which as a separate entity was denied by them.

The learned District Judge found as a matter of fact that the boutique No. 6 existed immediately behind No. 5. With that finding we are in entire agreement. But he dismissed the appellant's case and declared the first respondent the owner of the boutique No. 6 and allotted compensation to the appellant. The reason for the learned trial Judge's finding is stated in his judgment as follows :—

> " The mention of all the boutique rooms with the boundaries of the whole land and the transference of an undivided soil indicate that the bare land and buildings behind were considered as part and parcel of all the rooms. With this understanding between the plaintiff and the defendants, the soil that covered room No. 5 and all that appertained to it was transferred by 1D 1. "

This interpretation of the deed of transfer by the appellant in the name of the first respondent is clearly wrong. According to the plain meaning of the words used, the transfer was of the boutique room No. 5 with the soil covered thereby. Neither the use of the word " undivided " nor the recital of boundaries for the whole land could in any way enlarge the specified corpus conveyed. In *Maharaja Manindra Chandra Nandi v. Raja Durga Prashad Singh* [1], Lord Parmoor said :—

> " In construing the terms of a deed, the question is not what the parties may have intended, but what is the meaning of the words which they used. "

We have had no difficulty in coming to the same conclusion. We therefore allow the appeal with costs both here and in the Court below. In setting aside the judgment and decree of the District Court, we direct a decree to be entered in favour of the plaintiff-appellant in terms of the prayer in the plaint with damages at the agreed rate of Rs. 10 per month from 12th October 1951.

SINNETAMBY, J.—I agree.

Appeal allowed.

[1] *A. I. R. (1917) Privy Council 23.*