1934 *Present:* **Macdonell C.J. and Garvin S.P.J.**

ELIYATAMBY *et al. v.* KANAPATHY VEERAGATHIE.

13—D. C. Jaffna, 25,349.

Partition—Action to partition more than one land—When such proceeding is possible—Same set of owners in same proportion of shares—Intention of Ordinance.

It is not contemplated by the provisions of the Partition Ordinance that any more than one land will be partitioned in one proceeding.

An exception may be made in cases in which more than one allotment of land are held in common by the same set of co-owners in the same proportions.

APPEAL from a judgment of the District Judge of Jaffna.

H. V. Perera (with him *Chelvanayagam*), for defendant, appellant.

Gnanapragasam, for plaintiffs, respondents.

N. E. Weerasooria, for first and fourth to seventh added defendants, respondents.

January 24, 1934. GARVIN S.P.J.—

In this proceeding the plaintiffs sought to obtain a partition of two separate allotments of land—the first of which is depicted in plan bearing No. 422 filed at page 97 of the record and the second being the lot No. 1 in the plan filed at page 110 of the record—upon the footing that these two allotments of land belonged to the plaintiffs and the defendants in the proportions of 1|3 to the first plaintiff, 1|3 to the second plaintiff, and 1|3 to the defendant. The defendant agreed to the partition of the first allotment. In regard however to the second allotment he took the objection that it was not competent in one proceeding under the Partition Ordinance to seek the partition of more than one land and pleaded further that lot No. 1 in the plan referred to was not a separate entity, but formed with the lots 2 to 9 shown on that plan one undivided land which belonged in common to the plaintiffs, the defendants, and several others. He indicated certain others who were entitled to interests in what he alleged was the larger common land of which lot 1 was a part and these were made party defendants.

At the trial the main point upon which the parties concentrated was the question whether lot 1 was a separate entity or whether as pleaded by the defendant it was part of a larger land held in common. The position of the plaintiffs and of the added parties was that two contiguous portions of land to which their predecessors in title had in the remote past been entitled in common had been consolidated and then divided up amicably between them so that there was allotted to each set of co-owners a separte lot, and that at this amicable division the lot 1 was assigned to those through whom the plaintiffs and the defendants now claim. They alleged that since this division which was effected over 30 years ago, the various co-owners to whom these several lots had been assigned, had each held the lot assigned to him in severalty to the exclusion of the others and thereby prescriptive rights to the lots in severalty had been acquired.

The learned District Judge held in favour of the plaintiffs. Accordingly he treated the lot 1 as a separate entity and decreed a partition thereof between the plaintiffs and the defendant in equal shares. The defendant has appealed and it has been contended on his behalf that, even upon the finding of the learned District Judge that lot 1 was a separate entity, his judgment is wrong for the reason that under no circumstances can the deeds upon which the plaintiffs claim their interests be held to have conveyed to each of them a 1|3 share of the lot 1.

The first plaintiff claimed his interests upon a deed No. 3,191 of May 13, 1929. The second plaintiff acquired her interests upon a deed No. 3,920, also dated May 13, 1929. Now these deeds so far as they relate to the claim of the plaintiffs to interests in lot 1 in the plan filed at page 110 convey not an undivided 1|3 share of the lot 1 but a 1|3 of 1|6 of a portion of land in extent 3 lachams and 1|3 of 1|3 of a land in extent 4½ lachams.

These are the two portions of land which together form the area covered by the lots 1 to 9 which the defendant maintains was held in common. Proceeding upon the assumption that the common possession of this larger land had been resolved by amicable settlement as alleged by the plaintiff and found by the learned District Judge, the deeds under which the plaintiffs claim do not and cannot be construed to be effective conveyances to each of them of a 1/3 share of lot 1. Doubtless they are effective as conveyances of some small fractional share in the lot 1 but it is impossible in the present state of the record to determine with accuracy that fractional interest. We have no means of ascertaining whether lot 1 comprises portions of the two allotments referred to in the deed or whether the whole of lot 1 was carved out of one of these portions. In the absence of such information it is not possible to ascertain the extent of the interest which passed on these deeds. It is quite clear, however, that there are substantial interests in this lot 1 outstanding in the predecessors in title of the plaintiffs.

The decree therefore in its present form cannot stand so far as it relates to the lot 1.

The provisions of the Partition Ordinance considered as a whole strongly indicate that it was the intention of the legislature to provide a procedure for resolving common possession of one land into possession in severalty. It is not contemplated that in one proceeding any more than one land will be partitioned. There are instances in which it has been found possible to make an exception in cases in which more than one allotment of land are held in common by the same set of co-owners and such presumably is the reason why in this proceeding it was sought to partition two separate lands. But this case illustrates the danger of seeking a partition of more than one land in one proceeding for the trial has disclosed that there are others besides the plaintiffs and the defendant who are entitled to interests in lot 1. It is no longer possible therefore to treat this as one of those cases in which partition of more than one land may be permitted in one proceeding upon the ground that each of the lands is held in common and in the same proportions, by the same set of co-owners.

The judgment of the learned District Judge will therefore be affirmed so far as it relates to the land depicted in plan No. 422; but so far as it relates to the lot No. 1 in the plan filed at page 110 it cannot be sustained and must be set aside. A partition of that allotment must be sought in another action. The appellant is entitled to the costs of this appeal which will be paid by the plaintiffs, but he must pay the added defendants-respondents their costs both here and below.

MACDONELL C.J.—I concur. *Set aside.*