

1969 Present: H. N. G. Fernando, C.J., and Weeramantry, J.

S. RANASINGHE, Appellant and V. ARIYARATNE EPA  
and 10 others, Respondents

*S. C 123/67 (Intly.)—D. C. Matara, 4373/P.*

*Vendor and purchaser—Construction of deed—Co-owner—Erection of a building by him on the common land—Transfer thereafter by him of his undivided share in the land—Rights of the transferee.*

Where a building is erected on land with the intention that it will be a permanent structure, the building becomes annexed to the land and accedes to the soil. Accordingly, where a co-owner, after erecting a building on the common property, sells his undivided share in the land without making any reservation as to the building, his rights in the building as to ownership or compensation pass to the transferee and thereafter to the successors in title of the transferee.

**A**PPEAL from an order of the District Court, Matara.

*W. D. Gunasekera*, for the plaintiff-appellant.

*W. S. Weerasooria*, for the 5th defendant-respondent.

*Cur. adv. vult.*

June 25, 1969. H. N. G. FERNANDO, C.J.—

Under a Final Decree in D. C. Matara Case No. 9420 a 6/15 share of the land which is the subject of this action was allotted to one Punchihamy, and a 3/15 share to her husband Philip Epa. On the death of Punchihamy each of her 10 children became entitled to small undivided shares, and her husband to a further 3/15 share. The husband by the deed P 3 of 1959 sold all his undivided shares to his son Gunasinghe Epa. The son thereafter by P4 of 1960 sold all his shares to one Rosiya Wickremasekera

who in 1964 sold these interests to the plaintiff. The dispute in this appeal concerns only a boutique which had sometime prior to the present action been built on the land.

The plaintiff claimed that the boutique was built by Gunasinghe Epa, and if this had been so, the plaintiff is clearly entitled to the house because Gunasinghe Epa specifically mentioned in P4 that he was selling the tiled boutique standing on the land. But the position taken up by the 5th defendant, who is also a son of Philip Epa, was that the house was constructed by his father and that by 5D4 of 1964 the father sold the house to him.

On the facts the learned District Judge has held that the house was built by Philip Epa before he sold his interests in the soil to Gunasinghe Epa by P3 of 1959. This conclusion appears to have somewhat seriously affected the view formed by the learned Judge as to the proper construction of the deed P3. By this deed Philip Epa transferred "the properties mentioned in the schedule below, together with all and singular the rights, ways, easements, advantages, servitudes and appurtenances whatsoever thereto belonging or in any wise appertaining or usually held, occupies, used or enjoyed therewith or reputed or known as part or parcel thereof and together with all the estate, interest, claim and demand, whatsoever of the said Vendor, of, in, to, upon or out of the said premises and every part thereof", and the schedule specifies an undivided 6/15 parts of the land. The case of *Tissera v. Tissera*<sup>1</sup> applied the general maxim that where a building is erected on land with the intention that it will be a permanent structure, the building becomes annexed to the land and accedes to the soil. In the instant case it was not the position of the 5th defendant that there was any intention that the building would not be permanent. When therefore Philip Epa sold his share in the land the building had acceded to the land. The question is whether in such a case a transfer of the share in the land in such terms as occur in the deed P3 does convey a building which at the time of the transfer had acceded to the soil.

I can see no difference between the circumstances of this case and one in which an individual who owns an acre of land erects a building on it, and thereafter transfers the land and all his right title and interest therein without making any reservation as to the building. If in the latter case, the building manifestly passed with the land upon the transfer, there seems no reason why a transfer in similar terms by a co-owner of his share in the land should not also pass the ownership of a building which the co-owner had erected. In both cases the reasonable assumption is that the owner is divesting himself of his entire rights in the soil, and accordingly has no intention to retain any interest whatsoever in the land thereafter. In my opinion the transferee on P3 purchased all the shares previously held by Philip Epa and acquired rights in the house in view of the terms of the deed P3, and any person who thereafter desired to purchase the shares

<sup>1</sup> (1940) 42 N. L. R. 60.

held by that transferee was quite entitled to presume that whatever had been built on the land by Philip Epa did pass to his transferee. If the contrary view be correct, and if as has happened in this case, it is open to a co-owner who has sold his entire soil interest to claim subsequently that he did not intend to convey a building which he had erected, the question whether the right to the building has or has not been passed will have to be decided according to whatever version the transferor may subsequently choose to state in evidence. In fact it appears in this case from the evidence of Philip Epa himself that he set up a claim that he retained some right in the house only after Gunasinghe Epa to whom he sold his share had parted with the property to an outsider.

I hold that in the circumstances of this case, Philip Epa could only have retained a right in the building which he erected, if that right was expressly reserved in his transfer F3. In the absence of such a reservation, the rights in the building passed to his transferee and thereafter to the successors in title of the transferee.

The decree is amended when it refers to the building B by deleting the provision for compensation to the 5th defendant and substituting provision allotting the building or the right of compensation therefor to the plaintiff. The order in the decree that the plaintiff pay the 5th defendant Rs. 52·50 as costs of contest is set aside. The 5th defendant will pay to the plaintiff Rs. 52·50 as costs of the contest in the District Court and a further Rs. 52·50 as the costs of this appeal.

WEERAMANTRY, J.—I agree.

*Decree amended.*

