

Present : Fisher C.J. and Drieberg J.

1928.

RATRANHAMY *v.* SINGHO *et al.*

148—D. C. Ratnapura, 4,265.

*Evidence—Transfer of land—Reference to plan—Lot outside the boundaries but within plan—Oral evidence—Intention of parties—Ordinance No. 15 of 1895, s. 97.*

Where land, which formed the subject of a transfer, was described as lying within stated boundaries and as comprising certain lots in a preliminary plan ; and where the question was whether a lot which was outside the boundaries but within the plan was included in the transfer,—

*Held*, that the case fell within the principle of section 97 of the Evidence Ordinance and that oral evidence was admissible regarding the intention of the parties when they executed the transfer.

**A** PPEAL from a judgment of the District Judge of Ratnapura.

*N. E. Weerasooria* (with *Asirwatham*), for plaintiff, appellant.

*Soertsz* (with *Samarawickreme*), for defendants and added defendants, respondents.

November 15, 1928. FISHER C.J.—

In this case the plaintiff brought an action for declaration of title to an undivided one-fourth share to certain lands which he claims to have been transferred to him by a deed No. 1,398 dated October 23, 1917. The parcels in the deed are as follows :—“ All that undivided one-fourth part of the two allotments of land comprising lot No. 90 C and lot No. 90 D in P. P. 39 adjoining each other and forming one property appertaining to Dawulkarage Panguwa, situated at Karawita in the Meda pattu of Nawadun korale in the District of Ratnapura of the Province of Sabaragamuwa ; and bounded on the north by chenas allotted to Juse Vedarala and Endagala, on the east by Acharigewatta, Aludeniye-ela, Aludeniya, Udukuredola, Udukumbura, Imbulewatta, Udagamawatta, and high road, on the south by Kudugal-dola, and on the west by boundary line of Kandewattehenyaya ; containing in extent 70 acres.”

The dispute arises as to four lots which form part of lot D in P. P. 39 but lying outside the eastern boundary road. The question is whether the lots referred to pass under the transfer. Evidence was led without any objection as to what was in the mind of the parties when they executed the transfer. Evidence was also led as to the conduct and attitude of the parties after the transfer.

1928. It is clear from the evidence that if the whole of lot D was conveyed the eastern boundary is not road, and it is also clear that if the eastern boundary is road the whole of lot D did not pass by the transfer.

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The case therefore seems to me to fall within the principle of section 97 of the Evidence Ordinance, 1895, which provides that: "When the language used applies partly to one set of existing facts and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply."

*Illustration.*

"A agrees to sell to B 'My land at X in the occupation of Y.'  
A has land at X, but not in the occupation of Y, and he has land in the occupation of Y, but it is not at X.  
Evidence may be given of facts showing which he meant to sell."

The law as to evidence of intention seems to be this, that the parties must be taken to have intended what is to be gathered from the language they used, and that evidence of intention only is not admissible. A document must be taken to pass that which it purported to pass, and that clearly will be the only way of looking at the matter if the parties to a transfer are dead, subject of course to evidence of facts properly admissible in evidence.

In the present case it is to be noted that the plan was merely referred to and was no part of the document. It is not therefore on the same footing as the plan in some of the cases cited, for instance, *Eastwood v. Ashton*,<sup>1</sup> where the plan was endorsed on the deed and the property conveyed was said to be "more particularly described in the plan." In my opinion the evidence given as to occupation is conclusive as to what is the proper construction to be placed on this document. The learned Judge in his judgment says "The fact that these persons were in occupation is the explanation why these allotments were excluded from the Partition Case No. 3,660 and support the story of the added defendants that they did not sell land lying between the road and the river." That evidence is evidence of facts showing what was meant to be transferred, and in this connection a passage from the judgment of Lord Parker in *Eastwood v. Ashton (supra)* is applicable. He says at pages 912, 913: "There are, however, numerous cases which show that the order in which the conflicting descriptions occur is not at all conclusive . . . . It seems to me that under these circumstances the court must in every case do the best it can to arrive at the true meaning of the parties upon a fair consideration of the language used and the facts properly admissible in evidence."

<sup>1</sup> (1915) A. C. 900.

The action of the transferees in not taking possession of the lots in question indicate that the deed must be construed according to the boundaries, and not according to a plan which was not apparently before the parties. For these reasons I think we cannot disturb the finding of the learned Judge, and the appeal must be dismissed with costs.

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DRIEBERG J.—I agree.

*Appeal dismissed.*

