1957 *Present :* Basnayake, C.J., and L. W. de Silva, A.J.

DONA LUCIHAMY *et al.*, Appellants, *and* CICILIYANAHAMY *et al.*, Respondents

S. C. 225—D. C. Gampáha, 4,222 P

Civil Procedure Code—Section 187—Requisites of a judgment—Partition action—Failure of Court to examine title of each party—Effect on decree.

Bare answers, without reasons, to issues or points of contest raised in a trial are not a compliance with the requirements of section 187 of the Civil Procedure Code.

Failure to examine the title of each party in a partition action vitiates the decree if it has prejudiced the substantial rights of the parties.

APPEAL from a judgment of the District Court, Gampaha.

Sir Lalita Rajapakse, Q.C., with *A. W. W. Goonewardena*, for the 1st, and 3rd to 6th defendants-appellants.

C. D. S. Siriwardene, with *G. D. C. Weerasinghe*, for the plaintiff-respondent.

H. Wänigatunga, with *A. Nagendra*, for the 7th to 11th defendants-respondents.

Cur. adv. vult.

September 20, 1957. L. W. de SILVA, A.J.—

The plaintiff instituted this action for the partition of a land called Dawatagahawatte described in the plaint and depicted as lots A and B in the plan No. 24 marked X, made for this action. She alleged that the only other owners were the 1st, 2nd and 3rd defendants. The 1st, 3rd, 4th, 5th, and 6th defendants, who are the appellants, filed answer alleging that the land depicted in the plan marked X was not Dawatagahawatte

but a portion of Hedawakagahawatte in which the plaintiff had no interest. The appellants further contended that the original owner Juseappu owned both lands Hedawakagahawatte and Dawatagahawatte which adjoin each other. The appellants denied the devolution of title pleaded in the plaint and relied on a separate title according to which they claimed to be the sole owners of Hedawakagahawatte. They claimed all the improvements and prayed for a dismissal of the action. The 7th to the 11th defendants claimed an exclusion of lot B as a part of a paddy field belonging to them. They claimed no interests in lot A. The appellants opposed their claim to lot B. After trial, the learned District Judge held that the land in suit is Dawatagahawatte and not Hedawakagahawatte and entered an interlocutory decree for a partition of lot A on the basis of the shares stated in the plaint. Lot B was excluded.

The learned District Judge has failed to consider the important point raised by the appellants that Hedawakagahawatte is in two portions. According to them, the southern portion is the corpus in suit as depicted in the plan X, and the land adjoining the corpus on the south is Dawatagahawatte. In other words, the appellants maintained that the plaintiff has sought a partition of a portion of Hedawakagahawatte by calling it Dawatagahawatte. If the appellants' contention is correct, the northern boundary in P1, which is stated to be Hedawakagahawatte, appears to be explained. The learned District Judge's finding that Dawatagahawatte is not the same as Hedawakagahawatte does not solve the problem of the identity of the two lands. The only other deeds to which reference is made in the judgment are P2 and P9. There is no reference at all to the appellants' title deeds or the boundaries stated therein. The judgment refers to certain oral evidence without relating it to the documents on the question of the identity of the corpus.

According to the plaintiff, Joramanu is said to have sold his interests along with the 1st defendant's brothers to the 3rd defendant appellant. No title deeds were produced by the plaintiff for the sale of these shares. If the plaintiff admits that this title was conveyed on 1D11 of 1934 and 1D13 of 1941, as she appears to do (for there is no other basis for admitting a title in the 3rd defendant-appellant) she must account for the description of the land Hedawakagahawatte appearing in those deeds which should have no place in the devolution of title relied on by her. In view of the order we have decided to make, it is unnecessary to consider these matters in greater detail.

No reasons at all have been given in the judgment for the exclusion of lot B. There were two issues relating to this portion :—

(7) Is lot B in plan X a part of the land called Wetekeyagahakumbura *alias* Millagahakumbura belonging to the 7th to the 11th defendants ?—

Need not be answered.

(8) If so, should lot B be excluded ?—

Lot B should be excluded.

It is not possible to answer the 8th issue without answering the 7th.

There were 12 issues raised in this case. Some of them do not bring out the real points of contest. The learned District Judge has stated in his judgment: "All the issues that have been raised can be crystallised in this one contest", that is, whether the land in suit is Dawatagahawatte or Hedawakagahawatte. In the result, the evidence germane to each issue has not been reviewed or discussed. No reasons precede or follow the answers which are mostly "yes" or "no" or "does not arise." Such a record has not disposed of the matters which the Court had to decide. Bare answers to issues or points of contest—whatever may be the name given to them—are insufficient unless all matters which arise for decision under each head are examined. Section 187 of the Civil Procedure Code (Cap. 86) is in the following terms :—

> "The judgment shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision."

The judgment of the trial court does not conform to these requisites.

The appellants made specific claims to the improvements on lot A. Some of these were not counter-claimed by other parties, but the judgment allots some of the admitted improvements in common without reasons being given. Learned counsel for the respondents so conceded at the hearing of this appeal.

We are of the opinion that the failure of the trial judge to examine the title of each party has prejudiced the substantial rights of the parties. We accordingly order a new trial. We allow the appeal by setting aside the judgment and decree of the District Court. Each party must bear the costs both here and in the court below.

BASNAYAKE, C.J.—I agree.

Appeal allowed.