

Present: Pereira J. and De Sampaio A.J.

ABDUL CAFFOOR v. PATTUMUTTU.

237—D. C. Galle, 11,580.

Partition—Allotment of a lot to a party by decree—Conveyance of share to another—Subsequent variation of decree—Different lot allotted under decree—Action by purchaser to rectify deed.

Where A being allotted a certain portion of land in a decree in a partition suit, conveys that portion to B, and the decree is subsequently varied, and A is allotted another portion in lieu of the portion conveyed by him,—

Held, that B cannot maintain an action against A for rectification of the deed of conveyance.

THE facts appear from the judgment.

A. St. V. Jayawardene, for plaintiff, appellant.

V. Grenier, for defendant, respondent.

Cur. adv. vult.

September 22, 1913. PEREIRA J.—

I think that the view taken by the District Judge on the question involved in this case is correct. The first defendant was by partition decree entered up in case No. 8,138 of the District Court of Galle declared entitled to a defined portion of land marked lot No. 4 in plan 73A filed of record in the case, and he by his deed P 4 sold and conveyed that allotment of land to the second defendant. The second defendant by his deed No. 2,320 of the same date as P 1 agreed to re-transfer the land to the first defendant, and the first defendant by his deed No. 10,469 assigned to the plaintiff her interests on this deed. The second defendant accordingly conveyed to the plaintiff by deed No. 10,607 the allotment of land No. 4 mentioned above. Subsequently the decree in the partition suit mentioned above was amended by this Court, and the first defendant was declared entitled to lot No. 3 instead of lot No. 4 on the plan referred to above. The plaintiff brings this action to have deed No. 10,607 rectified. The plaintiff, in my opinion, has no right whatever to claim a rectification of deed No. 10,607. The case of *Beale v. Kyte*¹ cited by the appellant's counsel has, so far as I can see, no application to the present case. That action was based on the ground of a common mistake on the part of the contracting parties. It appeared there that by an error the land conveyed included more

¹ (1907) 1 Ch. D. 564.

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than was comprised in the written contract, in pursuance of which the conveyance was executed. In the present case there was no mistake. At the date of the conveyances referred to above the first defendant had title to lot No. 4; the parties intended that that lot and no other should be conveyed; and the first defendant conveyed to the second, and the second to the plaintiff that lot. The effect of the order in the partition suit made subsequently was to vest title in the first defendant in lot No. 3 in lieu of lot No. 4. In these circumstances plaintiff was not entitled to claim a rectification of deed No. 10,607, and, indeed, what he claims is, in effect, a separate conveyance to him of lot No. 3. Clearly he has mistaken his remedy, and I would dismiss the appeal with costs.

DE SAMPAYO A.J.—I agree.

Appeal dismissed.

