

BATAGAMA APPUHAMI v. DINGIRI MENIKA.

1897.

November 29.

*C. R., Kurunegala, 4,328.*

*Partition suit—Necessity of proof of title—Power of Partition Commissioner to award compensation—Requirements of return—Ordinance No. 10 of 1863, s. 5.*

To obtain a decree of partition, which is binding against all the world, the Court should require parties to prove their title.

A Partition Commissioner has the power to award compensation. The return to the Commission should comply with the requirements of section 5 of the Partition Ordinance with regard to schedule, &c.

**P**LAINIFF claimed an undivided half share of a certain land on which he had made certain plantations, and averring that the defendant was entitled to the remaining moiety with certain plantations she had made, prayed for a partition, and that

1897. compensation be made to the plaintiff and the defendant accord-  
 November 29. ing to the plantations and improvements each of them was  
 responsible for. Defendant admitted that plaintiff was entitled  
 to a half share of the land in claim, and stated that a partition of  
 the land was effected of consent between them, but that if a fresh  
 division was ordered she claimed Rs. 90 as damages. On the case  
 coming on for trial on 23rd February, 1897, the Commissioner  
 (Mr. J. S. Drieberg) made the following order :—" No dispute as to  
 " title. It is decreed that plaintiff and defendant are each  
 " entitled to an undivided half share of the land claimed in plaint.  
 " Of consent Mr. E. B. Daniels is appointed Commissioner. His  
 " attention is directed to the pleadings." A commission issued to  
 Mr. Daniels, who effected a partition of the land, whereby the  
 defendant was given the greater part of the plantations and a  
 house, and was decreed to pay to plaintiff by way of compensation  
 a sum of Rs. 74·16½. The matter came up on 20th May, 1897, before  
 the then Commissioner (Mr. C. M. Fernando), who confirmed the  
 partition, save as to compensation, in respect of which he held  
 that the Partition Commissioner had no power to award, and that  
 he had acted *ultra vires* in awarding compensation. A decree  
 was accordingly entered. Plaintiff appealed.

*Sampayo*, for appellant.

*Bawa*, for respondent.

29th November, 1897. BROWNE, A.J.—

I regret to find that when this Court repeatedly enjoined the  
 necessity that to obtain a decree of partition, which is binding  
 against all the world (9 S. C. C. 64 ; 1,375, D. C., Matara ; C 6,840,  
 D. C., Colombo ; C 4,981, Colombo ; *Examiner* Reports, &c.), the  
 Court should require parties to prove their title, the record of the  
 proceedings at the trial of this action should be as follows :  
 " Parties and proctors present. No dispute as to title. It is  
 " decreed that plaintiff and defendant are each entitled to an  
 " undivided half of the land in the plaint."

A Commissioner to partition was then appointed. He returned  
 a report and survey dividing the land into two lots, and specified  
 that the values of the trees, &c., on A were Rs. 90·09 and on  
 B 238·42½, and awarded plaintiff should get A and Rs. 74·16½  
 compensation.

The Commissioner of the Court of Requests allowed defendant's  
 contention that the Partition Commissioner had no power to  
 award compensation, and decreed without it an equal soil area to  
 each party.

The return to the Commission did not comply with the requirements of section 5 of the Partition Ordinance, in that no such schedule as is there directed was filed.

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That schedule requires the value of the land to be shown, and the mode in which the partition is proposed to be made. Clearly, the allotments made must be equalized in value as well as in extent. Though the decree entered by this Court in 1,346, D. C., Negombo, on 26th January, 1865 (*Legal Miscellany, 1865, 21*), was of consent, this Court and the Counsel for parties recognized this principle, and so far as I know it has ever since obtained.

The decree must be set aside, and in so doing I set aside all proceedings as far back as and inclusive of those of the 23rd February, 1897, and direct that the action be properly tried. Defendants will pay costs of the 25th May, 1897, and this appeal, but plaintiffs will not have execution for same decree.

