

1895.
May 7.

DE SILVA v. HARMANIS et al.

C. R., Galle, 3,172.

House built by one on another's land—Ownership—Right to compensation—Right of owner of soil.

The builder of a house on another man's land does not acquire a saleable right to the house, but the house becomes the property of the owner of the soil.

Between the owner and the builder there may exist equities, such as a right to compensation, &c., but the ownership of a building cannot ordinarily be in one man, and that of the soil on which it stands be in another man.

THIS was an action under section 247 of the Civil Procedure Code to have a house declared the property of a claimant in execution and released from seizure. The evidence showed that the plaintiff (claimant) was entitled to an undivided half of the land on which the house stood, but that the house was not built by him. The Court below held that the plaintiff was not entitled to the house, and dismissed his claim with costs. He appealed.

Seneviratna, for appellant.

Sampayo, for respondent.

7th May, 1895. LAWRIE, J.—

The parties seem to be agreed that by the law of Ceylon the builder of a house on another man's land at once acquires a saleable right to that house.

That, however, is not the law. A house becomes the property of the owners of the soil on which it is built. Between the owners and the builders there may exist equities, such as a right to compensation, &c., but the ownership of a building cannot (in the ordinary case) be in another.

If such a division of property can be created by contract, it certainly was not created and did not exist here. The plaintiff, it is admitted, is the owner of an undivided half of the land on which the house stands. The house was seized in execution against a man residing in it. The plaintiff claimed before the Fiscal. The claim was disallowed, and then he brought this action under section 247 to have it established that he had right to the house "by right of construction about five years ago."

The learned Commissioner holds, I daresay rightly, that the plaintiff did not build the house, and that the house is an old house. If it be that the plaintiff has right to an undivided half

of it, it does not appear to whom the other half of the land belongs, but with the interest of the unknown owner the Court has now nothing to do.

I set aside the judgment, and find that the plaintiff is entitled to an undivided one-half of the land described in the plaint, including the house standing thereon.

Success has been divided. As he originally put it, the plaintiff's claim rested on a wrong ground. No costs.

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