

Present : Bertram C.J. and De Sampayo J.

1921.

TIYADORIS *et al.* v. SADISHAMY.

105—D. C. Galle, 17,657.

Sale of land alleging title by grant from father—Father entitled to only half—A portion of other half inherited from mother—Action rei vindicatio against widow of vendor—Is widow entitled to a share of portion inherited by husband from his mother ?

A claiming to be owner under a deed from his father sold a divided one-fourth share of a land to the plaintiff. In an action *rei vindicatio* against A's widow, she pleaded that A's father was entitled to only one-eighth, and that her husband became entitled to another one-fortieth share through his mother, and that that share was not sold to plaintiff.

Held, that the defendant (widow) had no title to any portion of the one-fortieth share as heir of her husband.

“When two parties have agreed for the conveyance of a definite *corpus* from one to the other, the vendor cannot derogate from his own grant by setting up the plea that he was not in fact entitled to so much as he granted, but that he has another interest in the property which he has never conveyed, and which he retains to himself. The heir of the vendor must be in the same position.”

THE facts appear from the judgment.

H. V. Perera, for the appellant.

Pereira, K.C. (with him *Amaresekera*), for the respondents.

November 17, 1921. BERTRAM C.J.—

In this case the widow of the vendor of certain interest was sued in a *rei vindicatio* action by the purchaser. She says in effect : “It is true my husband sold you the land in question, but he had not a full title to it. He purported to convey one-fourth, deriving his title ultimately from a deed granted by his father. He asserted that this one-fourth share, originally undivided, had by possession and improvement been converted into a divided one-fourth. But, as a matter of fact, he had no title to a one-fourth at all. His father was married in community. My husband, under the deed through which he traced his title thus, only acquired one-eighth, and not one-fourth. You, therefore, only acquired one-eighth from my husband. My husband, however, also, as one of five children, inherited one-fortieth share from his mother. That one-fortieth he has never conveyed to you. As one of my husband's heirs, I am

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entitled to a share in that one-fortieth, and standing on that I resist your claim to eject me from the land of which I am a part owner."

Various side issues have been discussed in the case. Was the interest which the vendor's father purported to convey acquired during the community or after the death of the wife? Had the divided one-fourth share been, in fact, converted into a divided share by prescription? In the view which we take of the case, I do not think that it is necessary to decide those questions. The case I think turns upon an equitable principle. When two parties have agreed for the conveyance of a definite *corpus* from one to the other, the vendor cannot derogate from his own grant by setting up the plea that he was not in fact entitled to so much as he granted, but that he has another interest in the property which he has never conveyed, and which he retains to himself. The heir of the vendor must be in the same position.

The vendor sets up another plea. She states: "Granted that I cannot set up a title inconsistent with my husband's conveyance, as a matter of fact, I am not on the land as a part owner; I am there as a tenant of my brother-in-law. He, too, inherited one-fortieth from his mother, and, being his tenant, I cannot be ejected by the plaintiff." The evidence of this tenancy is, however, extremely shadowy. I do not think it can be accepted. It was referred to in the judgment in another action brought between the same parties when the plaintiff sued the defendant for rent as his tenant. It was there referred to only incidentally, and was not, I think, seriously or fully considered.

There are certain previous authorities which have been referred to, namely, *Sandris v. Dinakahamy*,¹ and a case at present unreported (D. C. Matara, 8,999²). These cases, however, turn, I think, on the terms of the particular conveyances. It does not appear that in these cases the parties had agreed for the conveyance of a definite *corpus*. All that the conveyance passed and intended to pass in these cases was a certain undivided interest. In this case the land had been marked off by a fence. The vendor claimed the whole of it. The purchaser dealt with on the supposition that the vendor was the owner of the whole of it, and it was intended that that property should pass as a definite *corpus*. For the reasons I have explained I would dismiss the appeal, with costs.

DE SAMPAYO J.—I agree.

Appeal dismissed.

¹ (1910) 5 Bal. 75.

² S. C. Min., Oct. 14, 1921.