

Present : Pereira J.

1913

FERNANDO v. CHRISTIANA.

195—C. R. Kalutara, 5,834.

Prescription—Co-owner entitled to a divided portion of prescription—Sale by co-owner of an undivided share—Falsa demonstratio non nocet.

Where a co-owner who had acquired title to a defined portion by prescription sold by his deed an undivided share, it was held that the vendee could not claim the whole of the divided portion by virtue of his deed.

PEREIRA J.—Each case must depend upon its own facts and circumstances. In the present case I see no reason for the application of the maxim *falsa demonstratio non nocet*. This maxim means that as soon as there is an adequate and sufficient definition with convenient certainty of what is intended to pass by a particular instrument, a subsequent erroneous addition will not vitiate it. It applies only when the words of an instrument, exclusive of the *falsa demonstratio*, are sufficient of themselves to describe the property intended to be dealt with.

THE facts are fully set out in the judgment.

A. St. V. Jayewardene, for defendant, appellant.

E. W. Jayewardene for plaintiff, respondent.

Cur. adv. vult.

July 17, 1912. PEREIRA J.—

The plaintiff in his plaint claims to be entitled to a share of land described as follows: "An undivided four-sixths of one-third share of the defined southern portion of Mawatabadawatta containing in extent about 1 acre." This is a perfectly intelligible description, and it is the only description of the land in the deeds on which the plaintiff bases his title. It is said that this share of land belonged to one Carolis, and on a writ against him, it was sold by the Deputy Fiscal of Kalutara to one Salmon. Salmon by his deed dated October 20, 1886, is said to have sold the share of land to Endris, and Endris by his deed of July 15, 1910, is said to have sold the same to the plaintiff. No Fiscal's conveyance was obtained by Salmon, and so the plaintiff never acquired the title of Carolis to the land. He, however, pleads title by prescription. Now, the property actually in dispute in this case appears to be, not an undivided share of land as stated above, but a defined portion of land of the extent of about 27 perches, and described in the decree

1912.
 PEREIRA J.
 Fernando v.
 Christiana

as the "defined southern portion of Mawatabadawatta." The boundaries given in the decree are the same as those given in the plaint, except that while the plaint gives "the defined two-thirds portion of this land" as the northern boundary, the decree gives "another portion of the same land" as that boundary. I may, in passing, observe that I fail to see how a parcel of land can possibly be bounded by a portion of itself. However, as observed already, the plaintiff relies entirely on prescriptive possession, but he personally had no possession prior to July, 1910. Can he avail himself of the possession of his vendor? He may do so provided the conveyance to him by his vendor is a conveyance of the identical defined portion of land now in dispute. The conveyance, however, is a conveyance in express terms of "an undivided four-sixths share of the third share of the southern portion of Mawatabadawatta." Mr. E. W. Jayewardene argued that this was a *falsa demonstratio* that does not, in the eye of the law, make an instrument inoperative, and he cited the case of *Fernando v. Fernando*¹ in support of his contention. Each case must depend upon its own facts and circumstances. In the present case I see no room for the application of the maxim *falsa demonstratio non nocet*. This maxim means that as soon as there is an adequate and sufficient definition with convenient certainty of what is intended to pass by a particular instrument, a subsequent erroneous addition will not vitiate it. It applies only when the words of an instrument, exclusive of the *falsa demonstratio*, are sufficient of themselves to describe the property intended to be dealt with. There is no lack of authority in support of these propositions. In the present case, the only description of the property sold is "an undivided four-sixths share of the third share of the southern portion of Mawatabadawatta." This, as I have already observed, is a perfectly intelligible description, and is a description that enables us to ascertain the property actually conveyed. There was apparently a defined portion to the south; and whatever the parties may have intended to convey, the property in fact conveyed was an undivided four-sixths of one-third of that portion. That defined portion, it is stated in the deed in the plaintiff's favour, is about 1 acre in extent. If it has now contracted itself to 27 perches, the plaintiff is entitled to no more than four-sixths of one-third of that extent of land. I give judgment for plaintiff for an undivided four-sixths of one-third of the portion of land described in the first part of the present decree. The rest of the decree is set aside, and I think that parties should bear their own costs in both Courts. The name of the owner of the land to the north should be ascertained, and the northern boundary described as land belonging to him.

Varied.

¹ (1911) 14 N. L. R. 412.