

Present: Pereira J.

1914.

GOONEWARDENE v. SILVA.

492—C. R. Galle, 7,449.

Co-owner—Right to build on common land.

A co-owner has no right whatever to build on the common property without the consent of his co-owners.

“ No doubt in these cases (2 N. L. R. 225 and 275) the opinion has been expressed that the law does not prohibit one co-owner from using and enjoying the common property in such manner as is natural and necessary in the circumstances ; but that hardly means that one co-owner can in defiance of an expressed objection by the others put up a building on the common property.”

THE facts appear from the judgment.

A. St. V. Jayewardene, for plaintiffs, appellants.

Bawa, K.C., for defendants, respondents.

Cur. adv. vult.

February 2, 1914. PEREIRA J.—

This is an action by the plaintiffs for an injunction to prevent the defendants from building a house on the land Malpithiwatta, of which the parties to the action are co-owners. A co-owner has no right whatever to build on the common property without the consent of his co-owners. That proposition has been laid down in several cases, and my own views on it will be found expressed in my judgment in case No. 8,663—C. R. Balapitiya (*S. C. Civil Minutes of July 16, 1912*), and I need not repeat them here. It has been frequently laid down that if one co-owner cannot get the others to agree to any part of the common property being put to any use that he likes, the remedy is by proceedings under the Partition Ordinance. It is said that there are exceptions to the rule given

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above, and the cases of *Silva v. Silva*¹ and *Siyadoris v. Hendrick*² have been cited. No doubt in these cases the opinion has been expressed that the law does not prohibit one co-owner from using and enjoying the common property in such manner as is natural and necessary in the circumstances ; but that hardly means that one co-owner can in defiance of an expressed objection by the others put up a building on the common property. I do not think it means any more than that the mere fact that a co-owner puts the common property to a use that is natural and necessary without the consent of the other co-owners does not amount to an unlawful act. But the proposition, even in this meaning, does not appear to be supported by authority, and in the case of *Goonewardene v. Goonewardene*,³ my brother Wood Renton observed that the decisions referred to stood by their own authority. Anyway, as in the case of *Goonewardene v. Goonewardene*,³ it does not appear to be quite clear in this case that houses used to be put up on the land in question by some co-owners without the consent of the others. The evidence on this point is extremely meagre. The evidence against the third defendant appears to me to be as strong as the evidence against the other defendants. Proof of irremediable loss, although such loss is averred in the plaint, is not absolutely necessary under our law to entitle one to an injunction. I set aside the order appealed from, and allow the plaintiffs' prayer for an injunction and for an order that so much of the house as has already been built be taken down. The plaintiffs will have their costs in both Courts.

Set aside.

¹ 2 N. L. R. 225

³ 2 C. A. C. 151.

² 2 N. L. R. 275.