

1954

Present : Pulle J. and K. D. de Silva J.

K. L. PREMATHIRATNE *et al.*, Appellants, and N. ELO
FERNANDO *et al.*, Respondents

S. C. 117—D. C. (Inty.) Negombo, 15,656

Partition action—Improvements made by a co-owner—Limits of their relevancy in allotting shares.

Although, in a partition decree, a co-owner should, whenever possible, be given the lot which carries his improvements, this principle should not be adhered to if, in the process of giving effect to it, substantial injustice is likely to be caused to the other co-owners.

Where, however, improvements made by one co-owner fall within the portion allotted to another co-owner the latter should pay compensation to the former in respect of the improvements.

APPPEAL from an order of the District Court, Negombo.

Sir Lalita Rajapakse, Q.C., with *M. L. S. Jayasekera*, for the plaintiffs appellants.

N. E. Weerasooria, Q.C., with *D. S. Jayawickreme* and *K. G. de Silva*, for the defendants respondents.

*Cur. adv. vult.*³

January 28, 1954. K. D. DE SILVA J.—

This is a partition action. The learned District Judge after trial ordered that an interlocutory decree for partition be entered. The two plaintiffs are jointly entitled to $\frac{3}{4}$ ths of the land. The remaining $\frac{1}{4}$ th share is allotted to the 2nd and 3rd defendants subject to the life-interest of the 1st defendant and to the conditions set out in certain deeds. The corpus to be partitioned comprise lots 1 to 6 shown in plan X filed of record. The extent of the land amounts to a little over 44 acres. The whole land is very marshy, particularly lot 1 shown in plan X. Admittedly the most valuable portion of the land consists of lots 2 and 3. At the trial the defendants sought to establish that on their chain of title they were entitled to the northern $\frac{1}{4}$ th share of the land. There was also a contest between the plaintiffs on the one hand and the defendants on the other in regard to the ownership of the plantations of 25 years and under. The learned District Judge accepted the claim of the defendants to these plantations. In regard to the northern $\frac{1}{4}$ th share of the land, he rightly, if I may say so with respect, held against them.

The young plantations allotted to the defendants stand on lots 2 and 3. In his judgment the learned District Judge observed "it will be reasonable for the Commissioner to allot a share to the defendants towards the north so as to include these plantations" at the partition. It is against this observation, which almost amounts to a direction, that the plaintiffs have appealed. Lot No. 2 contains 20 coconut trees of the old plantation and 12 trees of the young plantation allotted to the defendants. On Lot 3 the number of coconut trees of the old plantation amounts to 54, while it also contains 12 coconut trees allotted to the defendants. As to whether these young plantations belonging to the defendants stand on a defined section of these two lots or not it is not clear. The probabilities are that these trees are interspersed with the old trees. In that event, according to the mild direction given by the learned District Judge, the entirety of these two lots are likely to be allotted to the defendants.

It is true that wherever possible a co-owner should be given at the partition a lot which carries his improvements. This principle, however, cannot be adhered to in all circumstances. If in the process of giving effect to that order substantial injustice is likely to be caused to the other co-owners, the principle should not be adhered to. According to the Surveyor's report, most of the coconut trees standing on this land are

stunted. That is not strange in view of the marshy nature of the soil. In regard to lots 2 and 3 it would appear what is more valuable is not the plantations but the soil itself. Out of the total number of trees standing on those two lots, the greater number would belong to the plaintiffs, as they are entitled to $\frac{3}{4}$ th share of the land. It is also in evidence that the land immediately to the north of these two lots also belong to the plaintiffs. Taking all these facts into consideration, it would be unjust to allot these two lots or the greater part of them to the defendants who are entitled to only $\frac{1}{4}$ th share of the land. Therefore, I would direct the Commissioner to allot the northern $\frac{3}{4}$ th share of lots 2 and 3 to the plaintiffs and the southern $\frac{1}{4}$ th share to the defendants. The line of demarcation is to run from the eastern boundary of lot 3 to the western boundary of lot 2 in a straight line. If any trees belonging to the plantations allotted to the defendants fall within the lot given to the plaintiffs, the defendants would be paid money compensation in respect of those trees. The Commissioner is directed to partition the other lots in the most equitable manner in his opinion.

The Interlocutory Decree is to be amended in terms of this Order.

The defendants will pay to plaintiffs fifteen guineas as costs of this appeal.

PULLE J.—I agree.

Decree amended.
